

**Pennington Borough Council  
Special Meeting – October 18, 2021**

Mayor Davy called the Special Meeting of the Borough Council to order at 7:01 pm. The meeting was held on Zoom due to the COVID19 pandemic. Borough Clerk Betty Sterling called the roll with Council Members Chandler, Gnatt, Gross, Marciante, Mills and Semple in attendance.

Also present were Borough Administrator Eileen Heinzel, Public Works Superintendent Rick Smith, Chief and Borough Attorney Walter Bliss.

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

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

Mayor Davy 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 raise your hand and when the Borough Administrator acknowledges your name and address for the record. Please limit comments to the Governing Body to a maximum of 3 minutes.**

There were no comments from the public.

**Council Discussion**

Mayor Davy stated that the plan for this evening is to discuss what has transpired since the last meeting with regard to pickle ball. Mayor Davy stated that he engaged a local resident, Jim McGuire who is a mediator to assist with this process and he graciously agreed to do it at no charge to the Borough. Mayor Davy stated that he would like Mr. McGuire to talk about the process used and what transpired after the meeting, that being a draft agreement. Mayor Davy stated that he understands that there is no longer an agreement but we will address that later. Mayor Davy stated that he will also talk about what has transpired after reaching the draft agreement. Mayor Davy stated that he will talk about discussions with the County regarding the cul-de-sac and he will have Mr. Bliss talk about his memo regarding insurance.

Mayor Davy introduced Jim McGuire and asked him to discuss the process and what came out of the process. Mr. McGuire stated that a meeting was held with the Hale Street residents and the pickle ball players to try to find some common ground for playing pickle ball at the Senior Center. Mr. McGuire stated that a meeting was held with the Hale Street residents on October 8<sup>th</sup> and a separate meeting was held with the pickle ball players on October 10<sup>th</sup>. Mr. McGuire named the representatives for both sides and stated that there were attorneys on both sides not representing the groups but attorneys nonetheless. Mr. McGuire stated that goal was to identify the concerns and to find a solution that would be acceptable to both sides. Mr. McGuire stated that pickle ball players just want to play for a number of reasons, social interaction, and health reasons and just to have fun. Mr. McGuire stated that on the neighbors side, they are impacted by the noise which was found to be significantly different than normal noise such as basketball, lawn mowers and leaf blowers. Mr. McGuire stated that the pickle ball industry recognizes that noise is an issue and manufacturers have taken note that people are not happy with the popping noise that is produced. Mr. McGuire stated that the industry has taken strides to change the equipment used to minimize the noise. Mr. McGuire stated that time of play and the use of lights at night was also discussed. Mr. McGuire noted that residents have stated that the noise has interfered with the ability to work from home and to hold backyard events. Mr. McGuire stated that the residents are not opposed to pickle ball play, they just want it to take place in a time, manner and place that is agreeable to everyone. Mr. McGuire stated that was the task and having heard from both sides, a third meeting was held with both parties on October 11<sup>th</sup> and concerns from both sides were shared and a problem solving question was considered, how does pickle ball play resume with limited impact on the neighbors. Mr. McGuire stated that options were explored and realized that there were three options to consider, short-term, mid-term and long-term. Mr. McGuire stated that regarding the short-term option there were three items that could be controlled by the parties and they related to equipment, location and hours of play. Mr. McGuire stated that there was a pretty constructive and vigorous discussion and on October 11<sup>th</sup> the parties came to an agreement, though he understands that this is no longer the case. Mr. McGuire stated that the parties agreed that with respect to equipment, the parties agreed that green equipment would be used instead of the regular equipment to mitigate the noise, they agreed that of the three courts at the Senior Center, a near court which is close to the neighbors, a mid-court which is in the parking lot and a third court which is in the cul-de-sac. Mr. McGuire stated that it was discussed that the cul-de-sac is not a good location because the surface is not suitable for pickle ball play. Mr. McGuire stated that it was agreed that the middle court would be used for the short term period until a long term solution could be identified. Mr. McGuire stated that it was agreed that the near court closest to the neighbors would not be used and that the cul-de-sac would be explored as a possible midterm solution. Mr. McGuire stated that third item that was discussed was the hours of play and the group agreed to Monday through Friday, 11am to 5pm. Mr. McGuire stated that the reason for the 11am start time was that even though there was

an early morning group that played, the neighbors stated that the morning play was the most intrusive because that is a quiet time of the day. Mr. McGuire stated that on Saturday, play would be allowed from 9am to 3pm, there would be no play on Sunday and no play on Thanksgiving, November 25<sup>th</sup>. Mr. McGuire stated that it was agreed that this solution would be effective through November 30<sup>th</sup> at which time the parties would reconvene to discuss the short term solution and discuss concerns. Mr. McGuire stated that this was the short term solution.

Mr. McGuire stated that the midterm solution was to explore the use of the cul-de-sac which was preferable to both parties provided it could be resurfaced. Mr. McGuire stated that the task was to explore the feasibility of resurfacing the cul-de-sac area. Mr. McGuire stated that it was also agreed that Borough Council in addition to the resurfacing would explore some sort of sound barrier whether that be arborvitae or some other type of barrier.

Mr. McGuire stated that the third option is the long term option and this is the one that both parties favored. Mr. McGuire stated that everyone would like to see an alternate site at somewhere other than the Senior Center. Mr. McGuire stated that it was agreed that Borough Council would explore the option of an alternate site.

Mr. McGuire stated that is the agreement that both parties agreed to on October 11<sup>th</sup>. Mr. McGuire stated that Mayor Davy would be speaking further on what has transpired since the draft agreement was reached.

Mayor Davy stated that the day after the agreement was reached he received an e-mail from one of the pickle ball players who asked to be removed from the group because he did not agree with having to purchase additional equipment or any other items in the agreement and stated that he would rather wait until the cul-de-sac is ready and then play pickle ball whenever and with whatever equipment he chose. Mayor Davy stated that he was a little concerned after reading the e-mail. Mayor Davy stated that subsequent to that he also received an e-mail from one of the Hale Street residents suggesting that everyone consider the northwest corner of the parking lot instead of the agreed location. Mayor Davy stated that another e-mail from Ellen Venezia came in representing the pickle ball players outlining why they are no longer in favor of the proposed agreement.

Mayor Davy stated that the negotiated agreement has fallen apart and in the meantime he contacted Mercer County to explore applying a thin coat of asphalt on the cul-de-sac and the County stated that they would not repave any surface for pickle ball play as they are concerned about the liability, however they stated that they would repave it for traffic or parking. Mayor Davy stated that the County provided a price of \$4,500 and they could start on October 25<sup>th</sup>. Mayor Davy stated that the cost of putting in sound barrier arborvitae would be about \$5,000 and additional noise buffering would be another \$3,000. Mayor Davy stated after hearing the dollar amounts and seeing the e-mails indicating that there was no longer an agreement he is suggesting that the Borough not spend a dime at the Senior Center, but instead put the funds into a pickle ball court at Kunkel Park as a permanent location only after conducting a meeting with the residents in the area and a meeting with the community.

Mr. Gross stated that from a fiscal standpoint it makes more sense to put the pickle ball court at Kunkel Park as open space funds can be used to develop recreational areas. Mr. Gross stated that improvements at the Senior Center would be a direct hit to the budget. Mr. Bliss explained the reason why open space funds cannot be used at the Senior Center.

Mayor Davy asked Mr. Bliss to comment on his findings. Mr. Bliss stated that the Business Administrator was asked to communicate with the Joint Insurance Fund to find out if someone were injured playing pickle ball at the Senior Center would it be covered and the answer was yes, however, the Borough might lose its immunity from suit in this kind of a setting. Mr. Bliss stated that there are two immunities in this case, design and plan immunity and discretionary judgement immunity. Mr. Bliss stated in a nutshell that if Council agrees to an activity on Borough property but does not design a plan in which the activity will take place then the Borough will not be protected under design and plan immunity. Mr. Bliss stated that if an accident occurs because a player is chasing a ball and collides with a car, the question would be asked why there is no barrier. Mr. Bliss stated that if the Borough considered such a barrier as part of a plan but decided it was not needed then it would not lose its immunity. Mr. Bliss stated that his conclusion was that Council should design a facility for this activity and therefor preserve its immunity from suit.

Mayor Davy asked for Council comments on the process, the mediated agreement, conversations with the County or Mr. Bliss' comments.

Mr. Marciante commented and clarified that Council approved the court in the parking lot and not the cul-de-sac. Mr. Marciante stated that in person lunches are starting and additional programs are also starting up beginning November 1<sup>st</sup>. Mr. Marciante stated that currently there are only three cars coming into the parking lot, but with the Senior Center opening up there will be increased traffic in the parking lot. Mr. Marciante stated that he will not use the parking lot or the cul-de-sac to play pickle ball. Mr. Marciante stated that he would urge Council Members to vote against allowing pickle ball at the Senior Center and put the funds into putting a pickle ball court at a more desirable location.

Mrs. Chandler stated that she is disappointed because she thought that the hours of play had been agreed on. Mrs. Chandler stated that there must be some kind of solution so that players could have time to play at the Senior Center. Mrs. Chandler stated that the Senior Center is an underused location and she would like to see a compromise made during hours when the Senior Center is not being used. Some discussion took place with regard to the hours and the lighting.

Mr. Gross stated that it seems that the increased use of the Senior Center is a new variable to the equation. Mr. Marciante stated that one net has already been run over. Mrs. Gnatt stated that her understanding is that the Joint Insurance Fund will cover the Borough for injury, but if a suit is raised the Borough would lose immunity unless the space is planned out by the Borough. Mr. Bliss stated that is correct. Mrs. Gnatt asked for clarification on what planning the space means to preserve the immunity. Mr. Bliss stated that if a player were injured in a way that could have been prevented with a barrier then there is a risk involved. Mrs. Mills stated that it sounds like a significant expenditure of money is involved in any of the solutions, short, mid or long term.

After some discussion related to alternate locations, hours of play and insurance concerns by Council, Mayor Davy opened the discussion up to the public.

Mr. Bob DiFalco stated that there are courts at Hopewell Valley Golf Course just up the road. Mr. Marciante stated that there is a cost to play there. Mr. DiFalco was concerned about a tax increase for putting in a court or for liability costs if someone gets hurt.

Mr. James Creegan thanked Mayor and Council for the meetings and discussions and also for the two week reprieve in pickle ball at the Senior Center. Mr. Creegan stated that the residents of Hale Street negotiated an agreement to allow the playing of pickle ball even though the preference is no pickle ball at the Senior Center and thirty six hours of play that was agreed to is pretty generous that was not done one-sided. Mr. Creegan stated that the hostile comments and hostile environment is unacceptable and he would ask for more respect for the process and the people that have tried to come up with a compromise.

Donna Popik of 313 Sked Street stated that she was involved in the process and she is surprised by Mr. Creegan's comments. Ms. Popik stated that she agrees that the hours should be outside of when the Senior Center is open.

Ellen Venezia stated that she would like to thank Borough Council for all of the time put into this and she asked what is happening tonight, will a decision be made and what is the next step.

Mayor Davy stated that there is a form of a resolution for consideration tonight with some blanks that need to be filled in regarding hours, location etc. if a short term arrangement is the answer or if pickle ball is put on hold until a long term solution can be figured out.

**NEW BUSINESS**

**BOROUGH OF PENNINGTON  
RESOLUTION 2021-10.14**

**RESOLUTION AUTHORIZING PICKLEBALL COURT ON BOROUGH PROPERTY**

**WHEREAS**, Borough Council of the Borough of Pennington hereby makes the following findings:

A. Residents and other citizens in the region have been playing pickleball in the parking lot of the Senior Center on Reading Street. Complaints from neighbors about noise emanating from play and concerns about potential conflicts between players and vehicles inhabiting the same space have caused Council to suspend play pending further action by Council addressed to the concerns that have been raised.

B. Pickleball is a paddle game featuring up to four players, two on each side of a net, hitting a ball back and forth on a court resembling a miniature tennis court. The boundaries and other lining for the court have been taped on the pavement. The net is portable and players have been bringing their own or borrowing a net from a Reading Street resident who has offered to make their net available.

C. The Senior Center parking lot is located on the easterly side of the northern end of Reading Street. It has in excess of 30 spaces for cars, intended primarily for use by seniors visiting the Center. The street ends in a cul de sac adjacent to the parking lot on the west, separated from the parking lot by a grass island 10 to 12 feet in width. The single entrance to the parking lot is off the entrance to the cul de sac.

D. A pickleball court is presently marked out in the aisle between two rows of parking spaces perpendicular to the aisle on the northerly side of the lot, eight spaces to the north and six spaces to the south. This court extends for most of the length and breadth of the aisle. A second court is outlined on the westerly side of the cul de sac.

E. Curbing or the equivalent runs along the entire perimeter of the lot. The island

between the lot and the cul de sac includes a light pole at the edge of the lot in the vicinity of the parking lot court. A second light pole is located on an island at the opposite side of the lot.

F. To the east of the parking lot are residential properties on Hale Street whose back yards back up to the parking lot and the Senior Center property. Hale Street neighbors are the principal complainants concerning noise from the games.

G. Proponents of the sport herald it as a great door-opener for fostering sociability among neighbors and building a sense of community.

H. The Mayor has initiated conversations among players and neighbors with the assistance of a professional mediator volunteering his time in an attempt to reconcile the competing positions but no compromise has been reached.

I. Borough Council heard comments from citizens with opposing views at the Council’s regular meeting on October 4, 2021 and has again received public comment at Council’s special public meeting on this date.

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, that resident requests for creation of a single pickleball court for use by the general public are hereby denied and any further use of either the parking lot or the cul-de-sac for this purpose is prohibited pending further action by Council; and

**BE IT FURTHER RESOLVED** that Mayor and Council are hereby authorized to pursue development of a pickleball court in an appropriate alternative location.

**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	X				Mills	M			
Gross	S				Semple	X			

Council further discussed a short term solution at the Senior Center. Mrs. Mills commented that the short term solution is right down the street and only costs \$10.00 to play. Mayor Davy stated that he would suggest earnestly pursuing the installation of a pickle ball court at Kunkel Park with resident and community input. Ms. Semple stated that government is about planning and considering residents input and maybe we can’t please everyone right away, but that is how government works. Following the discussion it was agreed that Kunkel Park will remain paused until a long term solution can be reached. Mr. Bliss amended the language of the proposed resolution to deny use of the Senior Center for pickle ball and to authorize Council to pursue development of a pickle ball court in an appropriate location to be determined. Council Member Mills made a motion to approve Resolution 2021-14, second by Council Member Gross with all members present voting in favor with the exception of Mr. Marciante.

**BOROUGH OF PENNINGTON  
RESOLUTION 2021-10.16**

**RESOLUTION AUTHORIZING HALLOWEEN ROAD CLOSURE PLAN**

**WHEREAS**, Pennington residents have requested that all or parts of Burd Street, Laning Avenue, West Welling Avenue, Hale Street, Reading Street, Voorhees Avenue and Sked Street be closed between the hours of 5:00 PM and 9:00 PM on October 31, 2021, for the safety of the high volume of children expected to trick-or-treat in this area of the Borough at that time;

**WHEREAS**, a closure of this sort was last undertaken on Halloween in 2019 and was successful;

**WHEREAS**, Chief Pinelli has prepared the attached Halloween Road Closure Plan consisting of locations for the posting of officers and barricades to effect the closure, regulations governing conduct of the closure and a street map of the affected areas;

**WHEREAS**, once Burd Street is closed there will be absolutely no exceptions for vehicle traffic, whether residents or visitors, coming in or leaving the closed section of Burd Street;

**WHEREAS**, in the event of an emergency, one of the roaming patrol units will meet the emergency equipment if possible and safely escort them to the location of the incident;

**NOW, THEREFORE, BE IT RESOLVED**, by Borough Council of the Borough of Pennington, that the Road Closure Plan as set forth in the attached documents 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			
Gross	X				Semple	X			

Chief Pinelli stated that in anticipation of Burd Street being closed he prepared a traffic plan for closing of the Burd Street area streets. Chief Pinelli stated that he would encourage that a letter go out to all residents in the Burd Street corridor area. Chief Pinelli stated that officers will be placed at various intersections. Mrs. Chandler stated that this was done in 2019 with a certain amount of success. Mrs. Chandler stated Public Safety discussed this and agreed it would be a good idea. Mrs. Chandler stated that there is a cost involved and it was not budgeted for. Council Member Chandler made a motion to approve Resolution 2021-10.16, second by Council Member Gnatt with all members present voting in favor.

**Public Comment**

Mayor Davy opened the meeting for public comment stating that anyone wishing to speak please raise your hand so that the Borough Administrator can acknowledge you. Mayor Davy asked that anyone wishing to speak state your name and address for the record and please limit comments to the Governing Body to a maximum of three minutes. Mayor Davy stated that following the Public Comment, Council will convene in Closed Session.

Donna Popik asked about parking during Halloween for people who come in from out of the area. Chief Pinelli stated that they can park in other areas of town. Chief Pinelli stated that he did not see a need for setting a designated area for parking.

**Closed Session**

**AT, 8:51 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:

- Personnel – Police – New Hire/Promotion

At 9:06 P.M. Council returned to open session.

Mayor Davy asked for a motion and second to authorize the Chief of Police to take all necessary and appropriate steps leading up to Borough Council’s approval of the hiring of a sixth police officer for the Pennington Police Department. Council Member. Marciante made a motion, second by Council Member. Chandler with all members present voting in favor.

Mayor Davy asked for a motion and second to authorize the Chief of Police to take all necessary and appropriate steps leading up to Borough Council’s approval of the promotion of two officers to the position of Sergeant. Council Member Marciante made a motion, second by Council Member Mills with all members present voting in favor.

With no further business to address Council Member Chandler made a motion to adjourn, second by Council Member Marciante.

Respectfully submitted,

Elizabeth Sterling  
Borough Clerk