

**Pennington Borough Council
Regular Meeting – December 7, 2009**

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

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

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

Flag Salute

Mr. Tucker asked everyone to stand for the Flag Salute.

Approval of Minutes

Council Member Chandler made a motion to approve the minutes of the November 2, 2009, Regular Meeting, second by Council Member Ogren with all members present voting in favor.

Open to the Public – Agenda Items Only

Mr. Tucker read the following statement:

The meeting is now 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 on agenda items.

Mayor's Business

Mr. Tucker invited Tax Assessor, Toni Sost to come forward to speak about assessment changes. Ms. Sost stated that she has filed a compliance plan to try to avoid a lot of tax appeals for next year. Ms. Sost stated that the market is changing and home values are going down and so in an effort to be equitable with residents in certain neighborhoods she has applied to the State to do a compliance plan. Ms. Sost explained that the compliance plan allows the Assessor to make changes to assessments but restricts the changes to not more than twenty-five percent of the line items. Ms. Sost stated that she has spoken to the County Tax Administrator and he is allowing the Borough to adjust neighborhoods outside of the compliance plan that have had a lot of appeals or that have had adjustments done because of the appeals. Ms. Sost stated that she has provided to Council a compliance plan summary sheet that outlines the neighborhoods that will be adjusted. Ms. Sost stated that she has gone to the State and she has provided all of the information and now it is up to them as to whether the plan gets approved. Ms. Sost answered questions for Council Members regarding the proposed plan. Mr. Griffiths asked what the total amount of the reduction would be if this plan is approved. Ms. Sost stated that she would calculate the figure and get it to Council Members. Ms. Sost explained that doing these adjustments this way would help alleviate the tax appeal burden of refunding school and county taxes.

Mr. Tucker thanked Ms. Sost for attending.

Mr. Tucker wished Kit Chandler a Happy Birthday and thanked her for coming out to a Council Meeting on her birthday.

Mr. Tucker reported that Jack Koeppl has reopened the former Queenstown Gallery on Main Street with his family members and encouraged everyone to support this new business.

Mr. Tucker stated that today, December 7th marks the 68th Anniversary of what President Roosevelt dubbed a "day of infamy", the Japanese sneak attack on the United States bases at Pearl Harbor. Mr. Tucker gave a brief history of that day and asked for a moment of silence in memory of the men and women who lost their lives that day.

Mr. Tucker noted the passing of a dear friend, Will Dickey. Mr. Tucker outlined some of Mr. Dickey's many accomplishments including his involvement on the Economic Development Commission and the Historical Society here in Pennington Borough. Mr. Lawver spoke briefly on his friendship with Mr. Dickey and noted that he will be sadly missed. Mr. Lawver stated that Mr. Dickey has left a mark on Pennington that is deep and lasting and his contributions to Pennington through the Economic Development Commission will be long remembered.

Ordinances for Public Hearing and Adoption

Mr. Tucker read Ordinance 2009-11 by title.

**Borough of Pennington
Ordinance #2009-11**

**AN ORDINANCE REVISING REGULATIONS PERTAINING TO YARD WASTE AND
AMENDING CHAPTER 172 OF THE CODE OF THE BOROUGH OF PENNINGTON**

WHEREAS, Borough Council of the Borough of Pennington, on the recommendation of the Public Works Committee, seeks to revise and supplement provisions of Chapter 172, Article III of the Code of the Borough of Pennington, concerning Yard Waste;

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

1. Section 172-18 of the Code, concerning definitions, is hereby amended to include in proper alphabetic order a definition of "CONTRACTOR" as follows:

BRUSH – Branches and shrubs suitable for disposal in a chipper. Brush does not include grass clippings, leaves, cuttings, twigs or miscellaneous organic matter.

CONTAINERIZED – The placement of yard waste in a trash can, bucket, bag or other container sufficient to prevent the yard waste from spilling or blowing into the street.

CONTRACTOR – Any person, persons, company or other entity hired for the purpose of altering, cleaning, clearing, removing, pruning, maintaining or modifying the lawn, trees, shrubs, plantings or other natural materials on a property.

CUTTINGS AND TWIGS – Small diameter branches collected from yards or pruned from trees or shrubs. Cuttings and twigs are too small for disposal in a chipper.

LEAVES – Leaves collected from yard areas exclusive of grass clippings, cuttings, twigs, brush or other organic matter.

PERSON – Any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

STREET - Any street, avenue, boulevard, road, parkway, viaduct, drive, or other way, which is an existing State, county, or municipal roadway, and includes the land between the street lines, whether improved or unimproved, and may include pavement, shoulders, gutters, curbs, sidewalks, parking areas, and other areas within the street lines.

YARD WASTE – Brush, cuttings and twigs, [leaves] grass clippings and miscellaneous organic material resulting from yard maintenance.

2. Section 172-21 of the Code, concerning collection of yard waste, is amended and supplemented as follows:

A. Leaves may be placed in a Borough-owned street for collection by the Borough no more than seven days immediately prior to a scheduled collection. Leaves will be scheduled for collection by the Borough on an ongoing basis, as often as practicable, during the period from October 1 to January 1 and from April 1 to June 1. Scheduled collections will be announced through local newspapers and by notices posted in the municipal building. Leaves placed in the street in anticipation of collections during the period from October 1 to January 1 need not be containerized. Leaves placed in a Borough-owned street in anticipation of collections during the period April 1 to June 1 must be containerized. When containerized, the leaves must be contained in bags which when full shall not weigh more than 45 pounds per bag. Whether or not containerized, leaves placed in the street for collection shall not include grass clippings or other yard waste.

B. The placement of uncontainerized leaves in a street owned by the County or State shall be subject to regulation by them. However, containerized leaves may be placed in a State or County street for collection by the Borough during the period from April 1 to June 1, subject to the weight limitations set forth above.

C. Other yard waste, exclusive of grass clippings, may be placed in any street during the day immediately prior to a collection scheduled by the Borough for that type of yard waste and at no other time. All such yard waste shall be containerized, except brush must be stacked neatly with the large end of the trunk or stem facing the street and need not be tied or containerized. **Tree trunks and limbs in excess of six inches (6") in diameter will not be collected except in compliance with regulations governing bulk trash service as provided in the Borough Code.** Grass clippings may not be included or mixed with this waste. Placing grass clippings in the street, whether or not containerized, is prohibited at all times.

D. Weekly collections shall be scheduled as follows:

- (1) Collection of cuttings and twigs and yard waste other than brush, leaves and grass clippings, shall be scheduled for every Monday, exclusive of holidays, throughout the year.
- (2) Collection of brush shall be scheduled for every Tuesday, exclusive of holidays, throughout the year.

E. [Any person who violates or neglects to comply with any provision of this article shall, upon conviction, be subject to a fine not to exceed \$1,000, imprisonment for a period not to exceed 90 days, or a period of community service not to exceed 90 days, or any combination thereof; except a person who has received notice from the Borough to remove yard waste unlawfully placed in a street and fails to do so within seven days from receipt of the notice shall be subject to a mandatory minimum fine of \$100 for each day the violation continues after the seventh day. Each day the violation so continues shall be deemed a separate offense. . In addition, any person who violates this chapter shall be liable to the Borough for expense, loss or damage incurred by the Borough as a result of the violation.] **To the extend yard waste is permitted by this Article to be placed in the street in bags or containers, no more than twenty (20) bags or containers may be placed at the curb for collection at any one time. Yard waste permitted to be placed in the street without bags or containers shall be placed in a pile no larger than four feet (4') wide by four feet (4') high by fifteen feet (15') long. Each property is limited to one such pile per week.**

F. (new) All yard waste generated by a Contractor must be removed from the property by the Contractor and may not be left at the curb. Leaves shall be left at the curb in compliance with subsection A of this section.

3. Section 172-22 of the Code, concerning violations and penalties, is amended as follows:

Any person who violates or neglects to comply with any provision of this article **or any regulation promulgated pursuant thereto** shall [, upon conviction] **receive at least one warning before an enforcement action is brought but thereafter shall** be subject to a fine not to exceed \$[1,000] **500** [, imprisonment for a period not to exceed 90 days, or a period of community service not to exceed 90 days, or any combination thereof; except a person who has received notice from the Borough to remove yard waste unlawfully placed in a street and fails to do so within seven days from receipt of the notice shall be subject to a mandatory minimum fine of \$100 for each day the violation continues after the seventh day]. Each day the violation [so] continues shall constitute [be deemed] a separate offense. [In addition, any person who violates this chapter shall be liable to the Borough for expense, loss or damage incurred by the Borough as a result of the violation.]

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

Council Member Lawver made a motion to open the Public Hearing on Ordinance 2009-11, second by Council Member Chandler. There were no comments from the public. Council Member Lawver made a motion to close the Public Hearing on Ordinance 2009-11, second by Council Member Chandler. Mr. Tucker called for a voice vote with all members present voting in favor. Council Member Lawver made a motion to adopt Ordinance 2009-11, second by Council Member Chandler with all members present voting in favor.

Mr. Tucker read Ordinance 2009-12 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2009-12**

AN ORDINANCE DESIGNATING WESTBOUND CURLIS AVENUE A “STOP” STREET AT BURD STREET AND AMENDING CHAPTER 200 OF THE CODE OF THE BOROUGH OF PENNINGTON

WHEREAS, the Borough of Pennington wishes to replace existing “Yield” control on Curlis Avenue at Burd Street with a “Stop” sign at westbound Curlis Avenue where it intersects Burd Street;

WHEREAS, the Borough Engineer has determined that in the interest of safety and the expeditious flow of traffic, Curlis Avenue should be designated the “Stop” street and the existing “Yield” control on Curlis Avenue at Burd Street should be removed;

WHEREAS, the Borough Council of the Borough of Pennington directs that the Yield sign on Curlis Avenue be removed and that a Stop sign should be installed on Curlis Avenue at Burd Street and these changes are in accordance with law;

WHEREAS, Article II of Chapter 200 of the Code of the Borough of Pennington (“Code”) designate stop intersections and the location of stop signs in the Borough;

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

- Article II of the Code at Section 200-6 is hereby amended to add to the intersections designated as stop intersections and the locations of stop signs the following:

Intersection	Stop Sign on
Curlis Avenue and Burd Street	Curlis Avenue

- This ordinance shall be effective upon adoption and publication as provided by law.

Council Member Ogren made a motion to open the Public Hearing on Ordinance 2009-12, second by Council Member Lawver. There were no comments from the public. Council Member Ogren made a motion to close the Public Hearing on Ordinance 2009-12, second by Council Member Lawver. Mr. Tucker called for a voice vote with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2009-12, second by Council Member Ogren with all members present voting in favor.

Mr. Tucker read Ordinance 2009-13 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2009-13**

AN ORDINANCE SUSPENDING ENFORCEMENT OF CERTAIN SHORT-TERM PARKING RESTRICTIONS IN THE MUNICIPAL PARKING LOT DURING THE MONTH OF DECEMBER 2009 AND AMENDING SECTION 200-15 OF THE CODE OF THE BOROUGH OF PENNINGTON

WHEREAS, the Section 200-15 of the Code of the Borough of Pennington, at subsection A, B, C and D, prescribes time limitations of two hours, one hour, 30 minutes and 15 minutes, respectively, in designated spaces in the Municipal Parking Lot;

WHEREAS, these time limitations are intended to be effective between 8:00 AM and 6:00 PM, prevailing time, except Sundays and holidays;

WHEREAS, in order to facilitate shopping and other activities in the Town Center during the holiday season, Borough Council seeks to suspend these time limitations for the affected spaces from December 1 through December 31, 2009, while maintaining all other regulations and time limitations affecting the Municipal Parking Lot in full effect;

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

- Section 200-15 of the Borough Code, regulating parking in the Municipal Parking Lot, is amended as follows:

Certain parking spaces in the Municipal Parking Lot are hereby designated as "2 Hours", "1 Hour", "30 Minute," "15 Minute," "Long Term" or "Reserved" as shown on the attached drawing of the parking lot to be kept on file in the office of the Borough Clerk. Appropriate signs advising of the time limitations shall be erected in the immediate area of the parking spaces affected by this section.

- Between the hours of 8:00 a.m. and 6:00 p.m., prevailing time, except Sundays and holidays, n**[N]o person shall park continuously for more than two consecutive hours in those spaces so designated in the municipal parking lot.
- Between the hours of 8:00 a.m. and 6:00 p.m., prevailing time, except Sundays and holidays, n**[N]o person shall park continuously for more than one hour in those spaces so designated in the municipal parking lot.
- Between the hours of 8:00 a.m. and 6:00 p.m., prevailing time, except Sundays and holidays, n**[N]o person shall park continuously for more than 30 minutes in those spaces so designated in the municipal parking lot.
- Between the hours of 8:00 a.m. and 6:00 p.m., prevailing time, except Sundays and holidays, n**[N]o person shall park continuously for more than 15 minutes in those spaces so designated in the municipal parking lot.
- No person shall park continuously for more than 48 hours in the spaces designated "Long Term" or spaces not otherwise restricted in the municipal parking lot.
- No person shall park in those spaces designated as "Reserved for Library Volunteers" during the hours of operation of the library, unless a valid parking permit, issued by the library, is displayed.
- No person shall park at any time in those spaces designated as "Reserved for Police" in the municipal parking lot.

- The time restrictions for parking in spaces in the Municipal Parking Lot set forth in Section 200-15, subsections A, B, C and D of the Borough Code, are hereby suspended from December 1 through December 31, 2009.

3. All provisions of Section 200-15 otherwise remain in full force and effect.
4. This ordinance shall be effective upon adoption and publication as provided by law.

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2009-13, second by Council Member Ogren. There were no comments from the public. Council Member Chandler made a motion close the Public Hearing on Ordinance 2009-13, second by Council Member Ogren. Mr. Tucker called for a voice vote with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2009-13, second by Council Member Ogren with all members present voting in favor with the exception of Council Member Lawver who voted no.

Committee Reports

Planning & Zoning / Environmental Commission / Library – No report due to Ms. Heinzl being absent.

Public Works / Economic Development – Mr. Lawver reported that the Economic Development Commission will be meeting on Wednesday, December 9th to select the second recipient of the Business Person of the Year Award. Mr. Lawver stated that the Economic Development Commission will not meet again until next year, but they are in search of new members to replace Will Dickey and Susan Porcella who is stepping down at the end of her term.

Mr. Lawver reported that the Public Works Department dealt with the first snow fall of the season with no incidents reported. Mr. Lawver stated that installation of the VOC filtration system at Well 8 is progressing with the addition almost complete and the machinery on order. Mr. Lawver stated that the filtration system should be up and functioning prior to the summer of 2010. Mr. Lawver reported that surveying for the Lower King George Road and Safe Routes to Schools projects is complete and the design is underway.

Mr. Lawver reported that the Borough is still at an impasse with the Teamsters negotiations; another meeting is scheduled for December 11th.

Mr. Lawver stated that leaves should be left at the curb in windrows at least 20 feet away from the storm drains. Mr. Lawver stated that beginning January 1st, 2010 we will begin single stream recycling so residents will no longer be required to sort recycling.

Mr. Lawver stated that there has been interest expressed in the old Public Works garage so he will be looking into advertising for bids as early as January of 2010. Mr. Lawver stated that leasing the land will bring the Borough some short term revenue until something more permanent happens.

Mr. Lawver gave the following report for water and trash for the month of November 2009.

PENNINGTON BOROUGH PUBLIC WORKS

TO: Joseph Lawver, Chairman
Public Works Committee

FROM: Jeff Wittkop, Superintendent

DATE: December 1, 2009

RE: **COUNCIL REPORT FOR THE MONTH OF NOVEMBER 2009**

WATER

Water pumped for the month of November 2009 -	7,445,000*
Daily-	248,167

***This is the lowest monthly average since 1995, 14 years.**

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

For the month of November 2009 we averaged 8,600 gallons **less** per day than November 2008.

TRASH

89.56 tons of household trash for the month of November 2009 vs. 64.57 tons in November 2008

Leaf pick-up has started. Leaves should be blown or raked to the curb and should be placed at least 20 feet from stormwater inlets. Leaves may be raked or blown to the street in long windrows and should be free of any debris such as sticks, branches or other debris.

Leaf pick-up will continue until December 31st, after that date leaves will have to be bagged.

Mr. Lawver stated that he has received some clarity with regard to sale of a liquor license in Pennington. Mr. Lawver stated it appears that the referendum that was held in 1917 was nullified when the 18th Amendment to the Constitution was adopted in 1920. Mr. Lawver stated that in 1933 when the 21st Amendment repealed prohibition it specifically delegated control back to the States and so the State of New Jersey then in 1933 passed what is known as Title 33 and it spelled out specifically how municipalities can control local sales of alcohol. Mr. Lawver stated that the long and short of it is that between the 18th and the 21st Amendments it appears that the 1917 referendum was voided and so the Borough can move forward with offering a liquor license simply by ordinance. Mr. Lawver stated that he has discussed all of this with Mayor Persichilli and he was in favor of proceeding with an ordinance as opposed to a referendum. Mr. Lawver stated that he is waiting for some documents being sent by the Division of Alcoholic Beverage Control and we should be in a position to proceed with introduction of an ordinance early in 2010.

Personnel/Shade Tree – Mr. Ogren reported that the Personnel Committee did not meet in November. Mr. Ogren stated that the Shade Tree Commission did meet in November; discussion began regarding a possible Shade Tree Protection Ordinance. Mr. Ogren stated that there was some discussion regarding the grant application that was submitted for the downtown tree planting project.

Mr. Ogren stated that he attended a meeting at the County Administration Building concerning the proposed Route 546 bikeway. Mr. Ogren stated that he presented a proposal to Council last year regarding this project. Mr. Ogren stated Mercer County received grant money to conduct a feasibility study and the meeting he attended was to meet with the consultant to discuss the report. Mr. Ogren stated that the Delaware Valley Regional Planning Commission is also undertaking a study of all roads in Mercer County to determine their bikability.

Mr. Ogren stated that this Thursday, December 10th, a public information session is scheduled for the Pennington Connection to the Lawrence-Hopewell Trail. Mr. Ogren stated that this session is required by the Federal Grant. Mr. Ogren stated that he has met with the Department of Environmental Protection regarding permits for this project.

Community Services – Ms. Chandler stated that Pennington Parks and Recreation met in November. Ms. Chandler stated that the Carol Sing has been scheduled for December 20th which was the original date set. Ms. Chandler acknowledged and thanked Mr. Ogren for planting trees in Kunkel Park. Ms. Chandler stated that the trees have protection wires around them to fend off any deer and the Parks and Recreation Commission will be making sure that they are maintained.

Finance – Mr. Griffiths stated that the Finance Committee did meet to discuss a 30 year capital projection and to look at overhead allocations. Mr. Griffiths stated that one issue that will be looked at in greater depth is allocation of overhead and debt service to the Library budget. Mr. Griffiths stated that the Finance Committee will try to meet again in December to look at water and sewer rates and to start to tackle the overhead issue.

Public Safety – Mr. Tucker reported that Public Safety Director Meytrott and Acting Sergeant Friedman have been meeting with the schools on a regular basis to discuss safety issues regarding vandalism at the schools. Mr. Tucker stated that Director Meytrott represented the Department at the New Jersey Conference of Police – Suicide Prevention sponsored by the US Department of Justice.

Mr. Tucker stated that Pennington Police Department participated in the US Drug Enforcement Administration – Operation Medicine Cabinet, along with Hopewell Township Police Department. Mr. Tucker reported that unused and outdated medicines were turned in at the Hopewell Branch of the Mercer County Library by Valley residents. Mr. Tucker reported that approximately eight garbage bags of medicines were turned over to the DEA and the operation locally was deemed very successful and will probably become an annual event.

Mr. Tucker reported that Director Meytrott continued to work with the Holiday Walk representatives and the event went off very smoothly with lots of food and events for residents to enjoy.

Mr. Tucker reported that he and Director Meytrott attended the NJ League of Municipalities Conference in Atlantic City. Mr. Tucker reported that the new Police Vehicle has arrived and is awaiting decals. Mr. Tucker stated that this vehicle was obtained under State Contract. Mr. Tucker reported that Director Meytrott represented the Borough at the First Aid Squad Graduation Ceremony. Mr. Tucker reported that about forty persons completed the course with an anticipated eight remaining with the Pennington Squad. Mr. Tucker reported that one of the graduates was Pennington Police Officer Joseph Maccaquano.

Mr. Tucker gave the following statistics for the month of November 2009:

1	Motor Vehicle Theft
3	Criminal Mischief Complaints
166	Motor Vehicle Stops
49	Warnings
12	Parking Summonses Issued
117	Motor Vehicle Summonses Issued
3	Adult Male Arrests
1	Juvenile Male Arrest
1	Juvenile Female Arrest

New Business

**Borough of Pennington
Resolution #2009-12.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund in the amount of \$50.00 be issued to Joseph Lawver of 304 Burd Street for an overpayment of the fee for truck rental.

BE IT RESOLVED, that a refund be issued to CitiMortgage, c/o First American R/E Tax Service, P.O. Box 961250, Fort Worth, TX 76161-9887 for an overpayment or fourth quarter 2009 taxes in the amount of \$598.08 for Block 1001, Lot 8.

BE IT RESOLVED, that a refund be issued to Bank of America c/o Home Focus c/o First American R/E Tax Service, P.O. Box 961250, Fort Worth, TX 76161-9887 for an overpayment or fourth quarter 2009 taxes in the amount of \$659.12 for Block 706, Lot 4.

BE IT RESOLVED, that a refund be issued to Chase Home Finance LLC, c/o First American R/E Tax Service, P.O. Box 961250, Fort Worth, TX 76161-9887 for an overpayment or fourth quarter 2009 taxes in the amount of \$2396.80 for Block 801, Lot 25.

BE IT RESOLVED, that a refund be issued to Benbrooke Realty, c/o George Ackerman, 6 Todd Ridge Road, Titusville, NJ 08560 for a Planning Board escrow balance for property at 65 S. Main Street, Block 601, Lot 12, Planning Board application number P04-007, in the amount of \$310.94.

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	S			
Heinzel				absent	Tucker	X			

Council Member Chandler made a motion to approve Resolution 2009-12.1, second by Council Member Ogren with all members present voting in favor.

**Borough of Pennington
Resolution #2009 – 12.2**

AUTHORIZING PAYMENT OF BILLS

WHEREAS, certain bills are due and payable as per itemized claims listed on the following schedules, which are made a part of the minutes of this meeting as a supplemental record;

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Pennington that the bills be paid on audit and approval of the Mayor, the Appropriate Council Member and the Treasurer in the amount of \$ 1,020,706.40 from the following accounts:

Current	\$ 929,192.34
W/S Operating	\$ 48,154.92
Grant Fund	\$ 4,172.36
Developers' Escrow	\$ 991.85
Water/Sewer Capital	\$ 38,144.93
Animal Control Fund	\$ 50.00
TOTAL	\$ 1,020,706.40

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2009-12.2, second by Council Member Lawver with all members present voting in favor.

**Borough of Pennington
Resolution #2009-12.3**

RESOLUTION AUTHORIZING BUDGET TRANSFERS

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

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that transfers be made between the following year 2009 budget appropriations:

<u>Appropriations:</u>	<u>To:</u>	<u>From:</u>
Municipal Clerk – Salaries		\$ 3,000.00
Finance – Salaries		\$ 3,000.00
Group Insurance – Active		\$ 15,000.00
Group Insurance – Retired		\$ 1,700.00
Police – Other Expense		\$ 5,000.00
Trash – Salaries		\$ 1,000.00
Borough Property – Other Expense		\$ 6,000.00
Gas/Fuel Lubricants		\$ 4,000.00
Legal		\$ 24,650.00
Borough Property – Salaries	\$ 1,000.00	
I/L Recycling	\$ 1,350.00	
Police – Salaries	\$ 51,000.00	
Recreation – Salaries	\$ 1,300.00	
Electricity – New PW Bldg.	\$ 4,000.00	
Gas/Propane	\$ 2,000.00	
Municipal Court – Salaries	\$ 2,500.00	
Public Defender	\$ 200.00	
Total Current Fund	\$ 63,350.00	\$ 63,350.00

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	S				Ogren	X			
Heinzel				absent	Tucker	X			

Council Member Chandler made a motion to approve Resolution 2009-12.3, second by Council Member Griffiths. Mr. Lawver questioned the transfer to police salaries. Mr. Meytrott explained that a couple of weeks ago it came to light that payments for unused holiday pay were not included in the proposed budget amount. Mr. Meytrott stated that another problem was that he estimated overtime much lower assuming that lower paid officers would be working the majority of overtime and as it turned out the overtime was worked by senior officers in the department. Mr. Meytrott explained that he also thought that the overtime hours would be decreased but in reality it took longer to get the new officers trained, on the road and EMT certified than anticipated. Upon a roll call vote all members present voted in favor.

**Borough of Pennington
Resolution 2009-12.4**

**RESOLUTION TO AMEND THE 2009 ADOPTED BUDGET (CHAPTER 159)
SPECIAL ITEMS OF REVENUE AND APPROPRIATION FOR
SOLID WASTE RECYCLING GRANT**

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

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

WHEREAS, the Borough of Pennington has received \$6,136.64 from the Solid Waste Recycling Program and wishes to amend its 2009 Budget to include a portion of this amount as revenue;

NOW THEREFORE BE IT RESOLVED, that the Borough Council of the Borough of Pennington hereby requests the Director of the Division of Local Government Services to approve the insertion of a special item of revenue in the budget of the year 2009 in the sum of \$6,136.64, which is now available as revenue from:

Solid Waste Recycling Grant, and

BE IT FURTHER RESOLVED that a like sum of \$6,136.64 be and the same is hereby appropriated under the caption of:

Solid Waste Recycling Grant

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

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2009-12.6, second by Council Member Chandler. Mr. Lawver stated that the Governor has deferred the requirement for a Certified Recycling Coordinator. Mr. Lawver stated that as a point of interest, Pennington Borough has no plans to hire a Certified Recycling Coordinator or to acquire the certification. Mr. Lawver stated that if Governor Christie decides to implement this next year, we will be faced with a \$3,000 annual fine for not having a coordinator. Mr. Lawver stated that the requirements to obtain the certification demand a lot of time initially and then require recertification credits each year. Mr. Lawver stated that this service should be provided to Pennington by Mercer County as they are our recycling provider. Upon a roll call vote all members present voted in favor.

**Borough of Pennington
Resolution #2009 – 12.5**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2 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. 2 (\$37,902.90) less two percent (2%) retainage (\$758.06), the net due therefore amounting to \$37,144.84; 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 \$37,144.84 pursuant to payment request No. 2 is hereby authorized.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2009-12.5, second by Council Member Chandler with all members present voting in favor.

**Borough of Pennington
Resolution #2009 – 12.6**

**A RESOLUTION AUTHORIZING PAYMENT REQUEST NO. 2 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. 2 (\$ 39,138.98) less two percent (2%) retainage (\$ 782.78), the net due therefore amounting to \$38,356.20; and

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 \$ 38,356.20 pursuant to payment request No. 2 is hereby authorized.

Record of Council Vote on Passage

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

Council Member Lawver made a motion to approve Resolution 2009-12.6, second by Council Member Chandler with all members present voting in favor.

**Borough of Pennington
Resolution 2009-12.7**

**RESOLUTION CONSENTING TO CREATION OF MEMORIAL
GARDEN BY ST. MATTHEW'S EPISCOPAL CHURCH**

WHEREAS, St. Matthew's Episcopal Church at 300 South Main Street in Pennington proposes creation of a Memorial Garden at the rear of the existing church, to provide a place for quiet reflection and prayer and the disposition and interment of the ashes of family members;

WHEREAS, the proposed Memorial Garden will consist of landscaped gardens and planters, a pathway of blue stone, brick or CMU pavers, a sitting area and granite markers, all of which will be enclosed within a fenced and gated area on the west side of the property;

WHEREAS, the proposed Memorial Garden has been designed to accommodate the interment of approximately one hundred six (106) persons, each with a uniform granite marker bearing the name of the deceased, the interred remains to be contained either within a biodegradable container which will be buried into the earth at a depth of approximately eighteen inches (18") or ashes will be permitted to be sprinkled on the landscaped garden areas within the Memorial Garden;

WHEREAS, St. Matthew's Episcopal Church has obtained approvals for the proposed Memorial Garden from the Pennington Borough Planning Board, including preliminary and final site plan approval and use and bulk variances, as set forth in the attached Resolution adopted by the Board on October 14, 2009;

WHEREAS, the attached Resolution of the Planning Board determines, inter alia, that the proposed Memorial Garden is an inherently beneficial use that will present no substantial detriment to adjacent property and will be buffered and screened from the street and the property to the rear by a wall along West Curlis Avenue and continuation of the fence along the rear of the property;

WHEREAS, among the conditions of approval imposed by the Board, as set forth in the attached Resolution, is consent to the proposed development by the Borough's governing body as required by N.J.S.A. 45:27-25;

WHEREAS, Borough Council seeks to grant such consent, subject to compliance by St. Matthew's Episcopal Church with all of the conditions imposed by the Planning Board;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that it hereby consents to construction of the aforesaid Memorial Garden as approved by the Pennington Borough Planning Board, subject to compliance with all conditions imposed by the Board as set forth in the attached Resolution of approval.

Record of Council Vote on Passage

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

Council Member Ogren made a motion to approve Resolution 2009-12.7, second by Council Member Chandler. Mr. Lawver inquired as to whether he could vote on this resolution given that he is a member of the church. Mr. Bliss suggested that members of the church should abstain from voting. Upon a roll call vote, all members present voted in favor with the exception of Mr. Lawver and Mr. Tucker who abstained.

Council Discussion

Sunesys – Mr. Bliss stated that this item was on the agenda for the November meeting and the discussion was deferred pending comment by people with knowledge as to whether or not there are aspects of the agreement that would cost the Borough money over and above the \$250 per year that Sunesys would pay to the Borough. Mr. Bliss stated that Mr. Wittkop has reviewed the agreement and found it to be acceptable with the understanding that any road openings done would require a road opening permit and under the road opening permit, any engineering costs for review would be recoupable. Mr. Bliss stated that there are other factors involved such as the need for an agreement with the owners of the poles and the need for Mercer County to chime in as part of the route indicated is under County jurisdiction. Mr. Bliss indicated that a copy of this agreement has been sent to the County for their input and we have not yet heard back from them. Mr. Bliss stated that we have checked with the insurance carrier, Mid Jersey Municipal Joint Insurance Fund and they have found the insurance requirements acceptable. Mr. Bliss stated that the last piece needed is a response from Mercer County. Mr. Bliss stated that to the extent that attorney review of the contract is needed, the contract provides for reimbursement of attorney fees related to this application.

AboveNet – Mr. Bliss stated that AboveNet has submitted a similar application to the one received from Sunesys. Mr. Ogren stated that the AboveNet agreement is to run cable to a business in Hopewell Borough. Mr. Lawver asked why the Sunesys agreement contemplates a fee to be paid to the Borough and the AboveNet agreement indicates that no funds can be received. Mr. Bliss indicated that both the AboveNet and the Sunesys agreements are on the agenda for review only to make sure that pertinent questions are asked prior to approval.

Mr. Lawver stated that when it comes down to putting the agreements on the agenda for approval, he would agree with Mr. Ogren that the Borough take the \$250/year in perpetuity rather than the one time payment that was offered.

Mr. Bliss stated that hopefully by the next meeting, we will have heard from the County on the Sunesys request so that it can be put on the agenda for approval and that we will have more information with regard to the AboveNet agreement.

Water/Sewer Rate Increase – Mr. Tucker stated that Borough Council has discussed raising water/sewer rates slightly each year rather than waiting several years and having to institute a larger increase. Mr. Tucker asked for comments on this topic. Mr. Griffiths stated that under the capital expense plan he has been using a three percent increase as an assumption. Mr. Griffiths stated that the essential argument for an increase no matter what the percent would be to pay down debt. Mr. Griffiths stated that the faster the Borough can pay down debt, the sooner we can look at rolling back rates if necessary. Mr. Griffiths stated that the other part of the argument is that we are hoping to install new, more efficient water meters and billing system and there is always the ubiquitous argument for the new water tower. Mr. Griffiths explained that these additional capital expenses would be funded by any rate increases, ultimately making the debt service burden lower. Mr. Dunworth stated that his interest in putting this on the agenda was that if a rate increase is going to be done, it would have to be introduced in January to have the new rates in place in time for the first billing of 2010. Mr. Griffiths stated that he would work on getting an ordinance ready for introduction in January.

Administrator's Report

Contract for Deer Carcass Removal – Mr. Dunworth stated that the Borough has had a couple of deer carcasses lately that have proved to be problematic. Mr. Dunworth stated that Mercer County has a contract under the County Cooperative Agreement that we belong to that provides for deer removal. Mr. Dunworth stated that he would like to work with Deer Carcass Removal at a cost of \$57.00 per pickup and would like Council's approval to use this service.

Comp Time Request – Mr. Dunworth stated that Mr. Wittkop has submitted his bi-annual request for payment for Comp Time. Mr. Dunworth stated that this request is for 110 hours for the period of June 2009 to November 2009 at his hourly rate of \$45.03 amounting to \$4,953.30. Mr. Ogren asked if this was a typical amount of hours. Mr. Wittkop stated that he averages about 300 hours per year. Ms. Chandler asked if any of these hours could be distributed to someone else. Mr. Wittkop stated that hours related to water can only be worked by a licensed water operator. Mr. Wittkop stated that he does roughly 50 percent of the water hours and Morris Fabian the other licensed operator does the other 50 percent. Council Member Lawver made a motion to approve the payment of comp time to Mr. Wittkop, second by Council Member Griffiths with all members present voting in favor.

Mercer County Nutrition Program - Mr. Dunworth stated that he has received the renewal from Mercer County for lease of the Senior Center for the Nutrition Program. Mr. Dunworth stated that this is a two year agreement and they are presently paying \$8,000.00. Mr. Dunworth stated that in the past when this agreement has come up, the amount has been increased by \$500.00 each year. Mr. Dunworth stated that he has left a message with the County and is waiting to hear back. Mr. Dunworth asked for Council input on requesting an increase of \$500.00 per year. Council Member Chandler made a motion to approve requesting an additional \$500.00 per year for this agreement, second by Council Member Griffiths with all members present voting in favor.

Avanti's – Mr. Dunworth stated that Mayor Persichilli asked him to discuss this item with Council. Mr. Dunworth stated that presently, Avanti restaurant leases a small piece of land from the Borough for his outdoor dining area in the amount of \$600.00 per year. Mr. Dunworth stated that the owner of Avanti has approached the Mayor and indicated that he might be interested in purchasing the small piece of property that he currently leases. Mr. Dunworth stated that if Council is interested in pursuing this request there is a

process that the Borough would have to undergo. Mr. Bliss stated that the property would have to be advertised for bid and offered to the adjacent owners. Mr. Bliss stated that the problem is how much the property is worth and the cost involved with designing a sub-division and the like. Mr. Bliss stated that these costs would normally be borne by the owner. Mr. Lawver stated that he is inclined to think that it would not be worth the expense and effort for the Borough to pursue this. Mr. Bliss stated that if there were a clear buyer, then the costs could be imposed on the buyer. Mr. Bliss stated that because this property abuts the parking lot, there is the issue of the buffer needed for the parking lot. Mr. Bliss stated that if land is dedicated for public use, it would not qualify as surplus land and the Borough by statute, can only sell excess land. Mr. Dunworth stated that the owner of Avanti is looking to expand the kitchen and therefore the restaurant. Mr. Lawver suggested an alternative might be to offer Avanti a ninety-nine year lease. Mr. Lawver stated that when this agreement was struck he felt the \$600 fee for a ten year period was set too low. Mr. Griffiths asked Mr. Dunworth to get an assessment number from the Tax Assessor and to try to get a handle on costs involved from the engineer so that Mayor Persichilli can approach Avanti with a figure for the land and any expenses.

Mr. Ogren asked Mr. Dunworth to report on a question that was raised at the last meeting about a transfer of funds into Construction salaries. Mr. Dunworth stated that when the salary figure was calculated it was under budgeted by the \$3,000 that was transferred in at the last meeting. Mr. Dunworth stated that when the salaries were calculated it was anticipated that the Construction Department would not be as busy and so the figure was tightened up.

Professional Reports

There were no further reports from professionals. Mr. Bliss requested a closed session following the meeting.

Public Comment Period

Mr. Tucker 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

Mr. Tucker read the following resolution to convene in Closed Session.

AT, 8:25 PM, BE IT RESOLVED, that Mayor and Council shall hereby convene in closed session for the purposes of discussing a subject or subjects permitted to be discussed in closed session by the Open Public Meetings Act, to wit:

Litigation – Presbyterian Homes

Council Member Griffiths made a motion to convene in Closed Session, second by Council Member Chandler.

AT, 8:34 PM, Mayor and Council returned to open session.

Borough of Pennington Resolution 2009-12.8

RESOLUTION AUTHORIZING RETENTION OF SPECIAL COUNSEL FOR PRESBYTERIAN HOME LITIGATION

WHEREAS, the Borough of Pennington and Attorney Virginia Kerr of Princeton, New Jersey desire to enter into an agreement for the performance of professional services by Attorney Kerr on behalf of the Borough in the capacity of Special Counsel, for the purpose of representing the Borough as co-counsel in connection with the present phase of litigation known as The Presbyterian Home at Pennington, Inc. v. The Borough of Pennington, Appellate Division Docket No. A-6061-06T1, in particular, the filing of a Petition for Certification on behalf of the Borough appealing the decision of the Appellate Division in this matter to the New Jersey Supreme Court;

WHEREAS, the proposed Professional Services Agreement is attached to this Resolution;

WHEREAS, as set forth in the attached Agreement, the Agreement shall be effective as of October 6, 2009 through December 31, 2009, except the agreement shall sooner terminate upon the filing of (a) the Petition for Certification and (b) the Borough's Reply Brief responding to opposition to the petition, unless extended in writing by Mayor and Council;

WHEREAS, the Borough shall pay Attorney Kerr a fee on the basis of \$120 per hour plus reimbursement of certain out-of-pocket costs. However, total fees paid to Attorney Kerr plus total costs associated with the Petition and Reply Brief shall not exceed \$2,500.

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute and enter into the attached Professional Services Agreement with Attorney Virginia Kerr.

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	S				Ogren	X			
Heinzel				absent	Tucker	X			

Council Member Chandler made a motion to approve Resolution 2009-12.8, second by Council Member Griffiths with all members present voting in favor.

Approval of Closed Session Minutes (for content but not for release)

Council Member Chandler made a motion to approve the Closed Session minutes of the October 5, 2009, October 8, 2009 and November 2, 2009 minutes for content but not for release, second by Council Member Ogren with all members present voting in favor.

At, 8:25 PM, Council Member Chandler made a motion to adjourn the meeting, second by Council Member Ogren.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk