

**Pennington Borough Council
Regular Meeting – November 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 Council Members Chandler, Griffiths, Marciante and Semple in attendance. Mrs. Gnatt arrived at 7:15pm during Presentations and Mrs. Mills 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 invited 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.**

Mary Wagner of 8 Park Avenue came forward and stated that there is a serious deer problem in Pennington. Ms. Wagner stated that she has a 2 acre lot behind her which attracts a lot of deer that then find their way to her property. Ms. Wagner stated that she has noticed that more people are putting up fences and that takes away from the sense of community. Ms. Wagner stated it is not just about the deer, but there are the health issues related to ticks. Ms. Wagner stated that she is very frustrated because the deer are eating her plants and the only way to keep her plants safe is by putting up ugly fences.

Ms. Betsy Messick of 10 Weidel Drive stated that she agrees with Ms. Wagner. Ms. Messick stated that she has counted the deer in her yard and there is a herd of 18 that regularly enter her property. Ms. Messick stated that the community needs to work together on the deer problem. Ms. Messick stated that her grandchildren cannot play in her yard because of the deer droppings and she would be open to any ideas and she would welcome any help.

Mayor's Business

Mayor Lawver asked for a moment of silence to mourn the passing of Susan Porcella who served on Borough Council from 1995 to 2000 and was a long time member of the community.

Mayor Lawver asked all Council Members to look at the membership lists for Boards and Commissions and work on filling vacancies and making re-appointments.

Mayor Lawver summarized the following Proclamation – Communities of Light. Mayor Lawver announced that luminaries are available at the Pennington Market and other local businesses.

PROCLAMATION

WHEREAS, it is the policy of the Borough of Pennington to recognize organizations that have contributed to the overall benefit of the community; and

WHEREAS, Womanspace, founded in 1977, has demonstrated a unique ability to provide comfort, support services, crisis intervention and safety to women who are victims of sexual assault and domestic violence; and

WHEREAS, Womanspace, in the belief that “peace begins at home”, has asked the Mercer County Community to join them in their struggle against violence toward women by participating in their annual Communities of Light project; and

WHEREAS, Womanspace has provided emergency shelter in secure locations and comprehensive services for victims of domestic violence since 1977 and sexual assault since 2002, for more than 71,393 women, 13,717 children and 5,153 men. Additionally, Womanspace has assisted more than 277,877 hotline callers over the last 42 years; and

WHEREAS, the Borough of Pennington commends Womanspace for their efforts to bring an end to the cycle of interpersonal violence imposed on women, children and men; and

WHEREAS, as Mayor of the Borough of Pennington I urge that each and every household demonstrate their support of the concept that “peace begins at home” by placing luminaries along their driveways and sidewalks on Monday, December 2, 2019, as a visible symbol of that support; and

WHEREAS, the proceeds from Communities of Light 2019 will be used to fund vital services for victims of domestic violence, sexual assault and human trafficking.

NOW, THEREFORE, I, Joseph Lawver, Mayor of the Borough of Pennington, County of Mercer, State of New Jersey, do hereby proclaim Monday, December 2, 2019, as

COMMUNITIES OF LIGHT DAY

and hereby honor Womanspace on its many accomplishments and wish them continued success with Communities of Light in the years to come.

Approval of Minutes

Council Member Chandler made a motion to approve the Regular Meeting minutes for October 7, 2019, second by Council Member Marciante with all members present voting in favor with the exception of Ms. Semple who abstained.

Presentations

Mayor Lawver stated that Borough Auditor, Bob Morrison was scheduled to report on the audit but as he did not see him in the audience he would move on.

Mayor Lawver invited Chief Financial Officer, Sandra Webb to come forward to talk about Best Practices. Ms. Webb stated that this is the tenth Best Practices to come before Council and she basically has the same report each year. Ms. Webb stated that we are required to answer a certain number of questions in the affirmative and this year there were eighty some questions, thirty of which were unscored. Ms. Webb stated that the unscored questions are new this year and in reading the Local Finance Notice the reason for that is so that the Division of Local Government is gathering information through these unscored questions. Ms. Webb stated that we go through the list of questions and we have to answer at least thirty of them yes or not applicable. Ms. Webb stated that this process is required by the State but more importantly it ties to the amount of State Aid that we receive. Ms. Webb stated that if we drop below the threshold of thirty, the State has the right to withhold State Aid. Ms. Webb stated that she is happy to report that Pennington has forty-four and one-half points so we are in good shape. Ms. Webb stated that she would be happy to answer any questions from Council.

Mayor Lawver invited Mike Van Clef to come forward for a presentation on deer management. Mr. Van Clef stated that he is here more for a question and answer presentation. Mr. Griffiths stated that he asked the Mr. Van Clef be invited to the meeting because he was impressed with a presentation that he made to the Board of Health. Mr. Griffiths stated that at the meeting, the Board of Health began drafting a resolution to urge Borough Council to begin a deer management program. Mr. Griffiths stated that Mr. Van Clef reported to the Board of Health that the deer population is ten times what it should be for this area and that there are active deer management programs in the Township and on the open space that FOHVOS is responsible for. Mr. Griffiths stated that informal feedback suggest that there is not a lot of resistance in the community these days for a deer management program. Mr. Griffiths stated that he would like Mr. Van Clef to outline how we get started and how do we establish a relationship with other entities in the area. Mr. Marciante asked Mr. Van Clef for his background. Mr. Van Clef stated that he has a PhD in Ecology from Rutgers and he has been doing conservation work for thirty years. Mr. Van Clef stated that he started the deer management program for FOHVOS and he was involved in the Hopewell Township program as well. Mr. Van Clef stated that he has helped out in different places in the State. Mr. Van Clef stated that the first step is to lay out the argument which is where we are right now. Mr. Van Clef stated that through his work with Hopewell Township he has a lot of figures for the Hopewell Valley, not necessarily Pennington Borough, but the number of deer in the area is high for the area. Mr. Van Clef stated that lyme disease cases are tracked by the CDC formally and surveys have been done in the Hopewell Valley, which would include Pennington Borough residents. Mr. Van Clef stated that there are also figures on the number of collisions involving deer. Mr. Van Clef stated that the surveys and formal numbers suggest that deer in this area is a big problem for everyone. Mr. Van Clef stated that one of the biggest things to come out of the survey is that the seventy percent of people who responded say that deer is a big problem and something needs to be done.

Mrs. Chandler stated that in her research of deer management plans in New Jersey, she was not able to find one as small or as densely populated as Pennington Borough. Mrs. Chandler asked if Mr. Van Clef was aware of any successful programs in a residential community like Pennington. Mr. Van Clef stated that Princeton is probably the most similar. Mr. Van Clef stated that the key thing is safety zones and the State rules are that you have to be 150 feet away from a structure that could be occupied by a person for bow hunting and 450 feet for gun hunting. Mr. Van Clef stated that bow hunting is the only thing that would work for Pennington Borough. Some discussion took place with regard to luring deer to open areas.

Mayor Lawver stated that he would argue for a coordinated effort with neighboring towns. Mr. Van Clef stated that one of the reasons that Pennington Borough is seeing so many deer is because Pennington Borough is a safe zone for deer. Mr. Van Clef stated that deer are not dumb and if they are getting hunted just outside the Borough they come into the Borough because they know it is safe. Mr. Van Clef stated that he lives in rural Warren County and when he walks out of his house, the deer look at him and they don't move, just like everywhere else, but when he goes on his loop trail they run away. Mr. Van Clef stated that deer know that a human next to a house is not a threat, but a human in the woods is a threat.

Mayor Lawver asked about baited hunts. Mr. Van Clef stated that the results vary but it is not unheard of that even in a tight spot a hunter could get a dozen deer. Mr. Van Clef stated that the majority of hunters are known as recreational hunters, they hunt for fun when they have the time. Mr. Van Clef stated that no matter what, the main objective is to get a buck and that means that recreational hunters often let the female deer pass by. Mr. Van Clef stated that hunters will throw corn down to bait the female deer and they in turn attract the bucks. Mr. Van Clef stated that management hunters on the other hand understand and have the skill and desire to thin the herd. Mr. Van Clef stated that management hunters will put in a considerable amount of time and money of their own to hunt, but they have limits. Mr. Van Clef stated that the reason that there are not a lot of management hunters is that there are not enough recreational hunters with the time and the money to become a management hunter. Mr. Van Clef stated that is the problem across the State because municipalities and non-profits don't have the funds to pay for services. Mrs. Chandler asked about companies like White Buffalo that Princeton uses. Mr. Van Clef stated that the municipality pays a significant amount for those services. Mr. Van Clef stated that he is looking at the bigger picture of how we get more recreational hunters to become management hunters. Mr. Van Clef stated that the short answer is that they need to be paid and not be volunteers putting out their own time and money. Mr. Van Clef stated that it could take a management hunter eight hours of time to get one deer at \$50.00 a deer because you have to dump corn over and over again and wait for it to attract the deer. Mr. Van Clef stated that even if there are a lot of deer in the area it takes a significant amount of time and effort on the hunters' part.

Mr. Van Clef stated that FOVHOS has over time accumulated several hunters that like to hunt and so they do not have to expend any funds. Mr. Van Clef stated that the small pool of management hunters does not allow for that now. Mr. Van Clef stated that in Princeton they have a Community based deer management plan with Division of Fish and Wildlife who issues permits but he has recently found out that hunters can be paid outside of that permit structure as long as the deer have been documented to have been donated to a certified food bank. Mr. Van Clef stated that in addition a management hunter could be compensated at a bounty for each deer and then also paid the \$70.00 fee for donating the deer and firms like White Buffalo would not be able to compete with that.

Mrs. Chandler stated that her concern is that there can't be any misses with bow hunting in Pennington. Mrs. Chandler stated that the hunter has to be good enough to get the job done the first time because Pennington is too small a space. Mrs. Chandler stated that we can't have deer running around with arrows sticking out of them. Mr. Van Clef stated that the structure of the program would minimize that from happening. Mr. Van Clef stated that she has seen deer walking in Hopewell Township with arrows sticking out of them. Mr. Van Clef stated that the agreement should provide for an accuracy test and management hunters get a lot of deer because they don't often miss. Some discussion took place with regard to the legal time of year for hunting. Mr. Van Clef stated that the Borough can set their own rules within the broader rules and signs will be posted on properties indicated that deer management is taking place and dates and times when it will take place. Mr. Van Clef stated that currently deer are coming into Pennington because they know they are safe, if hunting is allowed in 5 or 10 places in the Borough it is unclear how the deer population would change. Mr. Van Clef stated that a deer management plan would certainly shake things up. Ms. Semple asked if driving deer out of town is an option. Mr. Van Clef stated that if it were planned out well enough it is possible that drives could be part of the plan and he would suggest that all of that be written down in the plan.

Mr. Griffiths stated that he took notes during the discussion and it seems that in order to get started the key points are to design/define a program with the roles, zones, times and so forth identified. Mr. Griffiths stated that the plan should be designed to attract management hunters and everything should be captured in a written document. Mr. Griffiths stated that there should also be outreach regarding permission from landowners for hunting and outreach to hunters to make them aware of the opportunity to hunt in Pennington and then outreach to residents so that everyone knows what is going on and why.

Some discussion took place with regard to whether there have been any reported incidents related to deer management programs. Mr. Van Clef stated that he was not aware of any and this plan would be bow only which is inherently safer than guns and also hunting is done from elevated stands and a miss would only go into the ground. Mr. Van Clef stated that in his mind there is no safety issue. Mr. Van Clef stated that bow hunting is done from 20 to 30 yards away from the target and the chances of missing or hitting something other than a deer are slim and hunting at night is not allowed. Further discussion took place with regard to proper noticing of areas where hunting will take place. Mr. Van Clef stated that in Hopewell Township they publish a map indicating all properties that get hunted and it is made available to the public.

Mayor Lawver thanked Mr. Van Clef and stated that the discussion was very informative and everyone recognizes that this is a real problem that is not going to go away and is in fact just getting worse.

Committee Reports

Planning & Zoning / Open Space / Personnel – Mrs. Gnatt reported that the Open Space Committee met this month and Mr. Hershey updated the committee on the Arboretum project. Mrs. Gnatt stated that meeting dates for 2020 were discussed and appointment of Chair, Vice Chair and Secretary took place.

Mrs. Gnatt stated that the Planning Board met on October 10th and heard an application for an appeal of the Zoning Officer's determination that 9 and 11 East Curlis Avenue was illegally converted from a single family to a two family home without board approval. Mrs. Gnatt stated that the Board did not find in favor of the applicant however the application will be carried to the next meeting to allow the applicant to obtain additional information and if necessary apply for a variance.

Mrs. Gnatt stated that an application was heard for a use variance for a garage on King George Road and that was approved.

Mrs. Gnatt stated that Heritage at Pennington came in to request that the restriction in the resolution that they not be allowed to begin Phase 2 until all approvals are granted by the State be eliminated and that was approved by the Board. Mayor Lawver stated that there is a resolution on the agenda for later in the meeting.

Public Safety /Economic Development / Environmental – Mrs. Chandler stated that Economic Development and they are working on an initiative called "Get Lit" to encourage businesses in the downtown and near Route 31 to light up for the holidays. Mrs. Chandler stated that they are trying to get this in place prior to the Holiday Walk sponsored by the Pennington Business and Professional Association on the first Friday of December.

Mrs. Chandler stated that Council may recall that the Environmental Commission came before Council to discuss a plastic bag ordinance. Mrs. Chandler stated that over the summer and with further research the commission is now looking to recommend a resolution instead of an ordinance. Mrs. Chandler stated that very few businesses use plastic bags and so an ordinance would not remove that many plastic bags from the system. Mrs. Chandler stated that there was an issue of enforcement that could not be resolved and the other issue that was troubling is that studies show that paper bags are just as bad as the plastic bags. Mrs. Chandler stated that studies show that the best mechanism to reduce usage of plastic bags is to charge a fee for bags. Mrs. Chandler stated that it was decided that it was not worth the time, the money or the effort to do an ordinance and it would be better to spend time on education and a resolution. Mrs. Chandler stated that said, the downside is that ANJEC would like the State to move on this and the State is looking for 100 municipalities to adopt an ordinance to tip the scale for the State to make a decision and there are currently only 51 municipalities. Mrs. Chandler stated that it is up to Council to decide, but the Environmental Commission is working on a resolution.

Mrs. Chandler stated that Public Safety met to discuss the road closures on Halloween. Mrs. Chandler stated that after a lively conversation it was decided to go ahead and though she does not live on Burd Street, from what she can tell it was very well received. Mr. Marciante thanked the Police and Public Works Departments for their efforts and he has heard that it was well received. Mr. Marciante stated that he thinks the Borough can expect this event to grow each year. Mayor Lawver stated that he has heard some complaints about it being a burden on residents in the area of Burd Street who ran out of candy or shut their lights and still had people pounding on their doors. Mrs. Chandler asked that this be discussed again in August or September.

Public Works – Mr. Marciante reported that Burd Street and Abey Drive/Kings Court road projects are out for bid with the bid opening scheduled for November 14th, 2019. Mr. Marciante reported that 11 trees will be removed on Burd Street due to disease or overgrowth but the trees will be replanted. Mrs. Chandler asked if Shade Tree is being consulted on this. Mrs. Semple stated that in the recent Shade Tree minutes she read that the Shade Tree Committee discussed this and how they would be willing to assist in educating the public on why certain trees are coming down and that the plan is to replant trees. Mrs. Chandler stated that a lot of trees are being lost with this particular project and she wants to make sure that Shade Tree is in the loop on this. Mayor Lawver stated that typically tree removal and replanting is identified in the bid specifications. Discussion took place with regard to making sure that residents understand the process and the reasons for the tree removal. Mrs. Heinzl stated that she would include something in the next newsletter.

Mr. Marciante stated that streets have been identified for possible mill and overlay by Mercer County in 2020 and they are West Welling Avenue, Fitzcharles Drive, North Riding, Walking Purchase and West Franklin Avenue.

Mr. Marciante stated that the generator project is still under discussion and later in the meeting there is a resolution to advertise for bids. Mrs. Heinzl stated that the reason that the resolution is on the agenda is to give Van Note Harvey the authority to advertise, but later this week the building committee will meet to further discuss the generator.

Mr. Marciante stated that Elizabethtown Gas was granted permission to open Laning Avenue which was recently paved. Mr. Marciante stated that given that there was new construction the ordinance in place that does not allow road openings within five years of paving does not apply. Mr. Marciante stated that

Elizabethtown Gas has assured the Borough that they have a new procedure that will blend the blacktop and it will be restored good as new.

Finance / Board of Health – Mr. Griffiths stated that the finance committee did not meet so he had no formal report. Mr. Griffiths stated that sitting on the public works committee has allowed him to mitigate financial issues before they occur by keeping road projects within the grant award. Mr. Griffiths stated that one thing he is looking at is the grant schedule for road projects and reconstruction versus mill and overlay. Mr. Griffiths stated that a \$600,000 grant could potentially cover mill and overlay of 4 miles of road. Mr. Griffiths stated that in a couple years the Borough could be in a position where all Borough streets will be complete and in 2024 the twenty year cycle will start again. Mr. Griffiths stated that the Borough is in much better shape in terms of road projects that a few years ago. Mayor Lawver stated that great progress has been made over the past 5 to 7 years.

Historic Preservation / Library – No report – Mrs. Mills absent.

Parks and Recreation / Shade Tree – Ms. Semple reported that Parks and Recreation has completed their activities for the year and they are working on a budget and programs for next year. Ms. Semple stated that the Shade Tree Committee has indicated that they would be willing to come and talk to Council and the public regarding tree removal and replanting. Mr. Marcianti asked when the next meeting of Parks and Recreation is scheduled and Ms. Semple stated that it was the next day at 7:00pm in the Library.

Senior Advisory Board – Mayor Lawver stated that he had no report.

Council Discussion

Website Redevelopment – Mayor Lawver stated that we have come a long way on this project and we are now moving forward with the website redevelopment. Mayor Lawver stated that three vendors made presentations and the committee has chosen one vendor who has provided an online tutorial to make sure that the change is manageable. Mayor Lawver stated that the goal is to launch the website on Pennington Day 2020. Mrs. Heinzel stated that she along with Betty Sterling, Gabrielle Canavera and Glen Griffiths sat in on the tutorial. Mrs. Heinzel stated that following the tutorial, the vendor set us up with a dummy website that she and Betty have been trying out to learn how things work. Mayor Lawver stated that the next step in the process is to create a logo for the Borough and a style guide for the website. Mayor Lawver state that he reached out to Zoe Graphics who will be working with the Borough on these two items. Mayor Lawver stated that he will be working with Betty Sterling, Eileen Heinzel, Bev Mills and Jesse Landis on the design for the logo and the style guide and once the options have been narrowed down it will come to Council for approval.

Senior Center – Lunch Program – Mrs. Heinzel stated that the contractor for the Senior Center renovation project has asked if he could have access to the building for a month so that he could move the renovation project along. Mrs. Heinzel stated that she contacted the Pennington Fire Company and she is happy to report that they stepped right up and offered the fire house for the nutrition program for the month beginning right after Election Day.

Ordinances for Introduction

Mayor Lawver read Ordinance 2019-14 by title.

BOROUGH OF PENNINGTON ORDINANCE NO. 2019 - 14

ORDINANCE ACCEPTING GRANT OF EASEMENT TO THE BOROUGH OF PENNINGTON FOR PUBLIC RIGHT-OF-WAY ACCESS BETWEEN SOUTH MAIN STREET AND THE PROPERTY OF THE PENNINGTON AFRICAN CEMETERY ASSOCIATION

WHEREAS, John D. Schragger and Michelle L. Schragger are the owners of property in the Borough of Pennington known as 417 South Main Street, designated on the tax records of the Borough as Lot 12 in Block 1002 (“Schragger Property”);

WHEREAS, the Pennington African Cemetery Association is the owner of property in the Borough of Pennington designated on the tax records of the Borough of Pennington as Lot 46 in Block 1002 (“PAC Property”), which adjoins the Schragger Property in the rear and includes a 15’ wide driveway running to South Main Street along and adjoining the Schragger Property on the north;

WHEREAS, the Pennington Borough Planning Board has approved a subdivision of the Schragger Property, with variances, creating Lots 12.01 in Block 1002 fronting on South Main Street and Lot 12.02 in Block 1002 without frontage on the street but adjoining the PAC Property and driveway (Resolution of Memorialization of Application No. P16-002, June 8, 2016);

WHEREAS, as part of the approval of subdivision the Planning Board requested an easement to continue the right of the public to use the existing PAC driveway for ingress and egress and requiring that it be granted in the same document as that providing easement rights for the Schragger Property (Resolution of Memorialization, Condition of Approval 14.b);

WHEREAS, the Pennington African Cemetery Association, John D. Schragger and Michelle L. Schragger, and the Borough of Pennington are now proposed parties to the proposed driveway and shed easements attached to this Ordinance (“Driveway and Shed Easements”) by which, among other things, (1) PAC conveys to the Borough of Pennington an easement for public pedestrian and vehicular ingress and egress between South Main Street and the Pennington African Cemetery, and (b) PAC grants and conveys unto the Schraggers and their successors and assigns a perpetual easement for the purpose of pedestrian and vehicular ingress and egress to Lots 12.01 and 12.02 as further described in the Driveway and Shed Easements;

WHEREAS, consideration for the Driveway and Shed Easements and their terms are described in the easement document and its exhibits, including but not limited to the responsibility of the Schraggers for perpetual maintenance of the easement, including snow removal;

WHEREAS, the form of Driveway and Shed Easements attached has been reviewed by the attorney for the Pennington Borough Planning Board and determined to be acceptable as to form and content and in compliance with Condition 14.b of the Board approval;

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

1. The proposed Driveway and Shed Easements granting the Borough of Pennington an easement for public pedestrian and vehicular ingress and egress as described above and in the annexed easement document is hereby accepted and approved on behalf of the Borough.
2. The proposed Driveway and Shed Easements includes an Environmental Easement to the Borough as well as a Historic Preservation Easement, which are also accepted on behalf of the Borough.
3. The Mayor, with the attestation of the Borough Clerk, is authorized to execute the Driveway and Shed Easements on behalf of the Borough and to take such steps as necessary to ensure its recording in the Office of the Mercer County Clerk in accordance with law.

BE IT FURTHER ORDAINED that this Ordinance shall be effective upon passage and publication as provided by law.

Council Member Marciante made a motion to introduce Ordinance 2019-14, second by Council Member Gnatt. Mr. Bliss stated that the parties have now agreed on a document that is attached to this ordinance. Mr. Bliss explained that this is an easement document dated November 1, 2019 and the title of the document is “driveway and shed easements” it has been advanced to the Borough for acceptance of conveyance of an easement for pedestrian and vehicular ingress and egress to the cemetery for the general public during daylight hours. Mr. Bliss stated that the document although titled driveway and shed easements also includes the environmental easement that was directed by the approval of the Planning Board and the Historic Preservation Easement pertaining to the house on the front lot also directed by the Planning Board. Mr. Bliss stated that the negotiations between the parties produced a wider environmental easement, the Planning Board contemplated forty feet and the parties agreed to sixty feet. Mr. Bliss stated that there was some adjustment in the compensation being paid and that is the essence of it. Mr. Bliss stated that given the presence in the document of the Historic Preservation and Environmental Easements he would like to add language to the ordinance in the now, therefore be it resolved clause with the addition of a new paragraph 2 and renumbering the current 2 as 3. Mr. Bliss read into the record the new paragraph 2 - The proposed Driveway and Shed Easements includes an Environmental Easement to the Borough as well as a Historic Preservation Easement, which are also accepted on behalf of the Borough. Ms. Semple asked what the Borough’s role is in terms of the easements. Mr. Bliss stated that the Borough is the recipient of the easements as directed by the Planning Board in order to grant the sub-division, the Planning Board conditioned the approval on certain public aspects, that being the ingress / egress easement, the Historic Preservation easement and the Environmental Easement which effectively serves as a buffer between the new house to be and the cemetery. Mr. Bliss stated that our role is to accept the easements if acceptable in form and they are. Ms. Semple asked if review of any disturbance or tree removal or the new site plan would include the African American Cemetery. Mr. Bliss stated that they can certainly have a role in the discussions as the land is directly adjacent to the cemetery and there are restrictions stated in the ordinance. Upon a roll call vote all members present voted in favor with the exception of Mrs. Mills who abstained.

Ordinances for Public Hearing and Adoption

Mayor Lawver read Ordinance 2019-12 by title.

BOROUGH OF PENNINGTON ORDINANCE NO. 2019 – 12

ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF PENNINGTON, CHAPTER 163, CONCERNING SITE PLAN REVIEW, INCLUDING A REQUIREMENT THAT OWNERS OF MAJOR DEVELOPMENTS REPORT AND ANNUALLY CERTIFY REGULAR MAINTENANCE AND REPAIR OF THEIR STORMWATER MANAGEMENT MEASURES

WHEREAS, the Borough of Pennington seeks to update its stormwater management requirements with respect to the maintenance and repair of stormwater management measures for major developments;

WHEREAS, as part of the changes, the Borough will require annual certification that the owner has performed the maintenance and repairs required by the maintenance plan for the development;

WHEREAS, the changes also include amendment of checklist requirements for site plan review to include disclosure of State and Federal environmental enforcement actions affecting the site;

WHEREAS, the proposed changes require amendment of Chapter 163 of the Borough Code, concerning site plan review, in particular present sections 163-20.10 and 163-10;

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

1. Section 163-20.10 of the Code of the Borough of Pennington, is amended as follows:

163-20.10. Maintenance and repair.

- A. Applicability. Projects subject to review as major development shall comply with the requirements of this section.
- B. General maintenance.
- (1) The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.
 - (2) The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.
 - (3) Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.
 - (4) If the person responsible for maintenance identified under § 163-20.10B(2) above is not a public agency, the maintenance plan and any future revisions based on § 163-20.10B(7) below shall be recorded in the title of each property on which the maintenance described in the maintenance plan must be undertaken.
 - (5) Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.
 - (6) The person responsible for maintenance identified under Subsection B(2) above shall ~~maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance related work~~ orders submit to the Borough by January 1 of each year an annual inspection report and related log prepared by a Professional Engineer licensed in New Jersey or by a New Jersey Certified Stormwater Inspector. The inspection report and log shall include but need not be limited to investigation of:
 - a. Detention Basin outflow structures, escape provision as outlined in R.S.I.S. 7:8-62, and all components;
 - b. Storm sewer inlets, cleanouts, manholes, and structures;
 - c. Manufactured Treatment Devices;
 - d. Stormwater management basins;
 - e. Vegetation;
 - f. Trash racks and overflow grates;
 - g. Embankment erosion;
 - h. Sediment removal and pond maintenance.

Submission of the annual report shall be accompanied by the certification of the owner of the stormwater measure(s) that it has performed all maintenance and repairs required by the maintenance plan or otherwise by notice from the Borough. The certification shall be made on a

form supplied by the Borough. Filing of the report and certification shall require an annual fee of \$100.

- (7) The person responsible for maintenance identified under Subsection B(2) above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed. The owner of the stormwater management measure shall complete minor repairs of the facility within 14 days from notice of maintenance issues.
 - (8) The person responsible for maintenance identified under Subsection B(2) above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by Subsections B(6) and B(7) above. Each act or violation, and every day upon which any violation shall occur or continues to occur shall constitute a separate offense.
 - (9) The requirements of Subsections B(3) and B(4) above do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency. Failure to provide annual maintenance records shall be subject to a fine of \$100.
 - (10) In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have 14 days to effect maintenance and repair of the facility in a manner that is approved by the Municipal Engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or county may immediately proceed to do so and shall bill the cost thereof to the responsible person. Notwithstanding the penalties set forth in Section 163-20, any person who has not complied with this section and who, after notice, refuses to implement and maintain soil erosion control and stormwater runoff control measures and facilities in conformance with these regulations shall be subject to a fine of not more than \$1,000, or ninety days in jail, or both, plus the cost of prosecution.
 - (11) The requirements of Subsections B(3) and B(4) above do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency. In all other cases in which the municipality does not take responsibility for repair and maintenance of any stormwater management resources, the applicant shall post a two-year maintenance guarantee in accordance with N.J.S.A. 40:559-53.
 - (12) In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is in need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have 14 days to effect maintenance and repair of the facility in a manner that is approved by the Municipal Engineer or his designee. The municipality, in its discretion, may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or county may immediately proceed to do so and shall bill the cost thereof to the responsible person. Upon notice to the owner, in addition to any penalty or other remedy provided by law, such cost shall be certified to the Tax Assessor and shall become part of the taxes next assessed against the property on which the affected stormwater management measure(s) are located.
- C. Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.
2. Section 163-10 of the Code of the Borough of Pennington, in particular Subsection C of that section, is hereby amended as follows:
- C. No application for preliminary site plan review shall be deemed complete in the absence of (a) proof that a plan for soil erosion and sedimentation control has been submitted to the Mercer County Soil Conservation District, pursuant to the requirements of N.J.S.A. 4:24-39, et seq., or proof that such a plan is not required for the particular application; and (b) a statement whether any State or Federal environmental investigation or enforcement action affecting the site has been initiated or ongoing within the most recent five (5) years. Nothing in the latter statement shall be construed to authorize any action by the Board which conflicts with preemptive State or Federal jurisdiction.
3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.
4. This Ordinance shall be effective upon passage and publication as required by law.

Council Member Marciante made a motion to open the Public Hearing on Ordinance 2019-12, second by Council Member Chandler. There were no comments from the public. Mrs. Heinzl stated that the Planning

Board reviewed the Ordinance and found it to be consistent with the Master Plan. Council Member Chandler made a motion to close the Public Hearing on Ordinance 2019-12, second by Council Member Griffiths with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2019-12, second by Council Member Griffiths with all members present voting in favor.

Mayor Lawver read Ordinance 2019-13 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2019-13**

AN ORDINANCE DIRECTING INSTALLATION OF STOP SIGNS ON EGLANTINE AVENUE AT ITS INTERSECTION WITH EAST FRANKLIN AVENUE AND ABEY DRIVE AT ITS INTERSECTIONS WITH KINGS COURT, MALLARD DRIVE AND QUEENS LANE, AMENDING THE CODE OF THE BOROUGH OF PENNINGTON

WHEREAS, the Public Safety Committee of Borough Council has recommended installation of a stop sign on Eglantine Avenue at its intersection with East Franklin Avenue in the Borough; and

WHEREAS, the Public Safety Committee of Borough Council has further recommended installation of stop signs at the cul-de-sac intersections of Abey Drive and Kings Court, Mallard Drive and Queens Lane at each of those cul-de-sac roads in the Borough; and

WHEREAS, Borough Council has determined that installation of the recommended stop signs will further traffic safety at the intersections;

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

1. Chapter 200, Article II, of the Code of the Borough of Pennington, at Section 200-6, designating Stop Intersections in the Borough and directing installation of related stop signs, is hereby amended by the insertion of the following additional stop intersections and stop signs, with new language underlined:

Section 200-6. Stop intersections.

Intersection	Stop Sign On
* * *	* * *
<u>Eglantine Avenue and East Franklin</u>	<u>Eglantine Avenue (southbound)</u>
<u>Abey Drive and Kings Court</u>	<u>Kings Court</u>
<u>Abey Drive and Mallard Drive</u>	<u>Mallard Drive</u>
<u>Abey Drive and Queens Lane</u>	<u>Queens Lane</u>

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

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2019-13, second by Council Member Griffiths. There were no comments from the public. Council Member Chandler made a motion to close the Public Hearing on Ordinance 2019-13, second by Council member Gnatt with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2019-13, second by Council Member Marciante with all members present voting in favor.

NEW BUSINESS

**BOROUGH OF PENNINGTON
RESOLUTION #2019 – 11.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED, that a refund be issued from the Current Fund to American Properties @ Pennington, 517 Route 1 South, Suite 2100, Iselin, NJ 08830, for an overpayment of 2019 third quarter taxes, in the amount of \$632.15 and 2019 fourth quarter taxes in the amount of \$632.14 (total \$1,264.29) for Block 102, Lot 1, Qualifier –C1313 also known as 12A Cannon Drive.

BE IT RESOLVED, that a refund be issued from the Current Fund to Steele R. Chadwell, 212 King George Road, Pennington, NJ 08534, for an overpayment of 2019 fourth quarter taxes, in the amount of \$2,212.43 for Block 403, Lot 14.01 also known as 212 King George Road.

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				absent
Griffiths	S				Semple	X			

Council Member Chandler made a motion to approve Resolution 2019-11.1, second by Council Member Griffiths with all members present voting in favor.

BOROUGH OF PENNINGTON
RESOLUTION #2019 – 11.2

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 \$ 1,104,280.95 from the following accounts:

Current	\$ 807,843.28
W/S Operating	\$ 124,623.63
Developer’s Escrow	\$ 17,763.80
General Capital	\$ 39,437.15
Grant Fund	\$ 925.00
Other Trust Fund	\$ 100,200.00
Open Space Fund	\$ 6,864.50
Unemployment Fund	\$ 1,623.59
COAH Trust Fund	\$ 5,000.00
TOTAL	\$ 1,104,280.95

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

Council Member Gnatt made a motion to approve Resolution 2019-11.2, second by Council Member Griffiths. Council Members had questions on bills on the bill list. Upon a roll call vote all members present voted in favor.

BOROUGH OF PENNINGTON
RESOLUTION #2019 – 11.3

RESOLUTION FOR RENEWAL OF MEMBERSHIP IN THE
MID JERSEY MUNICIPAL JOINT INSURANCE FUND

WHEREAS, the Borough of Pennington is a member of the Mid Jersey Municipal Joint Insurance Fund; and

WHEREAS, said membership terminates as of January 1, 2020*, unless earlier renewed by agreement between the Municipality and the Fund; and

WHEREAS, the Municipality desires to renew said membership;

NOW THEREFORE, BE IT RESOLVED, as follows:

1. The Borough of Pennington agrees to renew its membership in the Mid Jersey Municipal Joint Insurance Fund for a period of three (3) years beginning January 1, 2020, and ending January 1, 2023*, and to be subject to the bylaws, rules and regulations, coverages, and operating procedures thereof as presently existing or as modified from time to time by lawful act of the Fund.

2. The Mayor and the Borough Clerk shall be and hereby are authorized to execute the agreement to renew membership annexed hereto and made a part hereof and to deliver same to the Mid Jersey Municipal Joint Insurance Fund evidencing the Borough’s intention to renew its membership.

*12.01 a.m.

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

Council Member Gnatt made a motion to approve Resolution 2019-11.3, second by Council Member Griffiths. Mrs. Heinzel stated that Council asked her to look into other options and she reached out to Montgomery Township Administrator Donato Needham who recently looked into private insurance and it was extremely expensive. Mrs. Heinzel stated that Mr. Needham stated that one of the reasons that the Joint Insurance Funds were formed was because municipalities were having a hard time finding affordable coverage. Upon a roll call vote all member present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION NO. 2019-11.4**

**RESOLUTION AUTHORIZING AMENDMENT TO HERITAGE
AT PENNINGTON DEVELOPER’S AGREEMENT REGARDING COMMENCEMENT OF
CONSTRUCTION OF PHASE 2 AND TIMING OF THE FINAL PAVING OF ROADS**

WHEREAS, American Properties of Pennington, LLC, (“Developer”) has received approval from the Pennington Borough Planning Board to construct an 80-unit mixed residential development, known as Heritage at Pennington, on Block 102, Lot 1, Pennington Borough Tax Map, commonly known as 105 West Franklin Avenue and located at the intersection of West Franklin Avenue and Knowles Street;

WHEREAS, a condition of approval of the development was that the Developer enter into a Developer’s Agreement with the Borough of Pennington to ensure compliance with all of the terms and conditions of the approval, and the parties first entered into this Agreement on April 28, 2017, with a subsequent amendment;

WHEREAS, changed circumstances and recent action by the Planning Board amending its approvals now require further amendment of the Developer’s Agreement, as explained in the attached form of Agreement entitled “Borough of Pennington – American Properties at Pennington, LLC, Second Amendment to Heritage at Pennington Developer’s Agreement;”

WHEREAS, on October 10, 2019, Developer appeared before the Planning Board and obtained a third amendment of the Board’s approvals that would permit the Developer to proceed with construction of the final 36 units in Phase 2 while final approval of sewer capacity for Phase 2 is still pending before NJDEP;

WHEREAS, this Planning Board action provides that, in compliance with the New Jersey Uniform Construction Code, Developer must undertake the proposed construction at its own risk and without assurance that the TWA permit will be approved by the NJDEP or that all the necessary upgrades and expansions of the Pennington Wastewater Treatment Plant will be completed in time to accommodate sewer service for Phase 2;

WHEREAS, the Planning Board is expected to memorialize this amended approval by resolution adopted at its next regular meeting;

WHEREAS, the proposed amendment of the Developer’s Agreement would permit the Developer to begin construction of Phase 2 of the development, at its own risk, before it receives final approval by NJDEP consistent with the Planning Board approval;

WHEREAS, the proposed Agreement would also permit the Developer to postpone final paving of roads in Phase 1 until completion of Phase 2;

WHEREAS, Borough Council determines that amendment of the Developer’s Agreement as proposed would serve the public interest for the reasons further explained in the Agreement;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that upon memorialization of the Planning Board’s approval of Developer’s application, the Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute the aforesaid Agreement on behalf of the Borough and to take such further steps as necessary to ensure that the Agreement is properly acknowledged and recorded.

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				Absent
Griffiths	S				Semple	X			

Council Member Chandler made a motion to approve Resolution 2019-11.4, second by Council Member Gnatt. Mr. Marciante asked if this would delay paving of the roads in Heritage at Pennington. Mrs. Heinzel stated that American Properties asked if they could wait to pave all of the development together because during the construction of Phase 2 the paving would be impacted and so this provides that agreement. Upon a roll call vote all members present voted in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2019 – 11.5**

**RESOLUTION AUTHORIZING THE HIRING OF ERIK MARTIN AS LABORER IN THE
DEPARTMENT OF PUBLIC WORKS**

WHEREAS, the Borough of Pennington has need for a qualified person to fill the position of Laborer in the Department of Public Works and has advertised for applicants for the position;

WHEREAS, the Superintendent of Public Works and the Borough Administrator reviewed the applications received and selected four (4) applicants for interviews, which were held on October 3rd, October 4th and October 11th 2019; and

WHEREAS, as a result of the interviews held the Superintendent of Public Works has recommended the hiring of Erik Martin for the position of Laborer I; and

WHEREAS, the Personnel Committee has been notified and has agreed with the recommendation of the Superintendent of Public Works;

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

1. the hiring of Erik Martin as Laborer I in the Department of Public Works is hereby approved;
2. Mr. Martin’s salary and other terms and conditions of employment shall be governed by the contract between the Borough and Teamsters Local 35;
3. Mr. Martin’s appointment shall be effective as of October 21, 2019.

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

Council Member Marciante made a motion to approve Resolution 2019-11.5, second by Council Member Gnatt with all members present voting in favor.

RESOLUTION TABLED

**BOROUGH OF PENNINGTON
RESOLUTION 2019 – 11.6**

**RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF
PENNINGTON, COUNTY OF MERCER, STATE OF NEW JERSEY, AUTHORIZING THE
SIGNING OF GOVERNMENT ENERGY AGGREGATION PROGRAM AGREEMENTS**

WHEREAS, the State of New Jersey has been engaged in a process to establish a competitive market place through deregulation and restructuring the electric and natural gas utility markets; and

WHEREAS, the establishment of a governmental energy aggregation program (“GEA Program”) to purchase electric generation service and natural gas pursuant to the Government Energy Act of 2003, N.J.S.A. 48:3-93.1 et seq. ("Act") and the New Jersey Board of Public Utilities' implementing rules at N.J.A.C. 14:4-6.1 et seq. ("Rules") will increase competition for the provision of electric power and natural gas to residential and non-residential electricity and gas ratepayers, thereby increasing the likelihood of lower electric rates and natural gas rates for these users without causing an interruption in service; and

WHEREAS, under a GEA Program the residential ratepayers may have the opportunity to receive a

direct reduction in their electric bills through the bulk purchase of energy from a third-party energy supplier; and

WHEREAS, pursuant to Ordinance # _____ adopted by the Borough Council of the Borough of Pennington on _____, 2019, the Borough publicly declared its intent to commence a GEA Program; and

WHEREAS, the Borough of Califon is the Lead Agency for the Hunterdon Area Energy Cooperative (HAEC) and shall accept or reject pricing on behalf of the Cooperative and its participant members; and

WHEREAS, the Borough of Pennington wishes to be a participating member of the HAEC and hereby agrees to proceed with the program, by signing the Supplier Agreement, should the Borough of Califon accept pricing, which provides a savings on the supply portion of the electric bill for the residential energy aggregation program; and

WHEREAS, the Borough of Califon appointed Commercial Utility Consultants, Inc. (CUC) and Concord Engineering dba Concord Energy Services (CES) for the HAEC to serve as the Energy Agents to assist and administer the GEA program at no cost to the Borough of Califon or HAEC or its participating members; and

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Borough Council of the Borough of Pennington in the County of Mercer, New Jersey, duly assembled in public session, as follows:

1. Pursuant to the provisions of N.J.S.A. 40A:11-11(5), the Mayor is hereby authorized to enter into a Cooperative Pricing Agreement with the Lead Agency.
2. The Lead Agency shall be responsible for complying with the provisions of the Local Public Contracts Law (N.J.S.A. 40A: 11-1 et seq.) and all other provisions of the revised statutes of the State of New Jersey.
3. The Borough of Pennington, as a participating member of the HAEC, hereby agrees to proceed with the program by signing the Supplier Agreement should the Borough of Califon accept pricing which provides a reduction on the supply portion of the electric bill for the residential energy aggregation program.
4. The Mayor, Chief Financial Officer, Treasurer or other municipal officer is hereby authorized and directed to execute, on behalf of the Borough of Pennington any documents necessary to carry out the purpose of this Resolution including the Supplier Services Agreement providing a reduction is achieved at the time of auction.

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

Council Member Chandler made a motion to approve Resolution 2019-11.6, second by Council Member Griffiths. Mr. Bliss stated that there are a couple of things that he has learned. Mr. Bliss stated that the original plan was to join the Hunterdon County Energy Aggregation Cooperative and he is not sure that is feasible at this point because we have been advised by our consultants, yet to be hired, that we cannot be in the same cooperative as the Hunterdon County Cooperative because they are JCP&L and we are PSE&G. Mr. Bliss stated that the apparent implication is that we will either have to go on our own or find other PSE&G communities to combine with. Mr. Bliss stated that he put together these agreements to be sure that we had something to act upon if that is the desire of Council and these agreements are twofold. Mr. Bliss stated that one agreement is with Concord Energy Services which basically signs up for them to be our agent in this process and effectively enables them to keep moving forward on our behalf. Mr. Bliss stated that this agreement is a redraft of one provided by them which was really not more than a letter agreement. Mr. Bliss stated that their attorneys are looking at the agreement and he should have an answer by the end of the week. Mr. Bliss stated that he has drafted the resolution so that Council can authorize him to approve the Mayor signing the agreement if they are in agreement. Mr. Bliss stated that the only open term on the document is the term of the agreement with regard to the Open Public Contracts Law. Mr. Bliss stated that the essence is this, if this is a professional services agreement, the term cannot be longer than one year which is problematical in this situation. Mr. Bliss stated that one might argue that the Borough is not putting out any money, but the Borough is on the hook for money if the consultant does not come through in certain respects. Mr. Bliss stated that under the second agreement, the Electric Distribution Company Aggregation Agreement, the Borough has certain obligations, all of which are being assumed by Concord Energy Services or Commercial Utility Consultants. Mr. Bliss stated that some of the items are explained under obligations of aggregator and the Borough is the aggregator. Mr. Bliss stated that regulatory compliance, notice to residential customers, performance of the role of option administrator and more.

Mrs. Chandler stated that we started down this road because we were going to group with Lambertville, Hopewell Township and others in Hunterdon County and now we cannot. Mrs. Chandler stated that isn't this a dead issue now? Mr. Bliss stated that the question is now whether it can be done with PSE&G communities. Mrs. Chandler asked shouldn't that be figured out before we do a resolution. Mr. Griffiths stated that he is getting sour on this and Mr. Marciante stated that he was too. Mrs. Chandler stated that she was on board when we were just joining an existing cooperative but she has no interest in creating our own. After some discussion, Council voted to table the resolution until we have more information.

**BOROUGH OF PENNINGTON
RESOLUTION #2019-11.7**

RESOLUTION GRANTING APPLICATION OF CUGINO'S HOLDING LLC FOR (1) ADDITIONAL TIME TO SATISFY CONDITIONS FOR ISSUANCE OF LIQUOR LICENSE UNDER RESOLUTIONS 2016-9.8 AND 2017-3.4 AND (2) CONTINUED USE OF BOROUGH PROPERTY UNDER USE AGREEMENT IN ORDER TO COMPLETE CONSTRUCTION

WHEREAS, Borough Council, under Resolution 2016-9.8, 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, among other things, 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 Beverage Control or otherwise as permitted or required by law;

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, 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, was 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 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, as of March 2019, Cugino's restaurant had not begun operations under the license within the required twenty-four month period in satisfaction of that condition under Resolution 2016-9.8 and the Notice to Accept Bids, and it applied to Borough Council for an extension of time to complete construction for the reasons set forth in the attached correspondence of its attorney Robert Friberg dated February 28, 2019;

WHEREAS, as set forth in the Friberg letter, after the adoption of Resolution 2017-3.4 Cugino's 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, applied for and secured full financing for the construction of the new space and closed on that loan on November 30, 2018;

WHEREAS, as further represented in the Friberg letter, since receiving municipal approvals, the applicant had been in the process of obtaining outside agency approvals and completing resolution compliance and the approval of the Mercer County Planning Board proved 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 had submitted plans to the Borough Construction Office for permit review but that review had not then begun because resolution compliance had not yet been completed;

WHEREAS, the Borough and Cugino's were also discussing an agreement which would permit Cugino's to use adjoining Borough property during construction and the discussion had not yet produced an agreement;

WHEREAS, the Friberg letter further represented that construction of the expanded facility was expected to take 6 to 8 months from the time of commencement, and an extension of time of 18 months was requested "out of an abundance of caution;"

WHEREAS, by Resolution 2019-3.7, adopted March 4, 2019, Borough Council granted this request for an extension of time to complete construction but only for a period of eight months, without prejudice to request additional time if needed;

WHEREAS, the eight-month extension of time expires in November 2019 and construction

is not yet complete, and as set forth in the letter of Robert Friberg dated October 31, 2019, also attached, Cugino’s now applies to Borough Council for an extension of the 24-month requirement for an additional eight months;

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 Resolution 2017-3.4;

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;

WHEREAS, in addition, on May 16, 2019, Cugino’s and the Borough entered into a Use Agreement (also sometimes referred to as a License Agreement) by which Cugino’s was permitted to use a designated area of Borough property adjacent to the Cugino’s premises as a construction staging area during construction, for a period of six months from the date of issuance of construction permit;

WHEREAS, Cugino’s received its permit and began construction in July 2019 and the term of the Use Agreement will expire in January 2020;

WHEREAS, the Friberg letter of October 31, 2019 also requests an extension of the term of the Use Agreement to coincide with the additional eight months needed to complete construction, which would therefore extend the end of the term to July 2020;

WHEREAS, Council envisions that the ongoing construction and anticipated opening of the Cugino’s restaurant will produce an asset to the community; and it determines that the public interest will be served by granting the requested extensions, which are believed to be made in good faith and not the result of a lack of diligence on Cugino’s part;

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 to and including July 2020; and

BE IT FURTHER RESOLVED, that the requested extension of the term of the Use Agreement between Cugino’s and the Borough to coincide with the completion of construction is hereby also granted.

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				absent
Griffiths	X				Semple	X			

Council Member Chandler made a motion to approve Resolution 2019-11.7, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2019 – 11.8**

**RESOLUTION AUTHORIZING BOROUGH TO REIMBURSE HOPEWELL VALLEY
REGIONAL SCHOOL DISTRICT FOR LEGAL EXPENSES IN CONNECTION WITH BOROUGH
ACQUISITION OF LAND TO CREATE HOWE’S ARBORETUM**

WHEREAS, Ordinance No. 2019-10 authorizes the Borough of Pennington to enter into an agreement with the Hopewell Valley Regional School District to purchase approximately 2.8 (+/-) acres of land for the development of Howe’s Arboretum;

WHEREAS, the Ordinance authorized a purchase price not to exceed \$34,000 from the Open Space Fund and an additional \$16,000 from the Fund toward costs of acquisition, including but not limited to reimbursement to the Hopewell Valley Regional School District for legal services associated with the conveyance, payment to the attorney representing the Borough in connection with the acquisition and related subdivision approval, surveying, title search and insurance and other miscellaneous expenses associated with the acquisition;

WHEREAS, by Resolution 2019-9.5, Borough Council authorized payments to Mason Griffin and Pierson of up to \$5,500 for fees and expenses in representing the Borough as special counsel in acquiring the land and obtaining approval of minor subdivision creating the parcel to be acquired;

WHEREAS, by Resolutions 2019-10.11 and 10.12, Borough Council authorized payments to Van Note-Harvey Associates of up to \$23,000 in the aggregate for surveying and engineering services in connection with the subdivision;

WHEREAS, the Borough is advised by the Hopewell Valley Regional School District that its attorneys Parker McKay, P.A., estimate that the District’s legal fees in connection with the project, including an application to the Department of Education for approval of the conveyance together with preparing the authorizing resolution, reviewing plans, attending a hearing on the subdivision, correspondence with the County Superintendent, review of sales agreement and amendment to the District’s Long Range Facility Plan, preparation of conveyance documents, and related communications, will be up to \$4,000;

WHEREAS, while the funds required for these expenditures exceeds the \$16,000 authorized by Ordinance 2019-10, the Chief Financial Officer has certified that sufficient additional funds are available in the Open Space Trust Fund;

WHEREAS, as with respect to all of the expenses earlier authorized, actual payments or reimbursements to the District will be made against future invoices approved by Borough Council;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that reimbursement of the Hopewell Valley Regional School District for the aforesaid legal fees of Parker McKay in the cumulative amount of up to \$4,000 is hereby authorized.

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

Council Member Chandler made a motion to approve Resolution 2019-11.8, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2019 – 11.9**

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 2019 budget appropriations:

<u>Appropriations:</u>	<u>To:</u>	<u>From:</u>
Tax Assessor – Salaries	\$ 1,200.00	
Tax Assessor – Other Expense	\$ 700.00	
Trash – Salaries	\$20,000.00	
DCRP – Admin/PW Clerical	\$ 1,000.00	
Tax Collection – Salaries		\$ 1,900.00
Streets – Salaries		\$15,000.00
Borough Property – Other Expense		\$ 6,000.00
Total Current Fund	\$ 22,900.00	\$ 22,900.00

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	X				Mills				Absent
Griffiths	M				Semple	X			

Council Member Griffiths made a motion to approve Resolution 2019-11.9, second by Council Member Chandler with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION #2019 – 11.10**

**RESOLUTION AUTHORIZING ADVERTISEMENT FOR BIDS
FOR THE PURCHASE AND INSTALLATION OF A 70KW NATURAL GAS POWERED
GENERATOR AT BOROUGH HALL UNDER A FEMA GRANT – HMGP-DR-4086-315**

WHEREAS, the Borough of Pennington seeks to purchase and install a 70KW natural gas powered generator at Borough Hall under a FEMA grant (HMGP-DR-4086-315);

WHEREAS, the deadline for installation of the generator has been extended to May 19, 2020; and

WHEREAS, the Borough Administrator will be requesting an additional extension of time to install the generator; and

WHEREAS, in order to meet the deadline for completion of the project it may be necessary to pre-purchase the generator and install the generator outside the scope of Phase 1 of the Borough Hall Renovation project; and

WHEREAS, the Borough now seeks to advertise for bids for this project as required by the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.;

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

The Borough Clerk is hereby authorized to take all actions necessary to advertise for and receive, in the manner provided by law, bids for purchase and installation of a 70KW Generator at Borough Hall, pursuant to plans, specifications and bid documents prepared by the Borough Engineer.

Record of Council Vote on Passage

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

Council Member Griffiths made a motion to approve Resolution 2019-11.10, second by Council Member Gnatt. Mrs. Heinzel stated that she is in the process of filing for an extension on the FEMA generator grant and it looks like we will be able to get an additional extension. Mrs. Heinzel stated that Van Note Harvey has indicated that delivery lead time for the generator is fourteen weeks so this resolution puts the wheels in motion to move this project forward. Upon a roll call vote all members present voted in favor.

Professional Reports

Mrs. Heinzel stated that she was on the scene of the fire at 107 King George Road and she would just like to say that the response by the Police, Public Works and the volunteers was great and she was very impressed.

Mr. Meytrott thanked everyone for the comments about the fire and Halloween. Mr. Meytrott stated that he was asked to address Council regarding the Holiday Walk. Mr. Meytrott stated that he does not represent the Holiday Walk or the Pennington Business and Professional Association however, they asked him to mention that the Holiday Walk will be held on December 6th, 2019 from 6 to 9pm. Mr. Meytrott stated that the Pennington Business Association is asking the Borough to assume some of the costs for Police services for the Holiday Walk. Mr. Meytrott stated that the costs for Pennington Police amounts to about \$1,100.00. Mr. Meytrott stated that additional personnel as needed comes from either Hopewell Township or Mercer County. Mr. Griffiths stated that if they can't raise the funds to hold this event then maybe there is diminished interest in the event. Mr. Griffiths stated that when funding goes down, then they need to look to other sources. Mrs. Chandler stated this event is sponsored by the businesses in the downtown and the Economic Development Commission is trying to work with the businesses which is part of the reason for the "Get Lit" initiative. Mrs. Chandler stated that the EDC is sending out letters and working with businesses. Mayor Lawver stated that he is not in favor of waiving the police fees for the Holiday Walk. After some discussion, Council decided not to waive the charges for Police services.

There were no further reports from Professionals.

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

Council Member Marciante made a motion to approve the Closed Session minutes for April 1, 2019 for content but not for release, second by Council Member Chandler with all members present voting in favor.

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.

Mr. Joseph Schmelte of 343 Hillcrest Ave in Ewing Township spoke briefly on the deer management plan discussion.

Mr. Dan Pace of 9 Railroad Place thanked Mr. Griffiths for asking Mr. Van Clef to come and make a presentation to Council. Mr. Pace also stated that if the Holiday Walk were to be cancelled there would be a lot of people who would be disappointed.

At 8:59 PM, with no further business to come before Council, Mrs. Chandler made a motion to adjourn, second by Council Member Griffiths.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk