

**Pennington Borough Council  
Regular Meeting – March 4, 2019**

Mayor Lawver called the Regular Meeting of the Borough Council to order at 7:00 pm. Borough Clerk Betty Sterling called the roll with Mayor Lawver and Council Members Chandler, Gnatt, Griffiths, Marciante and Mills. Ms. Semple was absent.

Also present were Borough Administrator Eileen Heinzl, Public Works Superintendent Rick Smith, Public Safety Director Bill Meytrott and Borough Attorney Walter Bliss.

Mayor Lawver announced that notice of this meeting has been given to the Hopewell Valley News, Trenton Times and was posted on the bulletin board in Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Mayor Lawver asked everyone to stand for the Flag Salute.

**Open to the Public – Agenda Items Only**

Mayor Lawver 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 3 minutes.**

Mr. Mark Blackwell of 74 North Main Street came forward to inquire about the Open Space topic listed on the agenda. Mr. Blackwell asked if this pertained to the property behind the school administration building. Mr. Lawver stated that if Mr. Blackwell is talking about the arboretum project, that is the woods behind the Tollgate Elementary School. Mr. Blackwell stated that answered his first question. Mr. Blackwell stated that the other resolution on the agenda refers to making a request to the Green Acres Program for funding. Mr. Blackwell asked if Resolution 3.9 is the same property or a different property. Mr. Lawver stated that Resolution 3.9 is to authorize Pennington Borough to make application to Green Acres for funding to purchase land. Mr. Lawver stated that a discussion will take place in closed session on what property the funds would be used for. Mr. Blackwell asked why a property is identified on the resolution. Mrs. Heinzl stated that the purpose of the resolution is so that after the closed session discussion, Council can authorize an application for Green Acres funding. Mrs. Heinzl stated that the property owner has not yet agreed to sell the property. Mr. Blackwell stated that the money raised by Pennington taxpayers was supposed to be used for a buffer around Pennington Borough. Mr. Lawver stated that the property is on the corner of Blackwell Road and Federal City Road. Mr. Blackwell stated that there is a pipeline running through that property. Mr. Blackwell asked if the public would be given an opportunity to speak after the Closed Session.

**Presentation**

Mayor Lawver invited Mr. Alan Hershey of 143 East Delaware and Chairman of the Open Space Committee to come forward. Mr. Hershey stated that to clarify the previous concern, there would be another hearing before any action is taken on any property and that is required under a Green Acres application.

Mr. Hershey stated that this is a good time to update Council on thoughts that the Open Space Committee has had regarding constructive uses of the Open Space funds. Mr. Hershey stated that the fund now has a balance of \$691,000 approximately. Mr. Hershey stated that in making these recommendations, he will be presenting an update to a presentation that was given about a year and a half ago. Mr. Hershey stated that in that time, the committee has given a lot of thought to what the Council have said in the past, which is to try to find ways to use Open Space funds within the Borough or immediately adjacent to the Borough. Mr. Hershey stated that they have come up with some good ideas that are responsive to those concerns. Mr. Hershey stated that at the same time, they have also assessed properties that have been identified to Council before, using criteria that the Open Space Committee has identified as required in the ordinance. Mr. Hershey talked a little bit about properties within the Borough and properties immediately adjacent to the Borough.

Mr. Hershey stated that one project that the Borough has already been working with the Board of Education on is the 2.8 acres behind the Tollgate Elementary School that will be used for the Arboretum project. Mr. Hershey stated that this project would develop an arboretum with native plants, get rid of invasive plants and make this property useful as an educational area for the school. Mr. Hershey stated that the second thing that the committee has talked about is using Open Space funds to upgrade the existing parks and facilities in the parks. Mr. Hershey stated that he has met with Brett Margulis of the Parks and Recreation Committee and he is supportive of a plan that would include use of Open Space Funds to replace and upgrade the basketball facility and sand box area in Kunkel Park. Mr. Hershey stated that the third thing is the opportunity to create a walking trail that would go from Kunkel Park north to Titus Mill Road and from there into the Watershed lands. Mr. Marciante asked how people would cross the brook. Mr. Hershey stated that they would cross on the bridge. Mr. Marciante stated that he would like to see funds used to build a bicycle trail through Kunkel Park with a wooden bridge to cross over and connect to the Lawrence Hopewell Trail. Mr. Hershey stated that there would be no land purchase because Bristol Myers Squibb land is already dedicated to conservation

by deed and there is even a defined trail corridor. Mr. Hershey stated that the main concern that he would have with Mr. Marciante's idea is that it is a flood plain. Mr. Hershey stated that he is on the Board for the Lawrence Hopewell Trail and he is full support of connecting the trail wherever possible. Mayor Lawver spoke briefly about some work that is planned in the near future to connect some more of the trails. Mr. Hershey stated that finally, they have learned about the emerging plan for development of the former landfill site and there is an opportunity to dedicate a portion of that land to public park facilities and open space funds could be used to support the development of a facility on that property.

Mr. Hershey stated that what is being proposed, which is in addition to acquiring open space outside of the Borough is that we look ahead to the end of 2020, project the balance of funds that will be in the Open Space fund and allocate half the funds for use inside the Borough and the other half for use outside the Borough to preserve the buffer.

Mr. Hershey reviewed some estimates that the Open Space Committee came up with for the projects that he mentioned. Mr. Griffiths stated that the Curlis Lake Woods property was a great use of Open Space Funds, but it is inaccessible, there is limited parking and someone walking with a cane or with assistance would not be able to walk safely on the trails. Mr. Griffiths urged Mr. Hershey to contact Mercer County and inquire if there is something that the Borough can do to improve the trails. Mr. Hershey stated that he would suggest that Mercer County use their Open Space funds to improve the trails.

Mr. Hershey stated that Brett Margulis has obtained some cost estimates for improvements at Kunkel Park. Mr. Hershey stated that he has gotten some estimates for trail improvements and they have estimated a contribution towards a recreational facility on the current landfill site when it is developed. Mr. Hershey stated that these items would account for about \$400,000 of an estimated \$800,000 balance in the Open Space Fund by the year 2020. Mr. Hershey stated that the committee has taken Borough Council's comments from the last meeting two years ago seriously and they have tried to come up with ways to use the Open Space Funds within the Borough or immediately adjacent to the Borough. Mr. Hershey stated that he will talk about specific properties in Closed Session.

Mr. Griffiths asked what the timetable for spending Open Space funds and is it true that if the funds are not used within a certain time period they will essentially be lost. Mayor Lawver quoted from the Code Book, Section 13-3.2, "in the event that no property is acquired for a period of five consecutive years, then the Borough Council shall review the activities of the committee and may elect to submit to registered voters the question of whether the committee should be dissolved, the funds liquidated and the open space tax repealed." Mr. Griffiths stated that he would like the rumors to stop regarding this.

Mr. Griffiths asked where an open space acquisition falls chronologically within the other projects that Mr. Hershey discussed because the reason he is asking is that the Open Space Committee is proposing spending one-half of the funds by acquisition. Mr. Hershey stated that the process involves negotiation with the owner, application for grants and so it is probably at least a year away. Mr. Griffiths asked what the endpoint would be for this purchase. Mr. Griffiths stated that he wants Council to be clear on the timetables for these proposed projects.

Mr. Bliss stated that this discussion should be taking place in closed session.

Mrs. Chandler thanked Mr. Hershey for the idea for the arboretum project which is now well underway. Mr. Marciante stated that he would like to thank Mr. Hershey and even though he may not agree with some of the proposals, Mr. Hershey is dedicated to what he is doing and he is a benefit to the Borough.

### **Closed Session**

**AT, 7:35 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:

- Open Space Acquisition

AT, 8:25PM, Mayor and Council returned to open session.

Mayor Lawver read Resolution 2019-3.9 by title and asked for a motion from Borough Council.

### **BOROUGH OF PENNINGTON RESOLUTION 2019- 3.9**

#### **RESOLUTION AUTHORIZING SUBMISSION OF A REQUEST TO THE GREEN ACRES PROGRAM, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR A GRANT TO FUND OPEN SPACE ACQUISITION**

**WHEREAS**, the Open Space Committee of Pennington Borough has recommended to Borough Council that it seek to join with Hopewell Township, Friends of Hopewell Valley Open Space, D&R Greenway and Mercer County in acquiring property in Hopewell Township;

**WHEREAS**, the land, which is identified in a Confidential Letter Authorizing an Offer on Behalf of Pennington Borough, will be formally identified provided the current owner of the property is willing to negotiate sale of the property;

**WHEREAS**, the New Jersey Department of Environmental Protection, Green Acres Program (“State”), provides loans and/or grants to municipal and county governments and grants to nonprofit organizations for assistance in the acquisition and development of lands for outdoor recreation and conservation purposes;

**WHEREAS**, the Borough of Pennington received approval from the Green Acres Program in 2002 to request Planning Incentive Grants for open space acquisitions;

**WHEREAS**, the deadline for application for Green Acres Funds is by or before March 30, 2019;

**WHEREAS**, Borough Council has discussed a multi-party funding plan for the project and believes that the acquisition, consistent with such a plan, will serve the interests of the Borough and its long-term planning goals by adding materially to the Green Belt around the Borough;

**WHEREAS**, the Green Acres funding combined with Borough Open Space funds and funding by Hopewell Township, the Friends of Hopewell Valley Open Space, D&R Greenway and Mercer County will provide regionally significant open space for the residents of Mercer County;

**NOW, THEREFORE, BE IT RESOLVED**, that the Borough Council of the Borough of Pennington resolves that the Mayor or Acting Mayor of the Borough (?), as appropriate, is hereby authorized to:

- (a) Submit a funding request to the Green Acres Program for funding in the amount of \$400,000 for the aforesaid acquisition; and
- (b) Provide such additional information and documents as may be required by Green Acres in support of the application.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante		X		
Gnatt	S				Mills	X			
Griffiths		X			Sample				absent

Council Member Chandler made a motion to approve Resolution 2019-3.9, second by Council Member Gnatt. Mr. Bliss asked Council to consider amending the Resolution that was provided in the Council packages to delete items in brackets. Mr. Blackwell asked if he could comment at this time. Mayor Lawver stated no. Upon a roll call vote, all members present voted in favor of the amended resolution with the exception of Mr. Griffiths and Mr. Marciante who voted no.

**Mayor’s Business**

Mayor Lawver announced the following resignations and appointments:

- Resignation – Art Firestone - Environmental Commission
- Resignation – Harry Compton – Stonybrook Regional Sewerage Authority

**Mayor’s Appointments**

Mayor Lawver announced the following appointment.

- William Alexander – Environmental Commission for an unexpired term ending 12/31/2020

**Mayor’s Appointments (with Council Approval)**

Mayor Lawver announced the following appointments.

**Open Space Committee**

- John Jackson – moving from regular member to Alternate 1 for a term ending 12/31/2019
- Art Firestone – Alternate 2 for a term ending 12/31/2019
- Dan Pace – representative from Open Space to Hopewell Township Open Space for a term ending 12/31/2019

**Historic Preservation**

- Barbara Kirsh – Class C member for unexpired term ending 12/31/2020

Council Member Chandler made a motion to approve the appointments, second by Council Member Gnatt with all members present voting in favor with the exception of Mr. Griffiths who voted no.

**Approval of Minutes**

Council Member Chandler made a motion to approve the minutes of the February 4, 2019 Regular meeting, second by Council Member Gnatt with all members present voting in favor.

**Committee Reports**

**Planning & Zoning / Open Space / Personnel** – Mrs. Gnatt reported that Mr. Hershey has reported for Open Space. Mrs. Gnatt stated that a resolution pertaining to the Arboretum project is on the agenda for later in the meeting.

Mrs. Gnatt reported that the Planning Board did not meet in February.

Mrs. Gnatt reported that under Personnel, the position of Technical Assistant to Construction will be filled later in the meeting by Resolution. Mrs. Gnatt reported that the Administrative Assistant position for the Police Department will be advertised. Mrs. Gnatt stated that Mr. Smith has made a request for additional hours for his assistant Gabrielle Canavera. Mrs. Gnatt reported that another interview is scheduled for a tax collector clerk.

**Public Safety /Economic Development / Environmental** – Mrs. Chandler stated that the Public Safety Committee did not meet, but they will be meeting soon.

Mrs. Chandler stated that she had nothing to report for Economic Development or Environmental.

**Public Works** – Mr. Marciante stated that the Public Works Committee reviewed the proposed engineering budget, public works budget and water/sewer budgets for 2019. Mr. Marciante stated that the committee is recommending the firm of NV5 for the design and construction oversight of the Streetscape project under the Transportation Alternative Program. Mr. Marciante stated that this project is scheduled for 2021. Mrs. Heinzel briefly described the process going forward regarding selecting and appointing an engineer for this project.

**Finance / Board of Health** – Mr. Griffiths stated that the Annual Financial Statement has been received and we are working on putting the budget figures together. Mr. Griffiths stated that there is an increase in valuation which is very encouraging. Mr. Griffiths stated that he has sent out a request to the finance committee members to meet to discuss the budget for 2019.

**Historic Preservation / Library** – Mrs. Mills had no report for Historic Preservation. Mrs. Mills reported that the Library is working on “The Big Read” events that will be happening in March.

**Parks and Recreation / Shade Tree** – No report.

**Senior Advisory Board** – Mayor Lawver reported that Mercer County has approved the grant for the Senior Center renovation project; the next step will be pulling together the bid documents.

Mrs. Heinzel reported that Hopewell Township Engineer, Mark Katariniak has submitted preliminary bid documents, which Mr. Bliss is in the process of reviewing. Mrs. Heinzel stated that Ed Pattik from Mercer County has requested a meeting to discuss the next steps in the process.

**New Business**

**BOROUGH OF PENNINGTON  
RESOLUTION #2019 – 3.1**

**RESOLUTION AUTHORIZING REFUNDS**

**BE IT RESOLVED** that a refund be issued from the Developer’s Escrow Account to Rob Robson, 110 Crawley Avenue for Planning Board Application #P17-003, in the amount of \$1,090.87.

**BE IT RESOLVED**, that a refund be issued from the Current Fund to CoreLogic Centralized Refunds, P.O. Box 9202, Coppell, TX 75019-9760, for refund of overpayment of 2019 first quarter taxes, Block 907, Lot 13, also known as 514 S. Main Street, in the amount of \$2,785.12.

**BE IT RESOLVED**, that a refund be issued from the COAH Trust Fund to Louis and Amy Ondreyka, 39 Baldwin Street, Pennington, NJ 08534, for refund of overpayment of COAH Fees, Block 1001, Lot 2, in the amount of \$377.00.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante	X			
Gnatt	X				Mills	X			
Griffiths	S				Semple				absent

Council Member Chandler made a motion to approve Resolution 2019-3.1, second by Council Member Griffiths with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2019 – 3.2**

**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 \$ 1,090,640.10 from the following accounts:

Current	\$ 871,390.30
W/S Operating	\$ 125,086.69
Grant Fund	\$ 23,000.00
Developer’s Escrow	\$ 20,088.11
General Capital	\$ 15,000.00
Animal Control Fund	\$ 162.40
Water/Sewer Capital	\$ 35,912.60
TOTAL	\$ 1,090,640.10

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante	X			
Gnatt	X				Mills	S			
Griffiths	X				Semple				absent

Council Member Chandler made a motion to approve Resolution 2019-3.2, second by Mrs. Mills with all member present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2019–3.3**

**RESOLUTION AUTHORIZING AMENDMENTS TO THE  
2019 TEMPORARY BUDGET**

**WHEREAS**, the 2019 Budget for the Borough of Pennington has not been adopted; and

**WHEREAS**, additional funds are necessary to meet various obligations of the Borough of Pennington;

**NOW, THEREFORE, BE IT RESOLVED**, that the following additional appropriations be made in the 2019 Temporary Budget for the Current Account.

Administration	Other Expense	\$2,000.00
Municipal Clerk	Salaries	\$5,000.00
Finance	Salaries	\$10,000.00
Tax Collection	Salaries	\$10,000.00
Planning Board	Salaries	\$5,000.00
Construction	Salaries	\$10,000.00
Police	Salaries	\$40,000.00
Borough Property	Other Expense	\$20,000.00
Library	Other Expense	\$30,000.00
Total		\$132,000.00

**BE IT FURTHER RESOLVED**, that the following additional funds be appropriated for the 2019 Temporary Budget for the Water and Sewer Fund:

Water	Other Expense	\$50,000.00
SBRSA – Treatment Costs	Other Expense	\$25,000.00
<b>TOTAL</b>		<b>\$75,000.00</b>

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante	X			
Gnatt	S				Mills	X			
Griffiths	X				Semple				absent

Council Member Chandler made a motion to approve Resolution 2019-3.3, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2019 – 3.4**

**RESOLUTION AUTHORIZING BACK PAY AND PAYMENT FOR ADDITIONAL WORK FOR  
ELIZABETH STERLING**

**WHEREAS**, Wayne Blauth, who served as the Technical Assistant to the Construction Office since January 31, 2007 and as the Tax and Utility Collector of the Borough of Pennington since May 2, 2011, with his first four-year term as Tax Collector beginning January 1, 2012, resigned his position effective November 16, 2018;

**WHEREAS**, Elizabeth Sterling has served commendably as the Borough Clerk/ Treasurer since April 16, 2001 and was appointed Assistant CFO effective January 1, 2016; and

**WHEREAS**, Elizabeth Sterling has, since the resignation of Wayne Blauth stepped into the role of Technical Assistant to the Construction Office and assisting with tax and utility collection under the supervision and direction of Sandra Webb, the Borough CFO and Certified Tax Collector and the Borough has been fortunate to have the benefit of her extra services;

**WHEREAS**, Elizabeth Sterling has, since November 16, 2018, stewarded a smooth transition of the Borough Construction Office and both assisted with and ensured the uninterrupted work of Tax and Utility collection for the Borough while identifying several improvements in the Construction and Billing Departments;

**WHEREAS**, Elizabeth Sterling’s current hourly rate of pay is \$55.44 per hour;

**WHEREAS**, the Personnel Committee recommends that Elizabeth Sterling be paid at her hourly rate for all documented extra work that she has performed since November 16, 2018 and will hereafter perform in the temporary role of Technical Assistant to the Construction Office and/or assistant to the Tax and Utility Collector;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that Elizabeth Sterling shall be paid for all documented extra work at her aforesaid hourly rate including back pay to November 16, 2018, until such time as the positions of Technical Assistant to the Construction Office and Tax and Utility Collector are filled; and

**BE IT FURTHER RESOLVED**, that the Salary Ordinance shall be amended to reflect a salary for the Borough Clerk/Assistant Chief Financial Officer which includes this extra pay for extra work for as long as one or both of these vacancies exist.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	S				Marciante	M			
Gnatt	X				Mills	X			
Griffiths	X				Semple				absent

Council Member Marciante made a motion to approve Resolution 2019-3.4, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2019-3.5**

**RESOLUTION AMENDING RESOLUTION 2019-2.5 TO CORRECT RECITAL OF STARTING  
DATE FOR THE CURRENT LICENSED OPERATOR OF THE BOROUGH’S WATER AND  
SEWER UTILITY**

**WHEREAS**, Resolution 2019-2.5 appointing Richard Smith as Licensed Operator for the Borough’s Water and Sewer Utility incorrectly recites in the third recital that the starting date for Mr. Smith in that capacity was March 21, 2017, when in fact that starting date was March 15, 2017;

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, that Resolution 2019-2.5 is hereby amended to recite the correct starting date for Mr. Smith, in his capacity as Licensed Operator, as stated above.

**Record of Council Vote on Passage**

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	S				Marciante	X			
Gnatt	M				Mills	X			
Griffiths	X				Semple				absent

Council Member Gnatt made a motion to approve Resolution 2019-3.5, second by Council Member Chandler with all members present voting in favor.

Mayor Lawver asked that Resolution 2019-3.6 be held until another meeting.

**BOROUGH OF PENNINGTON  
RESOLUTION 2019-3.6**

**RESOLUTION AUTHORIZING VOLUNTARY REGISTRATION OF SECURITY CAMERA  
BY PENNINGTON PROPERTY OWNERS**

**BOROUGH OF PENNINGTON  
RESOLUTION #2019-3.7**

**RESOLUTION EXTENDING THE TIME FOR CUGINO’S HOLDING LLC TO SATISFY  
CONDITIONS FOR ISSUANCE OF LICENSE UNDER RESOLUTIONS 2016-9.8 AND 2017-3.4**

**WHEREAS**, Borough Council, under Resolution 2016-9.8, has authorized the public sale of a new plenary retail consumption license to the highest qualified bidder, subject to conditions;

**WHEREAS**, Resolution 2016-9.8 and the Notice to Accept Bids provided in particular that the license shall be issued only for use in a restaurant as defined in N.J.S.A. 33:1-1 which meets the following additional criteria:

- a. has a seating capacity of at least 60 people;
- b. offers table service by waiter/waitress from a menu to this minimum seating capacity;
- c. is an existing restaurant or is a restaurant proposed for a site or a structure and is expected to receive preliminary and final site plan approval from the Borough Planning Board in time to permit commencement of licensed operations as set forth below;
- d. will begin operation under the license within twenty-four months of the resolution granting the license, unless such period is extended by resolution of the Pennington Borough Council, by the Director of the Division of Alcoholic Control or otherwise as permitted or required by law;
- e. complies with all applicable ordinances and other laws;

**WHEREAS**, Cugino’s Holding LLC (“Cugino’s”) was the successful bidder for the license, for the sum of \$175,000, and under Resolution 2017-3.4, adopted March 6, 2017, was awarded the license subject to satisfaction of all specified requirements for issuance of the license;

**WHEREAS**, further pursuant to Resolution 2017-3.4, Cugino’s paid the bid price and certain fees into escrow pending satisfaction of all specified requirements for issuance of the license;

**WHEREAS**, the specified requirements for issuance of the license include, among others, satisfaction of conditions for licensure set forth in Resolution 2016-9.8 pertaining to additional criteria for

licensed premises as set forth above, a through e;

**WHEREAS**, Cugino's has not to date satisfied condition d, which requires that the licensee be ready to begin operation under the license within twenty-four months of the date of conditional award, which is March 6, 2019, unless such period is extended by resolution of the Pennington Borough Council or otherwise as provided;

**WHEREAS**, Cugino's intends that the license shall be used for its restaurant at 147 West Delaware Avenue in Pennington which as of August 10, 2016, memorialized by Planning Board Resolution adopted on November 9, 2016, has been the subject of Preliminary and Final Site Plan and related Planning Board approvals for expansion and additional improvements;

**WHEREAS**, amendments to Cugino's original development application has resulted in amended Planning Board approvals as of June 14, 2017, designated Amended Preliminary and Final Site Plan, etc., memorialized by Resolution adopted November 8, 2017 and a Revised Resolution adopted January 10, 2018;

**WHEREAS**, construction on the expanded premises has not begun and Cugino's now applies to Borough Council for an extension of the 24-month requirement;

**WHEREAS**, the reasons for the requested extension are set forth in the attached letter from Robert Friberg, the attorney for Cugino's, dated February 28, 2019 ("Friberg Letter");

**WHEREAS**, as set forth in the Friberg Letter, since the adoption of Resolution 2017-3.4, Cugino's has negotiated and executed a new Lease Agreement with the owner of the Old Mill Square Shopping Center to accommodate construction and occupancy of the expanded restaurant premises, and further, has applied for and secured full financing for the construction of the new space and closed on that loan on November 30, 2018;

**WHEREAS**, as represented in the Friberg Letter, since receiving municipal approvals, the applicant has been in the process of obtaining outside agency approvals and completing resolution compliance, the approval of the Mercer County Planning Board proving to be much more cumbersome than anticipated as a result of the relocation of the storm sewer and the numerous design proposals it required prior to obtaining approval, which was not finalized until late 2018;

**WHEREAS**, Cugino's has submitted plans to the Borough Construction Office for permit review but that review has not begun because resolution compliance has not yet been completed;

**WHEREAS**, the Borough and Cugino's have been discussing an agreement which would license Cugino's use of adjoining Borough property during construction and the discussion is ongoing, although, contrary to the Friberg Letter, such an agreement is not a condition of the effectiveness of Cugino's Planning Board approvals;<sup>1</sup>

**WHEREAS**, the Friberg Letter represents that construction of the expanded facility is expected to take 6 to 8 months from the time of commencement, and it requests an extension of time of 18 months "out of an abundance of caution;"

**WHEREAS**, Cugino's agrees to update its license application and to make such additional applications and obtain such additional approvals as required by law to be issued a license upon completion of construction, as further required by condition 2.f. of Resolution 2017-3.4;

**WHEREAS**, Borough Council deems it in the public interest to condition any extension of time on periodic reporting to Council on the status of completion of construction and commencement of operations, and therefore will condition the extension of time on such periodic reviews, beginning in no later than eight (8) months;

**WHEREAS**, this request for extension of time is predicated on a condition of the public sale of the license pursuant to Resolutions 2016-9.8 and 2017-3.4 and the Notice to Accept Bids and, accordingly, compliance must precede issuance of a license;

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, that the application of Cugino's Holding LLC seeking an extension of time for completing construction and being ready to commence operations under Resolutions 2016-9.8 and 2017-3.4 is hereby granted in part and denied in part, as follows:

1. the extension of time is hereby granted to the extent of eight (8) months, provided Cugino's reports to Borough Council on the status of construction and commencement of operations at of

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<sup>1</sup> The Revised Resolution of Memorialization granting Amended Preliminary and Final Site Plan and related approvals provides at numbered paragraph 8(b)(ii) as follows: "If the Applicant is unable to reach agreement with the Borough of Pennington for said license agreement, then the Applicant may proceed with the previously approved Site Plan construction permitting a construction staging area on the [Old Mill Square Shopping Center] Property."

before the expiration of the extension so that whether at that time the restaurant is likely to be operational in the near future can be reasonably assessed;

2. the request for an eighteen month extension is denied without prejudice to request additional time if needed consistent with the above.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	S				Marciante	M			
Gnatt	X				Mills	X			
Griffiths	X				Semple				absent

Council Member Marciante made a motion to approve Resolution 2019-7, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION # 2019 – 3.8**

**RESOLUTION AUTHORIZING APPLICATION FOR  
RECYCLING TONNAGE GRANT BASED ON 2018 RECYCLING**

**WHEREAS**, the Mandatory Source Separation and Recycling Act, P.L. 1987, c.102, has established a recycling fund from which tonnage grants may be made to municipalities in order to encourage local source separation and recycling programs; and

**WHEREAS**, it is the intent and the spirit of the Mandatory Source Separation and Recycling Act to use the tonnage grants to develop new municipal recycling programs and to continue and to expand existing programs; and

**WHEREAS**, the New Jersey Department of Environmental Protection has promulgated recycling regulations to implement the Mandatory Source Separation and Recycling Act; and

**WHEREAS**, the recycling regulations impose on municipalities certain requirements as a condition for applying for tonnage grants, including, but not limited to, making and keeping accurate, verifiable records of materials collected and claimed by the municipality; and

**WHEREAS**, this resolution, authorizing this municipality to apply for a tonnage grant based on calendar year 2018 recycling, will memorialize the commitment of this municipality to recycling and to meeting the requirements contained in the Recycling Act and recycling regulations; and

**WHEREAS**, this resolution must designate the individual authorized to ensure that the application is properly completed and timely filed;

**NOW, THEREFORE, BE IT RESOLVED** by the Council of Pennington Borough that Pennington Borough hereby endorses the submission of the recycling tonnage grant application to the New Jersey Department of Environmental Protection;

**BE IT FURTHER RESOLVED**, that Richard Smith, a Certified Recycling Coordinator, is hereby designated to ensure that the application is properly completed and timely filed;

**BE IT FURTHER RESOLVED** that the monies received from the recycling tonnage grant be deposited in a dedicated recycling trust fund to be used solely for the purposes of recycling.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante	X			
Gnatt	X				Mills	S			
Griffiths	X				Semple				absent

Council Member Chandler made a motion to approve Resolution 2019-3.8, second by Council Member Mills with all members present voting in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2019-3.10**

**RESOLUTION ACCEPTING DONATION OF AUTOMATED EXTERNAL DEFIBRILLATORS**

**WHEREAS**, TEAM LIFE, INC., a corporation with an office at 291 Route 34, Suite B, Colts Neck, New Jersey 07722-1114, wishes to donate to the Borough of Pennington two automated external defibrillators (“AED’s”) as further described in the attached Invoice No. 22848 dated November 12, 2018;

**WHEREAS**, the donated AED’s would be installed in public places in Borough Hall for access in the event of an emergency;

**WHEREAS**, in accordance with N.J.S.A. 2A:62A-25, in order to accept and make such devices accessible in this manner the Borough must:

- (a) ensure that any person who is anticipated to be in a position to render emergency care or treatment by the use of a defibrillator in the performance of that person’s duties of employment or volunteer service shall, prior to using that defibrillator, have successfully completed and hold a current certification from the American Red Cross, American Heart Association or other training program recognized by the Department of Health and Senior Services in cardio-pulmonary resuscitation and use of a defibrillator, although a person or entity that acquires a defibrillator shall not be liable for any act or omission of any lay person who uses the defibrillator in the rendering of emergency care;
- (b) ensure that the defibrillator is maintained and tested according to the manufacturer’s operational guidelines;
- (c) notify the appropriate first aid, ambulated or rescue squad, or other appropriate emergency medical services provider that the person or entity has acquired the defibrillator, the type acquired and its location; and
- (d) have a protocol in place to comply with these requirements;

**WHEREAS**, N.J.S.A. 2A:62A-26 further provides that any person who uses a defibrillator shall request emergency assistance from the appropriate first aid, ambulance, or rescue squad as soon as practicable, but a lay person who in good faith fails to request such emergency medical assistance shall be immune from civil liability for any personal injury that results from that failure;

**WHEREAS**, N.J.S.A. 2A:62A-27 further provides that:

- (a) any person or entity who in good faith acquires or provides a defibrillator, renders emergency care or treatment by the use of a defibrillator, assists in or supervises the emergency care or treatment by the use of a defibrillator or attempts to use a defibrillator for the purpose of rendering emergency care or treatment, and who has complied with the requirements of these statutes, shall be immune from civil liability for any personal injury as a result of that care or treatment, or as a result of any acts of omissions by the person or entity in providing, rendering, assisting in, or supervising the emergency care or treatment;
- (b) a person or entity providing or maintaining an automated external defibrillator (AED) shall not be liable for any act or omission involving the use of a defibrillator in the rendering of emergency care by a lay person;
- (c) these immunities do not extend to any act of gross negligence or willful or wanton misconduct, although it shall not be considered gross negligence or willful or wanton misconduct to fail to use a defibrillator in the absence of an otherwise preexisting duty to do so;

**WHEREAS**, TEAM LIFE, INC. includes with its donation the attached agreement of the manufacturer, Cardiac Science Corporation, which would indemnify and defend the Borough against any claim for personal injury relating to (i) the failure of the AED to function in accordance with its specifications or (ii) defects in design, material or workmanship of the AED, for the life of the AED, subject to specified customer responsibilities;

**WHEREAS**, Borough Council finds that accepting and deploying the AED’s from TEAM LIFE, INC. will provide life-saving opportunities and be in the public interest;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington that the Borough accepts with thanks the donation of two AED’s from TEAM LIFE, INC., as set forth in the attached Invoice, together with the attached Indemnification agreement, provided that before the devices are deployed, the Borough Administrator in consultation with the Police Department and other pertinent parties prepare a protocol ensuring that appropriate Borough employees receive training on the device and that procedures are in place to ensure as well that the devices are properly situated and properly maintained and that the requirements of law and the manufacturer’s specifications are met.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	S				Marciante	X			
Gnatt	M				Mills	X			
Griffiths	X				Sample				absent

Council Member Gnatt made a motion to approve Resolution 2019-3.10, second by Council Member Chandler with all members present voting favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2019 – 3.11**

**RESOLUTION AUTHORIZING USE OF OPEN SPACE FUNDS TO COVER ACQUISITION  
COSTS RELATED TO CONVEYANCE OF 2.8 ACRES OF PROPERTY OWNED BY HOPEWELL  
VALLEY REGIONAL SCHOOL DISTRICT TO PENNINGTON BOROUGH**

**WHEREAS**, Pennington citizens have authorized the creation of an Open Space Trust Fund in accordance with N.J.S.A. 40:12-15.7, which authorizes use of such funds for, among other things, development and maintenance of lands acquired for recreation and conservation purposes, as determined by the governing body of the municipality;

**WHEREAS**, Pennington Borough is considering the acquisition of a 2.8 acre parcel of land that will be conveyed by the Hopewell Valley Regional School District to the Borough of Pennington; and

**WHEREAS**, the Hopewell Valley Regional School District is willing to convey the 2.8 parcel of land to the Borough of Pennington for the de minimis consideration of \$10.00; and

**WHEREAS**, acquisition of this property will require a boundary survey, minor sub-division, and legal services on behalf of the Borough and the Hopewell Valley Regional School District; and

**WHEREAS**, the Borough agrees to cover all costs associated with the conveyance of the property from the Hopewell Valley Regional School District to the Borough; and

**WHEREAS**, the Chief Financial Officer has certified that funds are available in the Open Space Trust Fund for this purpose;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Pennington, that the Borough Administrator is hereby authorized to make expenditures from the Borough’s Open Space Fund for the aforesaid expenditures related to acquisition of the property for a total amount not to exceed \$30,000.00.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	S				Marciante	X			
Gnatt	M				Mills	X			
Griffiths	X				Semple				absent

Council Member Gnatt made a motion to approve Resolution 2019-3.11, second by Council Member Gnatt. Mr. Griffiths asked for clarification on what this authorization covers. Mrs. Chandler stated that this is to cover the legal fees and the engineering fees involved with acquisition of the property. Mr. Griffiths asked if this includes the planner. Mrs. Chandler stated that the ANJEC grant of \$1,500.00 that the Borough received was used to pay the planner. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION 2019-3.12**

**RESOLUTION APPOINTING PART-TIME  
TECHNICAL ASSISTANT TO THE CONSTRUCTION OFFICE**

**WHEREAS**, Mayor and Council seek to appoint Regina Taylor to the position of Technical Assistant to the Construction Office on a part-time basis;

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

1. Regina Taylor is hereby appointed Technical Assistant to the Construction Office, on a part-time basis;
2. Ms. Taylor’s weekly hours as Technical Assistant shall be fifteen (15) hours per week;
3. Ms. Taylor’s rate of compensation as Technical Assistant shall be set forth in the Salary Ordinance of the Borough beginning at \$25 per hour;
4. Ms. Taylor shall be an at-will employee.

**BE IT FURTHER RESOLVED** that the Borough Administrator is authorized to coordinate with Ms. Taylor her start date and hourly schedule.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante	X			
Gnatt	S				Mills	X			
Griffiths	X				Semple				absent

Council Member Chandler made a motion to approve Resolution 2019-3.12, second by Council Member Gnatt. Mr. Griffiths asked for more information on this appointment. Mrs. Heinzel stated that Wayne Blauth was serving as the Technical Assistant to Construction and Betty Sterling has been filling that role since his resignation. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON  
RESOLUTION #2019 – 3.13**

**RESOLUTION APPOINTING PAMELA SWITLIK AS REPRESENTATIVE TO THE  
STONYBROOK REGIONAL SEWERAGE AUTHORITY  
EFFECTIVE MARCH 4, 2019**

**WHEREAS**, Harry Compton has submitted a letter of resignation from his position as Pennington Borough’s representative to the Stonybrook Regional Sewerage Authority; and

**WHEREAS**, Harry Compton’s unexpired term is through December 31, 2020; and

**WHEREAS**, it is the desire of Mayor Joseph Lawver to appoint Pamela Switlik as Pennington Borough’s representative to the Stonybrook Regional Sewerage Authority; and

**NOW, THEREFORE BE IT RESOLVED**, by Borough Council of the Borough of Pennington that the Mayor’s appointment of Pamela Switlik to serve as representative to the Stonybrook Regional Sewerage Authority effective March 4, 2019 for the unexpired term ending December 31, 2020 is hereby approved.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Chandler	M				Marciante	X			
Gnatt	S				Mills	X			
Griffiths	X				Semple				absent

Council Member Chandler made a motion to approve Resolution 2019-3.13, second by Council Member Gnatt with all members present voting in favor.

**Professional Reports**

Mrs. Heinzel asked Mayor and Council if they would be available for a Special Meeting on March 11, 2019 to introduce an ordinance for a sewer easement that Cugino’s needs to proceed with his project. Mayor Lawver stated that he would be out of town.

Mr. Bliss reminded Council of a second Closed Session.

**Public Comment**

Mayor Lawver asked that anyone wishing to speak to Council please come forward and state your name and address for the record and please limit comments to the Governing Body to a maximum of 3 minutes.

Mark Blackwell of 74 North Main Street came forward and stated that with the new trash schedule, there will be ten days over Labor Day weekend between garbage collections at the end of August until the Thursday after Labor Day. Mayor Lawver stated that Council would consider his concern. Mayor Lawver stated that Council is trying to find ways to save taxpayer money and still get all of the work that needs to be done completed.

Dan Pace of 9 Railroad Place followed up on Mr. Blackwell’s comments regarding trash pick up. Mr. Pace suggested using the Swift 911 system to get word out to residents. Mayor Lawver stated that there is a meeting scheduled for later this week to address communications from the Borough to residents and what the most effective way to do that would be.

**Closed Session**

**AT, 8:48 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
- Proposed License Agreement – Cugino’s

AT, 9:18PM, Mayor and Council returned to open session.

With no further business to come before Council, Mrs. Chandler made a motion to adjourn, second by Council Member Mills.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk