

**Pennington Borough Council
Regular Meeting – February 6, 2023**

Mayor Davy called the Regular Meeting of the Borough Council to order immediately following the Reorganization meeting. The meeting was held via Zoom. Borough Clerk Betty Sterling called the roll with Council Members Angarone, Chandler, Gnatt, Gross, Marciante, Stern and Valenza in attendance.

Also present were Borough Administrator Donato Nieman, Public Works Superintendent Rick Smith, Chief Doug Pinelli 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 door at Borough Hall and on the Borough web-site according to the regulations of the Open Public Meetings Act.

Open to the Public

Mayor Davy read the following statement.

The meeting is now open to the public for comments. 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 you state your name and address for the record. Please limit comments to the Governing Body to a maximum of 2 minutes.**

Kurt Pedersen of 436 Sked Street asked what the plan for EMS services for the Borough is since the Pennington First Aid Squad is dissolving as of March 1, 2023. Mayor Davy stated that this topic is on the agenda later in the meeting, but perhaps he would address it now. Mayor Davy asked the Roger Demareski be admitted to the meeting for the discussion. Mr. Demaraski stated that he resides at 1 Walking Purchase and serves as the Chief of Fire Station 51 and also in attendance were Deputy Chief, Mike Balderosi, President, Lee Abey, and two Fire Commissioners Brian Hofacker and Bob DiFalco. Mr. Demareski stated that they have the same question as Mr. Pedersen and they would also like to request to be part of the conversation. Mr. Demareski stated that they are concerned that a vibrant volunteer First Aid Squad was not able to sustain itself. Mr. Demareski stated that they would like to be part of the conversation related to Capital Health and with regard to the First Aid Building. Mr. Demareski stated that their interest with regard to the building is in recruiting and maintaining volunteer fire fighters. Mr. Demareski stated that they would like to remain volunteer and remain part of the community and being part of the conversation particularly with regard to the building is important to them.

Mayor Davy stated that Hopewell Fire District is leading the effort to secure ambulance services for Pennington Borough and for the area that the Pennington First Aid Squad served. Mayor Davy stated that as Pennington has been advised, the Fire District has been in conversation with Capital Health for providing services effective April 1st, 2023 and the costs that would be associated with providing the services to Pennington Borough. Mayor Davy stated that the total cost is \$200,000 with Pennington's share at \$25,320 and Pennington is taking steps to facilitate that but the problem is that there is a one month period where there would be no coverage. Mayor Davy stated that we are hoping to hear from the Fire District as to what is being worked out for the period of March 1 to March 31. Mayor Davy stated that services will be in place effective April 1st. Mayor Davy stated that he asked the Pennington First Aid Squad if they would be able to cover the month of March and they indicated that they just don't have the volunteers to do it. Mayor Davy stated that with regard to the building, the deed states that the building will revert back to the Borough at the end of business and he is being told that the end of business is not March 1st, but it is actually three to six months down the road after they have all of their finances, inventory and documents organized. Mayor Davy stated that they have a meeting scheduled to do a walkthrough of the building and to review documents related to the building to determine costs associated with the building. Mayor Davy stated that in the meantime, he anticipates that an agreement for services beginning April 1st is in the works and an agreement for coverage for the month of March is under discussion.

Mr. Pedersen stated that many residents have come to him and asked what will happen and will ambulance services be provided to residents in the event of an emergency. Mayor Davy stated that his main concern is that any Pennington resident will be provided with services as needed and that is what he is working on now.

Mr. Demareski stated that they see an opportunity and they would like to repeat that they would like to be part of the conversation related to the building because the Fire Department wants to be

continue to provide services and use of the building would assist them in recruiting and retaining volunteer members.

Mr. Brian Hofacker stated that he is a former member of the First Aid Squad and he would like to reiterate that they would like to be part of the conversation and have a seat at the table.

Mr. Robert Kanig of Newtown, PA works at Emily’s Café and he wanted to ask if anything will be discussed regarding the fence that is being installed at 1 North Main Street. Mayor Davy stated that this matter will not be discussed by Council tonight. Mayor Davy stated that Emily has been advised that she should file documents with the Planning Board to be heard at their next meeting. Mayor Davy stated that the owner of 1 North Main Street filed a zoning permit and it was approved for installation of the fence. Mayor Davy stated that there may have been an arrangement with the prior owner, however the fence that the new owner is installing meets the zoning code. Mayor Davy stated that this is not the forum for discussion of this matter. Mr. Kanig spoke about an agreement that speaks about parking. Mayor Davy stated that Mr. Kanig should bring whatever documents they have and also advise Emily to file the necessary paperwork to be heard at the Planning/Zoning Board.

There were no further comments from the public.

Mayor’s Business

Mayor Davy stated that Kate Dunham is stepping down from the Shade Tree Committee and Dan Boone has also submitted his resignation from the Board of Health.

Mayor Davy read the following Proclamation acknowledging Dan Boone.

PROCLAMATION

WHEREAS: Daniel Boone has served on the Pennington Board of Health faithfully for 3 decades; and

WHEREAS: Daniel Boone has assisted Pennington Board of Health in meeting the core functions of Public Health during his tenure; and

WHEREAS: Daniel Boone’s knowledge of the community has increased the effectiveness of the Public Health assessment; and

WHEREAS: Daniel Boone’s keen insight has helped in the development of Public Health planning process; and

WHEREAS: Public Health practice standards for the community have been consistently well maintained through the effort of Daniel Boone; and

WHEREAS: Daniel Boone has served on the Pennington Volunteer First Aid Squad for 23 years, 17 of them as President.

NOW THEREFORE BE IT PROCLAIMED that the Mayor and Council of the Borough of Pennington recognizes and honor the long and outstanding service and extend to Daniel Boone the best wishes of a grateful community on this 6 day of February 2023.

Mr. Rick Smith thanked Dan Boone for his work related to training the Public Works employees each year. Mr. Steve Papenberg also recognized and thanked Dan Boone for his service on the Board of Health for many years.

Mayor Davy stated that next item under Mayor’s Business is EMS services which was covered already but he asked Council Members if they had any comments or concerns. Mr. Marciante asked if any meetings will be held and who would be involved. Mayor Davy stated that meetings are taking place and Mrs. Chandler has been participating when she can. Mr. Marciante stated that would also like to be included in any meetings that take place. Some discussion took place regarding charging for services and whether an ordinance will be needed. Mr. Marciante asked if there is a problem with contracting with the Fire District because he thought that Fire and Ambulance Services were required to be separate. Mr. Valenza had a concern about whether an ambulance would be stationed here in Pennington. Mayor Davy stated that this will be part of the conversations as to whether an ambulance can be stationed at the First Aid building. Mr. Valenza had concerns about response time if an ambulance has to come from Capital Health. Mayor Davy explained that the contract is being negotiated by the Hopewell Fire District and we will be entering into an agreement with them. Mr. Valenza stated that it is important to keep people informed and to make sure that the right people are included in the conversations.

Mayor Davy stated that later in the meeting Council will consider a Resolution to authorize and agreement with Excel Environmental to apply for funds to continue testing at the Landfill. Mayor Davy stated that he was told that a couple of Council Members have questions. Mrs. Chandler stated that she asked that this be put on the agenda and she would like everyone to have an opportunity to raise questions. Mayor Davy stated that the Resolution is to authorize Excel to apply for additional funding for more testing. Mr. Valenza stated he was fine with that, but he has some follow up questions after the presentation at the Special Meeting and he would like the opportunity to address those. Mr. Valenza stated that it doesn't have to be another meeting, he just wants the opportunity to ask the questions. Mayor Davy suggested that Council approve the Resolution tonight and then arrange a meeting with Excel to get any concerns or questions addressed before the application is submitted in case anything changes based on the questions or concerns that are raised.

Mayor Davy stated that the Borough is working with the State under a Federal Grant for Phase 2 of Streetscape Improvements which extend down Main Street and down Delaware Avenue. Mayor Davy stated that the project includes new sidewalks and curbing, benches, trash receptacles and tree replacement. Mayor Davy stated that after a meeting with the design engineer there are some items that still need to be ironed out, dead tree removal coordination with Mercer County, identification of what type of tree should be planted, drainage/ponding problem at the Village Salon corner which we will be asking to be added to the scope of the project, brick paver sidewalks in front of a couple of residences, and the clock tower. Mayor Davy stated that the project only allows for installation of a concrete pad for the clock, refurbishment and providing electric would be the responsibility of the Borough. Mrs. Chandler stated that the State Historic Preservation District would also need to approve the installation of the clock in the Historic District. Mayor Davy stated that the lighting will look the same ornamentally, but the light itself will be LED and they will look different than the Phase 1 lighting so the Borough will have to look into what to do with the lights that are currently in the downtown. Mayor Davy stated that some discussion took place regarding trash receptacles and their placement. Mayor Davy stated that local businesses did not like having the original receptacles in front of their businesses because of the dog waste. Mayor Davy stated that he thinks that the two existing receptacles seem to be enough but if Council Members feel differently to let him know. Mayor Davy stated the next phase of the project will be to schedule a Public Information Session and though these items do not need to be resolved, he would like to see them all resolved before the meeting.

Mayor Davy stated that later in the meeting there is a Resolution for Supplemental Funding from Green Acres. Mayor Davy stated that this is a request to set aside an allocation for use later down the road for preservation of Open Space.

Mayor Davy stated that the Finance Committee has been working on the agenda and he would like to schedule a Budget Work Session on February 28th at 7:00 pm. Council Members were all available for that date and time.

APPROVAL OF MINUTES

Council Member Chandler made a motion to approve the minutes of the December 29, 2022 Regular Meeting, second by Council Member Marciante with all members present with the exception of Mr. Valenza who abstained.

Council Member Chandler made a motion to approve the minutes of the January 4, 2023, Reorganization Meeting, second by Council Member Gnatt with all members present voting in favor.

Council Member Chandler made a motion to approve the minutes of the January 4, 2023, Regular Meeting, second by Council Member Stern with all members present voting in favor.

Council Member Chandler made a motion to approve the minutes of the January 17, 2023, Special Meeting, second by Council Member Angarone with all members present voting in favor.

APPROVAL OF CLOSED SESSION MINUTES (FOR CONTENT BUT NOT FOR RELEASE)

Council Member Chandler made a motion to approve the Closed Session Minutes for October 3, 2022 for content but not for release, second by Council Member Stern with all members present voting in favor with the exception of Mr. Valenza.

Council Member Chandler made a motion to approve the Closed Session Minutes for November 7, 2022 for content but not for release, second by Council Member Angarone with all members present voting in favor with the exception of Mr. Valenza.

Council Member Chandler made a motion to approve the Closed Session Minutes for December 5, 2022 for content but not for release, second by Council Member Angarone with all members present voting in favor with the exception of Mr. Valenza.

Council Member Chandler made a motion to approve the Closed Session Minutes for December 5, 2022 for content but not for release, second by Council Member Angarone with all members present voting in favor.

ORDINANCES FOR INTRODUCTION

Mayor Davy read Ordinance 2023-3 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2023-3**

**AN ORDINANCE APPROVING RULES AND REGULATIONS
FOR THE PENNINGTON POLICE DEPARTMENT AMENDING
AND SUPERSEDING “RULES AND REGULATIONS OF THE
POLICE DEPARTMENT OF THE BOROUGH
OF PENNINGTON DATED 1995.”**

WHEREAS, in accordance with Section 46-3 of the Code of the Borough of Pennington, Rules and Regulations for the Pennington Police Department were codified by Borough Council in 1995 as the “Rules and Regulations of the Police Department of the Borough of Pennington dated 1995;”

WHEREAS, Borough Council now seeks to amend and supersede the 1995 document by adoption of the codification of Rules and Regulations attached to this Ordinance and incorporated herein by reference as if set forth at length (hereafter “2022 Rules and Regulations”;

WHEREAS, the attached 2022 Rules and Regulations are proposed on the recommendation of the Chief of Police with the endorsement of the Public Safety Committee;

WHEREAS, the 2022 Rules and Regulations consist of 35 pages including an Introduction with Code of Ethics and Mission Statement, a description of the General Duties and Responsibilities of the members of the Department, Rules of Conduct and Disciplinary Regulations;

WHEREAS, the 2022 Rules and Regulations revoke and supersede any rule or regulation previously issued to the extent of any conflict or inconsistency;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that the attached 2022 Rules and Regulations of the Pennington Police Department are hereby adopted and approved, with the direction that copies be distributed electronically to all members of the Department and that a copy be maintained by the Borough Clerk and made available as a public document; and

BE IT FURTHER ORDAINED, that this Ordinance shall become effective upon passage and publication as required by law.

Council Member Chandler made a motion to introduce Ordinance 2023-3, second by Council Member Angarone with all members present voting in favor.

Mayor Davy read Ordinance 2023-7 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2023 - 7**

**ORDINANCE INCREASING BOROUGH ADMINISTRATIVE FEES IN CONNECTION WITH
PAID DETAIL POLICE SERVICES AND AMENDING CHAPTER 98 (FEES) OF THE CODE OF
THE BOROUGH OF PENNINGTON**

WHEREAS, Paid Detail Services are services provided by off-duty employment of Borough police officers in police-related services for private persons and entities;

WHEREAS, intends by this Ordinance to revise the hourly rate for administrative services performed by the Borough in connection with Paid Detail Services;

NOW THEREFORE BE IT ORDAINED by the Borough Council of the Borough of Pennington that Article IV of Chapter 98 of the Code of the Borough of Pennington, concerning Fees Required for Paid Detail Police Services, in particular Section 98-24, sub-section E, is hereby amended (with deleted language crossed out and new language underlined) to increase from \$10.00 to \$25.00 the hourly rate for Borough administrative services:

98-24. Fees.

*** E. In addition to the hourly rates specified, ~~\$10~~ \$25 per hour shall be charged by the Borough as an administrative fee.

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

Council Member Chandler made a motion to introduce Ordinance 2023-7, second by Council Member Gnatt with all members present voting in favor.

ORDINANCES FOR PUBLIC HEARING AND ADOPTION

Mayor Davy read Ordinance 2023-1 by title.

BOROUGH OF PENNINGTON ORDINANCE 2023 – 1

BOND ORDINANCE PROVIDING A SUPPLEMENTAL APPROPRIATION OF \$120,000 FOR IMPROVEMENTS TO WEST FRANKLIN AVENUE AND KNOWLES STREET IN AND BY THE BOROUGH OF PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY, AND AUTHORIZING THE ISSUANCE OF \$120,000 BONDS OR NOTES OF THE BOROUGH TO FINANCE THE COST THEREOF.

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The improvement described in Section 3(a) of this bond ordinance has heretofore been authorized to be undertaken by the Borough of Pennington, in the County of Mercer, New Jersey (the "Borough") as a general improvement. For the improvement or purpose described in Section 3(a), there is hereby appropriated the supplemental amount of \$120,000, such sum being in addition to the \$715,000 appropriated therefor by Bond Ordinance #2022-5 of the Borough, finally adopted May 2, 2022 (the "Original Bond Ordinance"). No additional down payment is required since the Original Bond Ordinance referenced a grant in the amount of \$515,000 from the State of New Jersey Department of Transportation.

Section 2. In order to finance the additional cost of the improvement or purpose, negotiable bonds are hereby authorized to be issued in the principal amount of \$120,000 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. (a) The improvement heretofore authorized and the purpose for the financing of which the bonds are to be issued is improvements to West Franklin Avenue and Knowles Street, including resurfacing, reconstruction and drainage and further including all work and materials necessary therefor and incidental thereto, as described in the Original Bond Ordinance.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for the improvement or purpose is \$835,000, including the \$715,000 authorized by the Original Bond Ordinance and the \$120,000 bonds or bond anticipation notes authorized herein.

(c) The estimated cost of the improvement or purpose is \$835,000, including the \$715,000 appropriated by the Original Bond Ordinance and the \$120,000 appropriated herein.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date, unless such bond anticipation notes mature at such later date in accordance with applicable law. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law or other applicable law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 5. The Borough hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

- (a) The improvement or purpose described in Section 3(a) of this bond ordinance is not a current expense. It is an improvement or purpose that the Borough may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.
- (b) The period of usefulness of the improvement or purpose within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is 10 years.
- (c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$120,000, and the obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.
- (d) An aggregate amount not exceeding \$224,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement. Of this amount, \$200,000 was estimated for these items of expense in the Original Bond Ordinance and an additional \$24,000 is estimated therefor herein.

Section 7. The Borough hereby declares the intent of the Borough to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3(a) of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of the Treasury Regulations.

Section 8. Any grant moneys received for the purpose described in Section 3(a) hereof shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the Borough is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

Council Member Stern made a motion to open the Public Hearing on Ordinance 2023-1, second by Council Member Chandler. There were no comments from the public. Council Member Stern made a motion to close the Public Hearing on Ordinance 2023-1, second by Council Member Angarone with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2023-1, second by Council Member Gnatt with all members present voting in favor.

Mayor Davy read Ordinance 2023-2 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2023 – 2**

**BOND ORDINANCE PROVIDING FOR THE RESURFACING OF ROCKWELL GREEN DRIVE,
CHADWELL COURT AND SCUDDER COURT IN AND BY THE BOROUGH OF PENNINGTON,
IN THE COUNTY OF MERCER, NEW JERSEY, APPROPRIATING \$700,000 THEREFOR AND
AUTHORIZING THE ISSUANCE OF \$155,000 BONDS OR NOTES OF THE BOROUGH TO
FINANCE THE COST THEREOF.**

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON, IN THE COUNTY OF MERCER, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The improvement described in Section 3(a) of this bond ordinance is hereby authorized to be undertaken by the Borough of Pennington, in the County of Mercer, New Jersey (the "Borough") as a general improvement. For the improvement or purpose described in Section 3(a), there is hereby appropriated the sum of \$700,000, including a grant from the State of New Jersey Department of Transportation in the amount of \$545,000 (the "State Grant"). Pursuant to N.J.S.A. 40A:2-11(c), no down payment is provided for the cost of the improvement or purpose herein since the improvement or purpose is being partially funded by the State Grant.

Section 2. In order to finance the cost of the improvement or purpose not covered by the State Grant, negotiable bonds are hereby authorized to be issued in the principal amount of \$155,000 pursuant to the Local Bond Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. (a) The improvement hereby authorized and the purpose for the financing of which the bonds are to be issued is the resurfacing of Rockwell Green Drive, Chadwell Court and Scudder Court, including all work and materials necessary therefor and incidental thereto.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for the improvement or purpose is as stated in Section 2 hereof.

(c) The estimated cost of the improvement or purpose is equal to the amount of the appropriation herein made therefor.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date, unless such bond anticipation notes are permitted to mature at such later date in accordance with applicable law. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law or other applicable law. The chief financial officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 5. The Borough hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Borough is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

- (a) The improvement or purpose described in Section 3(a) of this bond ordinance is not a current expense. It is an improvement or purpose that the Borough may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.
- (b) The period of usefulness of the improvement or purpose within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is 10 years.

- (c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Borough as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$155,000, and the obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.
- (d) An aggregate amount not exceeding \$140,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement.

Section 7. The Borough hereby declares the intent of the Borough to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3(a) of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of the Treasury Regulations.

Section 8. Any grant moneys received for the purpose described in Section 3(a) hereof shall be applied either to direct payment of the cost of the improvement or, if other than the State Grant referred to in Section 1 hereof, to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the Borough is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Borough and to execute such disclosure document on behalf of the Borough. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Borough pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Borough and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Borough fails to comply with its undertaking, the Borough shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the Borough are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Borough, and the Borough shall be obligated to levy *ad valorem* taxes upon all the taxable property within the Borough for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2023-2, second by Council Member Gnatt. There were no comments from the public. Council Member Chandler made a motion to close the Public Hearing on Ordinance 2023-1, second by Council Member Angarone with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2023-2, second by Council Member Angarone with all members present voting in favor.

Mayor Davy read Ordinance 2023-4 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2023 - 4**

**AN ORDINANCE BY BOROUGH COUNCIL OF PENNINGTON AMENDING THE
PENNINGTON BOROUGH CODE OF ORDINANCES TO SUPERSEDE ALL
EXISTING PROVISIONS OF CHAPTER 108 BY ADOPTING NEW SECTIONS 101
THROUGH 1001; TO ADOPT FLOOD HAZARD MAPS; TO DESIGNATE A
FLOODPLAIN ADMINISTRATOR AND TO PROVIDE FOR SEVERABILITY AND AN
EFFECTIVE DATE.**

WHEREAS, the Legislature of the State of New Jersey has, in N.J.S.A. 40:48 et seq and N.J.S.A. 40:55D et seq., conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of Pennington Borough and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief,

and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the **Pennington Borough** was accepted for participation in the National Flood Insurance Program on **June 25, 1976** and the **Borough Council of Pennington** desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59, 60, 65 and 70 necessary for such participation; and

WHEREAS, the **Pennington Borough** is required, pursuant to N.J.A.C. 5:23 et seq., to administer and enforce the State building codes, and such building codes contain certain provisions that apply to the design and construction of buildings and structures in flood hazard areas; and

WHEREAS, the **Pennington Borough** is required, pursuant to N.J.S.A. 40:49-5, to enforce zoning codes that secure safety from floods and contain certain provisions that apply to the development of lands; and

WHEREAS, the **Pennington Borough** is required, pursuant to N.J.S.A.58:16A-57, within 12 months after the delineation of any flood hazard area, to adopt rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the New Jersey Department of Environmental Protection (NJDEP).

NOW, THEREFORE, BE IT ORDAINED by the **Borough Council of Pennington** that the following floodplain management regulations are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. These regulations specifically repeal and replace Sections 108-1 through 108-18 of Chapter 108 of the Code of the Borough of Pennington.

SECTION 101: SCOPE AND ADMINISTRATION

101.1 Title. These regulations, in combination with the flood provisions of the Uniform Construction Code (UCC) N.J.A.C. 5:23 (hereinafter “Uniform Construction Code,” consisting of the Building Code, Residential Code, Rehabilitation Subcode, and related codes, and the New Jersey Flood Hazard Area Control Act (hereinafter “FHACA”), N.J.A.C. 7:13, shall be known as the *Floodplain Management Regulations of Pennington Borough* (hereinafter “these regulations”).

101.2 Scope. These regulations, in combination with the flood provisions of the Uniform Construction Code and FHACA shall apply to all proposed development in flood hazard areas established in Section 102 of these regulations.

101.3 Purposes and objectives. The purposes and objectives of these regulations are to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- (1) Protect human life and health.
- (2) Prevent unnecessary disruption of commerce, access, and public service during times of flooding.
- (3) Manage the alteration of natural floodplains, stream channels and shorelines;
- (4) Manage filling, grading, dredging and other development which may increase flood damage or erosion potential.
- (5) Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- (6) Contribute to improved construction techniques in the floodplain.
- (7) Minimize damage to public and private facilities and utilities.
- (8) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.
- (9) Minimize the need for rescue and relief efforts associated with flooding.
- (10) Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- (11) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- (12) Meet the requirements of the National Flood Insurance Program for community participation set forth in Title 44 Code of Federal Regulations, Section 59.22.

101.4 Coordination with Building Codes. Pursuant to the requirement established in N.J.A.C. 5:23, the Uniform Construction Code, that the **Pennington Borough** administer and enforce the State building codes, the **Borough Council of Pennington** does hereby acknowledge that the Uniform Construction Code contains certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the Uniform Construction Code.

101.5 Ordinary Building Maintenance and Minor Work. Improvements defined as ordinary building maintenance and minor work projects by the Uniform Construction Code including non-structural replacement-in-kind of windows, doors, cabinets, plumbing fixtures, decks, walls, partitions, new flooring materials, roofing, etc. shall be evaluated by the Floodplain Administrator through the floodplain development permit to ensure compliance with the Substantial Damage and Substantial Improvement Section 103.14 of this ordinance.

101.6 Warning. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage.

101.7 Other laws. The provisions of these regulations shall not be deemed to nullify any provisions of local, State, or Federal law.

101.8 Violations and Penalties for Noncompliance. No structure or land shall hereafter be constructed, re-located to, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a violation under N.J.S.A. 40:49-5. Any person who violates this ordinance or fails to comply with any of its requirements shall be subject to one (1) or more of the following: a fine of not more than \$1250 imprisonment for a term not exceeding ninety(90) days or a period of community service not exceeding 90 days.

Each day in which a violation of an ordinance exists shall be considered to be a separate and distinct violation subject to the imposition of a separate penalty for each day of the violation as the Court may determine except that the owner will be afforded the opportunity to cure or abate the condition during a 30 day period and shall be afforded the opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the 30 day period, a fine greater than \$1250 may be imposed if the court has not determined otherwise, or if upon reinspection of the property, it is determined that the abatement has not been substantially completed.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

101.8.1 Solid Waste Disposal in a Flood Hazard Area. Any person who has unlawfully disposed of solid waste in a floodway or floodplain who fails to comply with this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$2500 or up to a maximum penalty by a fine not exceeding \$10,000 under N.J.S.A. 40:49-5.

101.9 Abrogation and greater restrictions. These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal or abrogate any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, storm water management regulations, or building codes. In the event of a conflict between these regulations and any other ordinance, code, or regulation, the more restrictive shall govern.

SECTION 102: APPLICABILITY

102.1 General. These regulations, in conjunction with the Uniform Construction Code, provide minimum requirements for development located in flood hazard areas, including the subdivision of land and other developments; site improvements and installation of utilities; placement and replacement of manufactured homes; placement of recreational vehicles; new construction and alterations, repair, reconstruction, rehabilitation or additions of existing buildings and structures; substantial improvement of existing buildings and structures, including repair of substantial damage; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; and certain building work exempt from permit under the Uniform Construction Code; and other buildings and development activities.

102.2 Establishment of Flood Hazard Areas. The **Borough of Pennington** was accepted for participation in the National Flood Insurance Program on **June 25, 1976**

The National Flood Insurance Program (NFIP) floodplain management regulations encourage that all Federal, State, and Local regulations that are more stringent than the minimum NFIP standards take precedence in permitting decisions. The FHACA requires that the effective Flood Insurance Rate Map, most recent preliminary FEMA mapping and flood studies, and Department delineations be compared to determine the most restrictive mapping. The FHACA also regulates unstudied flood hazard areas in watersheds measuring 50 acres or greater in size and most riparian zones in New Jersey. Because of these higher standards, the

regulated flood hazard area in New Jersey may be more expansive and more restrictive than the FEMA Special Flood Hazard Area. Maps and studies that establish flood hazard areas are on file at the **office of the Floodplain Administrator at the Pennington Borough Offices, 30 N Main street, Pennington, NJ 08534.**

The following sources identify flood hazard areas in this jurisdiction and must be considered when determining the Best Available Flood Hazard Data Area:

- 1) **Effective Flood Insurance Study.** Special Flood Hazard Areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report entitled Flood Insurance Study Mercer County, New Jersey (All Jurisdictions) dated July 20, 2016 and the accompanying Flood Insurance Rate Maps (FIRM) identified in Table 102.2(1) whose effective date is July 20, 2016 are hereby adopted by reference.
Table 102.2(1)

Map Panel #	Effective Date	Suffix	Map Panel #	Effective Date	Suffix
34021C0108	July 20, 2016	F			
34021C0109	July 20, 2016	F			

- 2) **Federal Best Available Information. Pennington Borough** shall utilize Federal flood information as listed in the table below that provides more detailed hazard information, higher flood elevations, larger flood hazard areas, and results in more restrictive regulations. This information may include but is not limited to preliminary flood elevation guidance from FEMA (such as Advisory Flood Hazard Area Maps, Work Maps or Preliminary FIS and FIRM). Additional Federal Best Available studies issued after the date of this ordinance must also be considered. These studies are listed on FEMA’s Map Service Center. This information shall be used for floodplain regulation purposes only.
Table 102.2(2)

Map Panel #	Preliminary Date	Map Panel #	Preliminary Date
None as of the date of this ordinance			

- 3) **Other Best Available Data. Pennington Borough** shall utilize high water elevations from flood events, groundwater flooding areas, studies by federal or state agencies, or other information deemed appropriate by the **Pennington Borough**. Other “best available information” may not be used which results in less restrictive flood elevations, design standards, or smaller flood hazard areas than the sources described in Section 102.2 (1) and (2), above. This information shall be used for floodplain regulation purposes only.
- 4) **State Regulated Flood Hazard Areas.** For State regulated waters, the NJ Department of Environmental Protection (NJDEP) identifies the flood hazard area as the land, and the space above that land, which lies below the “Flood Hazard Area Control Act Design Flood Elevation”, as defined in Section 201, and as described in the New Jersey Flood Hazard Area Control Act at N.J.A.C. 7:13. A FHACA flood hazard area exists along every regulated water that has a drainage area of 50 acres or greater. Such area may extend beyond the boundaries of the Special Flood Hazard Areas (SFHAs) as identified by FEMA. The following is a list of New Jersey State studied waters in this community under the FHACA, and their respective map identification numbers:

Table 102.2(3) List of State Studied Waters

Name of Studied Water	File Name	Map Number
Stony Brook	SUPPVIII36	4
Stony Brook	SUPPVIII37	5

102.3 Establishing the Local Design Flood Elevation (LDFE).

The Local Design Flood Elevation (LDFE) is established in the flood hazard areas determined in Section 102.2, above, using the best available flood hazard data sources, and the Flood Hazard Area Control Act minimum Statewide elevation requirements for lowest floors in A, Coastal A, and V zones, as applicable, ASCE 24 requirements for critical facilities as specified by the building code, plus additional freeboard as specified by this ordinance.

At a minimum, the Local Design Flood Elevation shall be as follows:

- 1) For a delineated watercourse, the elevation associated with the Best Available Flood Hazard Data Area determined in Section 102.2, above plus one foot or as described by N.J.A.C. 7:13 of freeboard;
or

- 2) For any undelineated watercourse (where mapping or studies described in 102.2 (1) and (2) above are not available) that has a contributory drainage area of 50 acres or more, the applicants must provide one of the following to determine the Local Design Flood Elevation:
 - a. **A copy of an unexpired NJDEP Flood Hazard Area Verification plus one foot of freeboard and any additional freeboard as required by ASCE 24; or**
 - b. **A determination of the Flood Hazard Area Design Flood Elevation using Method 5 or Method 6 (as described in N.J.A.C. 7:13) plus one foot of freeboard and any additional freeboard as required by ASCE 24. Any determination using these methods must be sealed and submitted according to Section 105.2-3.**
- 3) AO Zones – For Zone AO areas on the municipality’s FIRM (or on preliminary flood elevation guidance from FEMA), the Local Design Flood Elevation is determined from the FIRM panel as the highest adjacent grade plus the depth number specified plus one foot of freeboard. If no depth number is specified, the Local Design Flood Elevation is three (3) feet above the highest adjacent grade.
- 4) Class IV Critical Facilities - For any proposed development of new and substantially improved Flood Design Class IV Critical Facilities, the Local Design Flood Elevation must be the higher of the 0.2% annual chance (500 year) flood elevation or the Flood Hazard Area Design Flood Elevation with an additional 2 feet of freeboard in accordance with ASCE 24.
- 5) Class III Critical Facilities - For proposed development of new and substantially improved Flood Design Class III Critical Facilities in coastal high hazard areas, the Local Design Flood Elevation must be the higher of the 0.2% annual chance (500 year) flood elevation or the Flood Hazard Area Design Flood Elevation with an additional 1 foot of freeboard in accordance with ASCE 24.

SECTION 103: DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

103.1 Floodplain Administrator Designation. The **Construction official** is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

103.2 General. The Floodplain Administrator is authorized and directed to administer the provisions of these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations consistent with the intent and purpose of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Section 107 of these regulations.

103.3 Coordination. The Floodplain Administrator shall coordinate with the Construction Official to administer and enforce the flood provisions of the Uniform Construction Code.

103.4 Duties. The duties of the Floodplain Administrator shall include but are not limited to:

- (1) Review all permit applications to determine whether proposed development is located in flood hazard areas established in Section 102 of these regulations.
- (2) Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- (3) Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
- (4) Determine whether additional flood hazard data shall be obtained or developed.
- (5) Review required certifications and documentation specified by these regulations and the building code to determine that such certifications and documentations are complete.
- (6) Establish, in coordination with the Construction Official, written procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 103.14 of these regulations.
- (7) Coordinate with the Construction Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the requirement to obtain permits for repairs.
- (8) Review requests submitted to the Construction Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the Uniform Construction code to determine whether such requests require consideration as a variance pursuant to Section 107 of these regulations.
- (9) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.
- (10) Require applicants who propose alteration of a watercourse to notify adjacent jurisdictions and the NJDEP Bureau of Flood Engineering, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
- (11) Inspect development in accordance with Section 106 of these regulations and inspect flood hazard areas to determine if development is undertaken without issuance of permits.

- (12) Prepare comments and recommendations for consideration when applicants seek variances in accordance with Section 107 of these regulations.
- (13) Cite violations in accordance with Section 108 of these regulations.
- (14) Notify the Federal Emergency Management Agency when the corporate boundaries of **Pennington Borough** have been modified.
- (15) Permit Ordinary Maintenance and Minor Work in the regulated areas discussed in Section 102.2.

103.5 Use of changed technical data. The Floodplain Administrator and the applicant shall not use changed flood hazard area boundaries or base flood elevations for proposed buildings or developments unless the Floodplain Administrator or applicant has applied for a Conditional Letter of Map Revision (CLOMR) to the Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency. A revision of the effective FIRM does not remove the related feature(s) on a flood hazard area delineation that has been promulgated by the NJDEP. A separate application must be made to the State pursuant to N.J.A.C. 7:13 for revision of a flood hazard design flood elevation, flood hazard area limit, floodway limit, and/or other related feature.

103.6 Other permits. It shall be the responsibility of the Floodplain Administrator to assure that approval of a proposed development shall not be given until proof that necessary permits have been granted by Federal or State agencies having jurisdiction over such development, including Section 404 of the Clean Water Act. In the event of conflicting permit requirements, the Floodplain Administrator must ensure that the most restrictive floodplain management standards are reflected in permit approvals.

103.7 Determination of Local Design Flood Elevations. If design flood elevations are not specified, the Floodplain Administrator is authorized to require the applicant to:

- (1) Obtain, review, and reasonably utilize data available from a Federal, State, or other source, or
- (2) Determine the design flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques. Such analyses shall be performed and sealed by a licensed professional engineer. Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The

accuracy of data submitted for such determination shall be the responsibility of the applicant.

It shall be the responsibility of the Floodplain Administrator to verify that the applicant's proposed Best Available Flood Hazard Data Area and the Local Design Flood Elevation in any development permit accurately applies the best available flood hazard data and methodologies for determining flood hazard areas and design elevations described in 102.2 and 102.3 respectively. This information shall be provided to the Construction Official and documented according to Section 103.15.

103.8 Requirement to submit new technical data. Base Flood Elevations may increase or decrease resulting from natural changes (e.g. erosion, accretion, channel migration, subsidence, uplift) or man-made physical changes (e.g. dredging, filling, excavation) affecting flooding conditions. As soon as practicable, but not later than six months after the date of a man-made change or when information about a natural change becomes available, the Floodplain Administrator shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Title 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

103.9 Activities in riverine flood hazard areas. In riverine flood hazard areas where design flood elevations are specified but floodways have not been designated, the Floodplain Administrator shall not permit any new construction, substantial improvement or other development, including the placement of fill, unless the applicant submits an engineering analysis prepared by a licensed professional engineer that demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachment, will not increase the design flood elevation more than 0.2 feet at any point within the community.

103.10 Floodway encroachment. Prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing-activity, the Floodplain Administrator shall require submission of a certification prepared by a licensed professional engineer, along with supporting technical data, that demonstrates that such development will not cause any increase in the base flood level.

103.10.1 Floodway revisions. A floodway encroachment that increases the level of the base flood is authorized if the applicant has applied for a Conditional Letter of Map Revision (CLOMR) to the Flood Insurance Rate Map (FIRM) and has received the approval of FEMA.

103.11 Watercourse alteration. Prior to issuing a permit for any alteration or relocation of any watercourse, the Floodplain Administrator shall require the applicant to provide notification of the proposal to the appropriate authorities of all adjacent government jurisdictions, as well as the NJDEP Bureau of Flood Engineering and the Division of Land Resource Protection. A copy of the notification shall be maintained in the permit records and submitted to FEMA.

103.11.1 Engineering analysis. The Floodplain Administrator shall require submission of an engineering analysis prepared by a licensed professional engineer, demonstrating that the flood-carrying capacity of the altered or relocated portion of the watercourse will be maintained, neither increased nor decreased. Such watercourses shall be maintained in a manner that preserves the channel's flood-carrying capacity.

103.12 Development in riparian zones All development in Riparian Zones as described in N.J.A.C. 7:13 is prohibited by this ordinance unless the applicant has received an individual or general permit or has complied with the requirements of a permit by rule or permit by certification from NJDEP Division of Land Resource Protection prior to application for a floodplain development permit and the project is compliant with all other Floodplain Development provisions of this ordinance. The width of the riparian zone can range between 50 and 300 feet and is determined by the attributes of the waterbody and designated in the New Jersey Surface Water Quality Standards N.J.A.C. 7:9B. The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank. Applicants can request a verification of the riparian zone limits or a permit applicability determination to determine State permit requirements under N.J.A.C. 7:13 from the NJDEP Division of Land Resource Protection.

103.13 Substantial improvement and substantial damage determinations. When buildings and structures are damaged due to any cause including but not limited to man-made, structural, electrical, mechanical, or natural hazard events, or are determined to be unsafe as described in N.J.A.C. 5:23; and for applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, ordinary maintenance and minor work, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Construction Official, shall:

- (1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- (2) Determine and include the costs of all ordinary maintenance and minor work, as discussed in Section 102.2, performed in the floodplain regulated by this ordinance in addition to the costs of those improvements regulated by the Construction Official in substantial damage and substantial improvement calculations.
- (3) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.
- (4) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage. This determination shall also include the evaluation of flood related damages over a 10 year period to determine if the costs of repairs at the times of each flood constitutes a repetitive loss as defined by this ordinance.
- (5) Notify the applicant in writing when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant in writing when it is determined that work does not constitute substantial improvement or repair of substantial damage. The Floodplain Administrator shall also provide all letters documenting substantial damage and compliance with flood resistant construction requirements of the building code to the NJDEP Bureau of Flood Engineering.

103.14 Department records. In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the Uniform Construction Code, including Flood Insurance Studies, Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; NJDEP delineations, records of issuance of permits and denial of permits; records of ordinary maintenance and minor work, determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the Uniform Construction Code and these regulations including as-built Elevation Certificates; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the Uniform Construction Code. The Floodplain Administrator shall also record the required elevation, determination method, and base flood elevation source used to determine the Local Design Flood Elevation in the floodplain development permit.

103.15 Liability. The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by legal representative of the jurisdiction until the

final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

SECTION 104: PERMITS

104.1 Permits Required. Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

104.2 Application for permit. The applicant shall file an application in writing on a form furnished by the Floodplain Administrator. Such application shall:

- (1) Identify and describe the development to be covered by the permit.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan and construction documents as specified in Section 105 of these regulations, grading and filling plans and other information deemed appropriate by the Floodplain Administrator.
- (5) State the valuation of the proposed work, including the valuation of ordinary maintenance and minor work.
- (6) Be signed by the applicant or the applicant's authorized agent.

104.3 Validity of permit. The issuance of a permit under these regulations or the Uniform Construction Code shall not be construed to be a permit for, or approval of, any violation of this appendix or any other ordinance of the jurisdiction. The issuance of a permit based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations or other ordinances of this jurisdiction.

104.4 Expiration. A permit shall become invalid when the proposed development is not commenced within 180 days after its issuance, or when the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested in writing and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each.

104.5 Suspension or revocation. The Floodplain Administrator is authorized to suspend or revoke a permit issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of this jurisdiction.

SECTION 105: SITE PLANS AND CONSTRUCTION DOCUMENTS

105.1 Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations when necessary for review of the proposed development. For buildings that are located in more than one flood hazard area, the elevation and provisions associated with the most restrictive flood hazard area shall apply.
- (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 105.2.
- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 105.2(3) of these regulations.
- (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and Coastal A zones, new buildings shall be located landward of the reach of mean high tide.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose. The applicant shall provide an engineering certification confirming that the proposal meets the flood storage displacement limitations of N.J.A.C. 7:13.
- (7) Extent of any proposed alteration of sand dunes.
- (8) Existing and proposed alignment of any proposed alteration of a watercourse.
- (9) Flood proofing certifications, V Zone and Breakaway Wall Certifications, Operations and Maintenance Plans, Warning and Evacuation Plans and other documentation required pursuant to

FEMA publications.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a registered design professional when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance.

105.2 Information in flood hazard areas without base flood elevations (approximate Zone A). Where flood hazard areas are delineated on the effective or preliminary FIRM and base flood elevation data have not been provided, the applicant shall consult with the Floodplain Administrator to determine whether to:

- (1) Use the Approximation Method (Method 5) described in N.J.A.C. 7:13 in conjunction with Appendix 1 of the FHACA to determine the required flood elevation.
- (2) Obtain, review, and reasonably utilize data available from a Federal, State or other source when those data are deemed acceptable to the Floodplain Administrator to reasonably reflect flooding conditions.
- (3) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques according to Method 6 as described in N.J.A.C. 7:13. Such analyses shall be performed and sealed by a licensed professional engineer.

Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator prior to floodplain development permit issuance. The accuracy of data submitted for such determination shall be the responsibility of the applicant. Where the data are to be used to support a Letter of Map Change (LOMC) from FEMA, the applicant shall be responsible for satisfying the submittal requirements and pay the processing fees.

105.3 Analyses and certifications by a Licensed Professional Engineer. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a licensed professional engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 105.4 of these regulations and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.
- (2) For development activities proposed to be located in a riverine flood hazard area where base flood elevations are included in the FIS or FIRM but floodways have not been designated, hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments will not increase the base flood elevation more than 0.2 feet at any point within the jurisdiction. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.
- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained, neither increasing nor decreasing the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in Section 105.4 of these regulations. The applicant shall notify the chief executive officer of all affected adjacent jurisdictions, the NJDEP's Bureau of Flood Engineering and the Division of Land Resource Protection; and shall provide documentation of such notifications.
- (4) For analyses performed using Methods 5 and 6 (as described in N.J.A.C. 7:13) in flood hazard zones without base flood elevations (approximate A zones).

105.4 Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change (LOMC) from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

SECTION 106: INSPECTIONS

106.1 General. Development for which a permit is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

106.2 Inspections of development. The Floodplain Administrator shall inspect all development in flood hazard areas authorized by issuance of permits under these regulations. The Floodplain Administrator shall inspect flood hazard areas from time to time to determine if development is undertaken without issuance of a permit.

106.3 Buildings and structures. The Construction Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

- 1) **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in Section 801.2 shall be submitted to the Construction Official on an Elevation Certificate.
- 2) **Lowest horizontal structural member.** In V zones and Coastal A zones, as applicable, upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in Section 801.2 shall be submitted to the Construction Official on an Elevation Certificate.
- 3) **Installation of attendant utilities** (electrical, heating, ventilating, air-conditioning, and other service equipment) and sanitary facilities elevated as discussed in Section 801.2.
- 4) **Final inspection.** Prior to the final inspection, certification of the elevation required in Section 801.2 shall be submitted to the Construction Official on an Elevation Certificate.

106.4 Manufactured homes. The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of these regulations and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted on an Elevation Certificate to the Floodplain Administrator prior to the final inspection.

SECTION 107: VARIANCES

107.1 General. The **Joint Planning and Zoning Board** shall hear and decide requests for variances. The **Joint Planning and Zoning Board** shall base its determination on technical justifications submitted by applicants, the considerations for issuance in Section 107.5, the conditions of issuance set forth in Section 107.6, and the comments and recommendations of the Floodplain Administrator and, as applicable, the Construction Official. The **Joint Planning and Zoning Board** has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations.

107.2 Historic structures. A variance to the substantial improvement requirements of this ordinance is authorized provided that the repair or rehabilitation of a historic structure is completed according to N.J.A.C. 5:23-6.33, Section 1612 of the International Building Code and R322 of the International Residential Code, the repair or rehabilitation will not preclude the structure's continued designation as a historic structure, the structure meets the definition of the historic structure as described by this ordinance, and the variance is the minimum necessary to preserve the historic character and design of the structure.

107.3 Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damage during the base flood and create no additional threats to public safety.

107.4 Restrictions in floodways. A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analysis and certification required in Section 105.3(1) of these regulations.

107.5 Considerations. In reviewing requests for variances, all technical evaluations, all relevant factors, all other portions of these regulations, and the following shall be considered:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternate locations for the proposed development that are not subject to flooding or erosion and the necessity of a waterfront location, where applicable.
- (6) The compatibility of the proposed development with existing and anticipated development.
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, where applicable, expected at the site.
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets, and bridges.

107.6 Conditions for issuance. Variances shall only be issued upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site limit compliance with any provision of these

- regulations or renders the elevation standards of the building code inappropriate.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
 - (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (5) Notification to the applicant in writing over the signature of the Floodplain Administrator that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the base flood level increases risks to life and property.

SECTION 108: VIOLATIONS

108.1 Violations. Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of elevation of the lowest floor, the lowest horizontal structural member if in a V or Coastal A Zone, as applicable, other required design certifications, or other evidence of compliance required by the building code is presumed to be a violation until such time as that documentation is provided.

108.2 Authority. The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner’s agent, or to the person or persons doing the work for development that is not within the scope of the Uniform Construction Code, but is regulated by these regulations and that is determined to be a violation.

108.3 Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by N.J.S.A. 40:49-5 as appropriate.

108.4 Review Period to Correct Violations. A 30-day period shall be given to the property owner as an opportunity to cure or abate the condition. The property owner shall also be afforded an opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250.00 may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

SECTION 201: DEFINITIONS

201.1 General. The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Other terms are defined in the Uniform Construction Code N.J.A.C. 5:23 and terms are defined where used in the International Residential Code and International Building Code (rather than in the definitions section). Where terms are not defined, such terms shall have ordinarily accepted meanings such as the context implies.

201.2 Definitions

30 DAY PERIOD – The period of time prescribed by N.J.S.A. 40:49-5 in which a property owner is afforded the opportunity to correct zoning and solid waste disposal after a notice of violation pertaining to this ordinance has been issued.

100 YEAR FLOOD ELEVATION – Elevation of flooding having a 1% annual chance of being equaled or exceeded in a given year which is also referred to as the Base Flood Elevation.

500 YEAR FLOOD ELEVATION – Elevation of flooding having a 0.2% annual chance of being equaled or exceeded in a given year.

A ZONES – Areas of ‘Special Flood Hazard in which the elevation of the surface water resulting from a flood that has a 1% annual chance of equaling or exceeding the Base Flood Elevation (BFE) in any given year shown on the Flood Insurance Rate Map (FIRM) zones A, AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, and AR/AO. When used in reference to the development of a structure in this ordinance, A Zones are not inclusive of Coastal A Zones because of the higher building code requirements for Coastal A Zones.

AH ZONES– Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

AO ZONES – Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. –

ACCESSORY STRUCTURE – Accessory structures are also referred to as appurtenant structures. An accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example, a residential structure may have a detached garage or storage shed for garden tools as accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings.

AGRICULTURAL STRUCTURE - A structure used solely for agricultural purposes in which the use is exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock. Communities must require that new construction or substantial improvements of agricultural structures be elevated or floodproofed to or above the Base Flood Elevation (BFE) as any other nonresidential building. Under some circumstances it may be appropriate to wet-flood proof certain types of agricultural structures when located in wide, expansive floodplains through issuance of a variance. This should only be done for structures used for temporary storage of equipment or crops or temporary shelter for livestock and only in circumstances where it can be demonstrated that agricultural structures can be designed in such a manner that results in minimal damage to the structure and its contents and will create no additional threats to public safety. New construction or substantial improvement of livestock confinement buildings, poultry houses, dairy operations, similar livestock operations and any structure that represents more than a minimal investment must meet the elevation or dry-flood proofing requirements of 44 CFR 60.3(c)(3).

AREA OF SHALLOW FLOODING – A designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. **AREA OF SPECIAL FLOOD HAZARD** – see SPECIAL FLOOD HAZARD AREA

ALTERATION OF A WATERCOURSE – A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

ASCE 7 – The standard for the Minimum Design Loads for Buildings and Other Structures, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA. which includes but is not limited to methodology and equations necessary for determining structural and flood-related design requirements and determining the design requirements for structures that may experience a combination of loads including those from natural hazards. Flood related equations include those for determining erosion, scour, lateral, vertical, hydrostatic, hydrodynamic, buoyancy, breaking wave, and debris impact.

ASCE 24 – The standard for Flood Resistant Design and Construction, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA. References to ASCE 24 shall mean ASCE 24-14 or the most recent version of ASCE 24 adopted in the UCC Code [N.J.A.C. 5:23].

BASE FLOOD ELEVATION (BFE) – The water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year, as shown on a published Flood Insurance Study (FIS), or preliminary flood elevation guidance from FEMA. May also be referred to as the “100-year flood elevation”.

BASEMENT – Any area of the building having its floor subgrade (below ground level) on all sides.

BEST AVAILABLE FLOOD HAZARD DATA - The most recent available preliminary flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

BEST AVAILABLE FLOOD HAZARD DATA AREA - The areal mapped extent associated with the most recent available preliminary flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

BEST AVAILABLE FLOOD HAZARD DATA ELEVATION - The most recent available preliminary flood elevation guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

BREAKAWAY WALLS – Any type of wall subject to flooding that is not required to provide structural support to a building or other structure and that is designed and constructed such that, below the Local Design Flood Elevation, it will collapse under specific lateral loads such that (1) it allows the free passage of floodwaters, and (2) it does not damage the structure or supporting foundation system. Certification in the V Zone Certificate of the design, plans, and specifications by a licensed design professional that these walls are in accordance with accepted standards of practice is required as part of the permit application for new and

substantially improved V Zone and Coastal A Zone structures, as applicable. A completed certification must be submitted at permit application.

BUILDING – Per the FHACA, “Building” means a structure enclosed with exterior walls or fire walls, erected and framed of component structural parts, designed for the housing, shelter, enclosure, and support of individuals, animals, or property of any kind. A building may have a temporary or permanent foundation. A building that is intended for regular human occupation and/or residence is considered a habitable building.

CONDITIONAL LETTER OF MAP REVISION - A Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the Letter of Map Change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

CONDITIONAL LETTER OF MAP REVISION - FILL -- A Conditional Letter of Map Revision - Fill (CLOMR-F) is FEMA's comment on a proposed project involving the placement of fill outside of the regulatory floodway that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the Letter of Map Change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

CRITICAL BUILDING – Per the FHACA, “Critical Building” means that:

- a. It is essential to maintaining continuity of vital government operations and/or supporting emergency response, sheltering, and medical care functions before, during, and after a flood, such as a hospital, medical clinic, police station, fire station, emergency response center, or public shelter; or
- b. It serves large numbers of people who may be unable to leave the facility through their own efforts, thereby hindering or preventing safe evacuation of the building during a flood event, such as a school, college, dormitory, jail or detention facility, day care center, assisted living facility, or nursing home.

DEVELOPMENT – Any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations and other land-disturbing activities.

DRY FLOODPROOFING – A combination of measures that results in a non-residential structure, including the attendant utilities and equipment as described in the latest version of ASCE 24, being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads.

ELEVATED BUILDING – A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Solid perimeter foundations walls are not an acceptable means of elevating buildings in V and VE Zones.

ELEVATION CERTIFICATE – An administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support an application for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

ENCROACHMENT – The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

FEMA PUBLICATIONS – Any publication authored or referenced by FEMA related to building science, building safety, or floodplain management related to the National Flood Insurance Program. Publications shall include but are not limited to technical bulletins, desk references, and American Society of Civil Engineers Standards documents including ASCE 24.

FLOOD OR FLOODING

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. The overflow of inland or tidal waters.
 2. The unusual and rapid accumulation or runoff of surface waters from any source.
 3. Mudslides (I.e. mudflows) which are proximately caused by flooding as defined in (a) (2) of this definition and are akin to a river or liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe

storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

FLOOD HAZARD AREA DESIGN FLOOD ELEVATION – Per the FHACA, the peak water surface elevation that will occur in a water during the flood hazard area design flood. This elevation is determined via available flood mapping adopted by the State, flood mapping published by FEMA (including effective flood mapping dated on or after January 31, 1980, or any more recent advisory, preliminary, or pending flood mapping; whichever results in higher flood elevations, wider floodway limits, greater flow rates, or indicates a change from an A zone to a V zone or coastal A zone, as applicable), approximation, or calculation pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-3.1 – 3.6 and is typically higher than FEMA's base flood elevation. A water that has a drainage area measuring less than 50 acres does not possess, and is not assigned, a flood hazard area design flood elevation.

FLOOD INSURANCE RATE MAP (FIRM) – The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) – The official report in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

FLOODPLAIN OR FLOOD PRONE AREA – Any land area susceptible to being inundated by water from any source. See "Flood or flooding."

FLOODPLAIN MANAGEMENT REGULATIONS – Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODPROOFING – Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

FLOODPROOFING CERTIFICATE – Certification by a licensed design professional that the design and methods of construction for floodproofing a non-residential structure are in accordance with accepted standards of practice to a proposed height above the structure's lowest adjacent grade that meets or exceeds the Local Design Flood Elevation. A completed floodproofing certificate is required at time of application for building permit.

FLOODWAY – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.

FREEBOARD – A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

FUNCTIONALLY DEPENDENT USE – A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

HABITABLE BUILDING – Pursuant to the FHACA Rules (N.J.A.C. 7:13), means a building that is intended for regular human occupation and/or residence. Examples of a habitable building include a single-family home, duplex, multi-residence building, or critical building; a commercial building such as a retail store, restaurant, office building, or gymnasium; an accessory structure that is regularly occupied, such as a garage, barn, or workshop; mobile and manufactured homes, and trailers intended for human residence, which are set on a foundation and/or connected to utilities, such as in a mobile home park (not including campers and recreational vehicles); and any other building that is regularly occupied, such as a house of worship, community center, or meeting hall, or animal shelter that includes regular human access and occupation. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit, construction trailer, or an individual shelter for animals such as a doghouse or outdoor kennel.

HARDSHIP – As related to Section 107 of this ordinance, meaning the exceptional hardship that would result from a failure to grant the requested variance. The **Joint Planning and Zoning Board** require that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these

problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

HIGHEST ADJACENT GRADE – The highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

HISTORIC STRUCTURE – Any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved State program as determined by the Secretary of the Interior; or
 2. Directly by the Secretary of the Interior in States without approved programs.

LAWFULLY EXISTING – Per the FHACA, means an existing fill, structure and/or use, which meets all Federal, State, and local laws, and which is not in violation of the FHACA because it was established:

- a. Prior to January 31, 1980; or
- b. On or after January 31, 1980, in accordance with the requirements of the FHACA as it existed at the time the fill, structure and/or use was established.

Note: Substantially damaged properties and substantially improved properties that have not been elevated are not considered “lawfully existing” for the purposes of the NFIP. This definition is included in this ordinance to clarify the applicability of any more stringent statewide floodplain management standards required under the FHACA.

LETTER OF MAP AMENDMENT - A Letter of Map Amendment (LOMA) is an official amendment, by letter, to an effective National Flood Insurance Program (NFIP) map that is requested through the Letter of Map Change (LOMC) process. A LOMA establishes a property's location in relation to the Special Flood Hazard Area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. Because a LOMA officially amends the effective NFIP map, it is a public record that the community must maintain. Any LOMA should be noted on the community's master flood map and filed by panel number in an accessible location.

LETTER OF MAP CHANGE – The Letter of Map Change (LOMC) process is a service provided by FEMA for a fee that allows the public to request a change in flood zone designation in an Area of Special Flood Hazard on an Flood Insurance Rate Map (FIRM). Conditional Letters of Map Revision, Conditional Letters of Map Revision – Fill, Letters of Map Revision, Letters of Map Revision-Fill, and Letters of Map Amendment are requested through the Letter of Map Change (LOMC) process.

LETTER OF MAP REVISION - A Letter of Map Revision (LOMR) is FEMA's modification to an effective Flood Insurance Rate Map (FIRM). Letter of Map Revisions are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM or FIS report. Because a LOMR officially revises the effective NFIP map, it is a public record that the community must maintain. Any LOMR should be noted on the community's master flood map and filed by panel number in an accessible location.

LETTER OF MAP REVISION – FILL -- A Letter of Map Revision Based on Fill (LOMR-F) is FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway may be initiated through the Letter of Map Change (LOMC) Process. Because a LOMR-F officially revises the effective Flood Insurance Rate Map (FIRM) map, it is a public record that the community must maintain. Any LOMR-F should be noted on the community's master flood map and filed by panel number in an accessible location.

LICENSED DESIGN PROFESSIONAL – Licensed design professional shall refer to either a New Jersey Licensed Professional Engineer, licensed by the New Jersey State Board of Professional Engineers and Land Surveyors or a New Jersey Licensed Architect, licensed by the New Jersey State Board of Architects.

LICENSED PROFESSIONAL ENGINEER - A licensed professional engineer shall refer to individuals licensed by the New Jersey State Board of Professional Engineers and Land Surveyors.

LOCAL DESIGN FLOOD ELEVATION (LD FE) – The elevation reflective of the most recent available preliminary flood elevation guidance FEMA has provided as depicted on but not limited to Advisory Flood

Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM which is also inclusive of freeboard specified by the New Jersey Flood Hazard Area Control Act and Uniform Construction Codes and any additional freeboard specified in a community's ordinance. In no circumstances shall a project's LDFE be lower than a permit-specified Flood Hazard Area Design Flood Elevation or a valid NJDEP Flood Hazard Area Verification Letter plus the freeboard as required in ASCE 24 and the effective FEMA Base Flood Elevation.

LOWEST ADJACENT GRADE – The lowest point of ground, patio, or sidewalk slab immediately next a structure, except in AO Zones where it is the natural grade elevation.

LOWEST FLOOR – In A Zones, the lowest floor is the top surface of the lowest floor of the lowest enclosed area (including basement). In V Zones and coastal A Zones, as applicable, the bottom of the lowest horizontal structural member of a building is the lowest floor. An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of other applicable non-elevation design requirements of these regulations.

MANUFACTURED HOME – A structure that is transportable in one or more sections, eight (8) feet or more in width and greater than four hundred (400) square feet, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities, and constructed to the Federal Manufactured Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. The term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

MANUFACTURED HOME PARK OR SUBDIVISION – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE – The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value shall be determined by one of the following methods (1) Actual Cash Value (replacement cost depreciated for age and quality of construction), (2) tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, or (3) established by a qualified independent appraiser.

NEW CONSTRUCTION – Structures for which the start of construction commenced on or after the effective date of the first floodplain regulation adopted by a community; includes any subsequent improvements to such structures. New construction includes work determined to be a substantial improvement.

NON-RESIDENTIAL – Pursuant to ASCE 24, any building or structure or portion thereof that is not classified as residential.

ORDINARY MAINTENANCE AND MINOR WORK – This term refers to types of work excluded from construction permitting under N.J.A.C. 5:23 in the March 5, 2018 New Jersey Register. Some of these types of work must be considered in determinations of substantial improvement and substantial damage in regulated floodplains under 44 CFR 59.1. These types of work include but are not limited to replacements of roofing, siding, interior finishes, kitchen cabinets, plumbing fixtures and piping, HVAC and air conditioning equipment, exhaust fans, built in appliances, electrical wiring, etc. Improvements necessary to correct existing violations of State or local health, sanitation, or code enforcement officials which are the minimum necessary to assure safe living conditions and improvements of historic structures as discussed in 44 CFR 59.1 shall not be included in the determination of ordinary maintenance and minor work.

RECREATIONAL VEHICLE – A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

REPETITIVE LOSS – any flood-related damage sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

RESIDENTIAL – Pursuant to the ASCE 24:

- a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;
- b. Structures including but not limited to one- and two-family dwellings, townhouses, condominiums, multi-family dwellings, apartments, congregate residences, boarding houses, lodging houses, rooming houses, hotels, motels, apartment buildings, convents, monasteries, dormitories, fraternity houses, sorority houses, vacation time-share properties; and
- c. institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, halfway houses, group homes,

congregate care facilities, social rehabilitation facilities, alcohol and drug centers, convalescent facilities, hospitals, nursing homes, mental hospitals, detoxification facilities, prisons, jails, reformatories, detention centers, correctional centers, and prerelease centers.

SOLID WASTE DISPOSAL – “Solid Waste Disposal” shall mean the storage, treatment, utilization, processing or final disposition of solid waste as described in N.J.A.C. 7:26-1.6 or the storage of unsecured materials as described in N.J.A.C. 7:13-2.3 for a period of greater than 6 months as specified in N.J.A.C. 7:26 which have been discharged, deposited, injected, dumped, spilled, leaked, or placed into any land or water such that such solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

SPECIAL FLOOD HAZARD AREA – The greater of the following: (1) Land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, shown on the FIRM as Zone V, VE, V1-3-, A, AO, A1-30, AE, A99, or AH; (2) Land and the space above that land, which lies below the peak water surface elevation of the flood hazard area design flood for a particular water, as determined using the methods set forth in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13; (3) Riparian Buffers as determined in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13. Also referred to as the AREA OF SPECIAL FLOOD HAZARD.

START OF CONSTRUCTION – The **Start of Construction** is as follows:

- a. **For other than new construction or substantial improvements, under the** Coastal Barrier Resources Act (CBRA), this is the date the building permit was issued, provided that the actual start of construction, repair, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation. For a substantial improvement, actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- b. For the purposes of determining whether proposed construction must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and Base Flood Elevation's (BFEs) increase or zones change, the Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. Such development must also be permitted and must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and Base Flood Elevation's (BFEs) increase or zones change.

For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

For determining if new construction and substantial improvements within the Coastal Barrier Resources System (CBRS) can obtain flood insurance, a different definition applies.

STRUCTURE – A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT – Any reconstruction, rehabilitation, addition, or other improvement of a structure taking place the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. This term also includes structures which have incurred “repetitive loss” or “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

UTILITY AND MISCELLANEOUS GROUP U BUILDINGS AND STRUCTURES – Buildings and structures of an accessory character and miscellaneous structures not classified in any special occupancy, as described in ASCE 24.

VARIANCE – A grant of relief from the requirements of this section which permits construction in a manner otherwise prohibited by this section where specific enforcement would result in unnecessary hardship.

VIOLATION – A development that is not fully compliant with these regulations or the flood provisions of the building code. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION – the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

WATERCOURSE – A river, creek, stream, channel, or other topographic feature in, on, through, or over which water flows at least periodically.

WET FLOODPROOFING – Floodproofing method that relies on the use of flood damage resistant materials and construction techniques in areas of a structure that are below the Local Design Flood Elevation by intentionally allowing them to flood. The application of wet floodproofing as a flood protection technique under the National Flood Insurance Program (NFIP) is limited to enclosures below elevated residential and non-residential structures and to accessory and agricultural structures that have been issued variances by the community.

SECTION 301: SUBDIVISIONS AND OTHER DEVELOPMENTS

301.1 General. Any subdivision proposal, including proposals for manufactured home parks and subdivisions, or other proposed new development in a flood hazard area shall be reviewed to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage.
- (2) All public utilities and facilities, such as sewer, gas, electric and water systems are located and constructed to minimize or eliminate flood damage.
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from structures.

301.2 Subdivision requirements. Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) The flood hazard area, including floodways, coastal high hazard areas, and Coastal A Zones, and base flood elevations, as appropriate, shall be delineated on tentative subdivision plats.
- (2) Residential building lots shall be provided with adequate buildable area outside the floodway.
- (3) The design criteria for utilities and facilities set forth in these regulations and appropriate codes shall be met.

SECTION 401: SITE IMPROVEMENT

401.1 Encroachment in floodways. Development, land disturbing activity, and encroachments in floodways shall not be authorized unless it has been demonstrated through hydrologic and hydraulic analyses required in accordance with Section 105.3(1) of these regulations, that the proposed encroachment will not result in any increase in the base flood level during occurrence of the base flood discharge. If Section 105.3(1) is satisfied, proposed elevation, addition, or reconstruction of a lawfully existing structure within a floodway shall also be in accordance with Section 801.2 of this ordinance and the floodway requirements of N.J.A.C. 7:13.

401.1.1 Prohibited in floodways. The following are prohibited activities:

- (1) The storage of unsecured materials is prohibited within a floodway pursuant to N.J.A.C. 7:13.
- (2) Fill and new structures are prohibited in floodways per N.J.A.C. 7:13.

401.2 Sewer facilities. All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with the New Jersey septic system regulations contained in N.J.A.C. 14A and N.J.A.C. 7:9A, the UCC Plumbing Subcode (N.J.A.C. 5:23) and Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwater into the facilities and discharge from the facilities into flood waters, or impairment of the facilities and systems.

401.3 Water facilities. All new and replacement water facilities shall be designed in accordance with the New Jersey Safe Drinking Water Act (N.J.A.C. 7:10) and the provisions of Chapter 7 ASCE 24, to minimize or eliminate infiltration of floodwater into the systems.

401.4 Storm drainage. Storm drainage shall be designed to convey the flow of surface waters to minimize

or eliminate damage to persons or property.

401.5 Streets and sidewalks. Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.

401.6 Limitations on placement of fill. Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwater, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the UCC (N.J.A.C. 5:23). Proposed fill and encroachments in flood hazard areas shall comply with the flood storage displacement limitations of N.J.A.C. 7:13.

401.7 Hazardous Materials. The placement or storage of any containers holding hazardous substances in a flood hazard area is prohibited unless the provisions of N.J.A.C. 7:13 which cover the placement of hazardous substances and solid waste is met.

SECTION 501: MANUFACTURED HOMES

501.1 General. All manufactured homes installed in flood hazard areas shall be installed pursuant to the Nationally Preemptive Manufactured Home Construction and Safety Standards Program (24 CFR 3280).

501.2 Elevation. All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be elevated such that the bottom of the frame is elevated to or above the elevation specified in Section 801.2.

501.3 Foundations. All new, relocated, and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on foundations as specified by the manufacturer only if the manufacturer's installation instructions specify that the home has been designed for flood-resistant considerations and provides the conditions of applicability for velocities, depths, or wave action as required by 24 CFR Part 3285-302. The Floodplain Administrator is authorized to determine whether the design meets or exceeds the performance necessary based upon the proposed site location conditions as a precondition of issuing a flood damage prevention permit. If the Floodplain Administrator determines that the home's performance standards will not withstand the flood loads in the proposed location, the applicant must propose a design certified by a New Jersey licensed design professional and in accordance with 24 CFR 3285.301 (c) and (d) which conforms with ASCE 24, the accepted standard of engineering practice for flood resistant design and construction.

501.4 Anchoring. All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

501.5 Enclosures. Fully enclosed areas below elevated manufactured homes shall comply with the requirements of Section 801.2.

501.6 Protection of mechanical equipment and outside appliances. Mechanical equipment and outside appliances shall be elevated to or above the elevation of the bottom of the frame required in Section 801.2 of these regulations.

Exception. Where such equipment and appliances are designed and installed to prevent water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by Section 801.2, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

SECTION 601: RECREATIONAL VEHICLES

601.1 Placement prohibited. The placement of recreational vehicles shall not be authorized in coastal high hazard areas and in floodways.

601.2 Temporary placement. Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use and shall be placed on a site for less than 180 consecutive days.

601.3 Permanent placement. Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of Section 801.2 for habitable buildings and Section 501.3.

SECTION 701: TANKS

701.1 Tanks. Underground and above-ground tanks shall be designed, constructed, installed, and anchored in accordance with ASCE 24 and N.J.A.C. 7:13.

SECTION 801: OTHER DEVELOPMENT AND BUILDING WORK

801.1 General requirements for other development and building work. All development and building work, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the Uniform Construction Code (N.J.A.C. 5:23), shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Meet the limitations of Section 105.3(1) of this ordinance when located in a regulated floodway;
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic and hydrodynamic loads, including the effects of buoyancy, during the conditions of flooding up to the Local Design Flood Elevation determined according to Section 102.3;
- (4) Be constructed of flood damage-resistant materials as described in ASCE 24 Chapter 5;
- (5) Have mechanical, plumbing, and electrical systems above the Local Design Flood Elevation determined according to Section 102.3 or meet the requirements of ASCE 24 Chapter 7 which requires that attendant utilities are located above the Local Design Flood Elevation unless the attendant utilities and equipment are:
 - i. Specifically allowed below the Local Design Flood Elevation; and
 - ii. Designed, constructed, and installed to prevent floodwaters, including any backflow through the system from entering or accumulating within the components.
- (6) Not exceed the flood storage displacement limitations in fluvial flood hazard areas in accordance with N.J.A.C. 7:13; and
- (7) Not exceed the impacts to frequency or depth of offsite flooding as required by N.J.A.C. 7:13 in floodways.

801.2 Requirements for Habitable Buildings and Structures.

Construction and Elevation in A Zones not including Coastal A Zones.

- a. No portion of a building is located within a V Zone.
- b. No portion of a building is located within a Coastal A Zone, unless a licensed design professional certifies that the building's foundation is designed in accordance with ASCE 24, Chapter 4.
- c. All new construction and substantial improvement of any habitable building (as defined in Section 201) located in flood hazard areas shall have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the Local Design Flood Elevation as determined in Section 102.3, be in conformance with ASCE Chapter 7, and be confirmed by an Elevation Certificate.
- d. All new construction and substantial improvements of non-residential structures shall:
 - i. Have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the Local Design Flood Elevation as determined in Section 102.3, be in conformance with ASCE Chapter 7, and be confirmed by an Elevation Certificate; or
 - ii. Together with the attendant utility and sanitary facilities, be designed so that below the Local Design Flood Elevation, the structure:
 1. Meets the requirements of ASCE 24 Chapters 2 and 7; and
 2. Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design professional, is certified by that individual in a Floodproofing Certificate, and is confirmed by an Elevation Certificate.
- e. All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding. Enclosures shall:
 - i. For habitable structures, be situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawlspaces and basements) which are below grade on all sides are prohibited;
 - ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is non-residential and the requirements of 801.2.1(d)ii are met;
 - iii. Be constructed to meet the requirements of ASCE 24 Chapter 2;
 - iv. Have openings documented on an Elevation Certificate; and
 - v. Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six feet in height. This deed restriction shall be recorded in the Office of the County Clerk or the Registrar of Deeds and Mortgages in which the building is located, shall conform to the requirements in N.J.A.C. 7:13, and shall be recorded within 90 days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including pre-construction earth movement, removal of vegetation and structures, or construction of the

project), whichever is sooner. Deed restrictions must explain and disclose that:

1. The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience.
2. The depth of flooding that the enclosure would experience to the Flood Hazard Area Design Flood Elevation;
3. The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement;

801.3 Garages and accessory storage structures. Garages and accessory storage structures shall be designed and constructed in accordance with the Uniform Construction Code.

801.4 Fences. Fences in floodways that have the potential to block the passage of floodwater, such as stockade fences and wire mesh fences, shall meet the requirements of Section 105.3(1) of these regulations. Pursuant to N.J.A.C. 7:13, any fence located in a floodway shall have sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement. Foundations for fences greater than 6 feet in height must conform with the Uniform Construction Code. Fences for pool enclosures having openings not in conformance with this section but in conformance with the Uniform Construction Code to limit climbing require a variance as described in Section 107 of this ordinance.

801.5 Retaining walls, sidewalks, and driveways. Retaining walls, sidewalks and driveways that involve placement of fill in floodways shall meet the requirements of Section 105.3(1) of these regulations and N.J.A.C. 7:13.

801.6 Swimming pools. Swimming pools shall be designed and constructed in accordance with the Uniform Construction Code. Above-ground swimming pools and below-ground swimming pools that involve placement of fill in floodways shall also meet the requirements of Section 105.3(1) of these regulations. Above-ground swimming pools are prohibited in floodways by N.J.A.C. 7:13.

801.7 Roads and watercourse crossings.

- (1) For any railroad, roadway, or parking area proposed in a flood hazard area, the travel surface shall be constructed at least one foot above the Flood Hazard Area Design Elevation in accordance with N.J.A.C. 7:13.
- (2) Roads and watercourse crossings that encroach into regulated floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low- water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, shall meet the requirements of Section 105.3(1) of these regulations.

SECTION 901: TEMPORARY STRUCTURES AND TEMPORARY STORAGE

901.1 Temporary structures. Temporary structures shall be erected for a period of less than 180 days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.

901.2 Temporary storage. Temporary storage includes storage of goods and materials for a period of less than 180 days. Stored materials shall not include hazardous materials.

901.3 Floodway encroachment. Temporary structures and temporary storage in floodways shall meet the requirements of Section 105.3(1) of these regulations.

SECTION 1001: UTILITY AND MISCELLANEOUS GROUP U

1001.1 Utility and Miscellaneous Group U. In accordance with Section 312 of the International Building Code, Utility and Miscellaneous Group U includes buildings and structures that are accessory in character and miscellaneous structures not classified in any specific occupancy in the Building Code, including, but not limited to, agricultural buildings, aircraft hangars (accessory to a one- or two-family residence), barns, carports, communication equipment structures (gross floor area less than 1,500 sq. ft.), fences more than 6 feet (1829 mm) high, grain silos (accessory to a residential occupancy), livestock shelters, private garages, retaining walls, sheds, stables, tanks and towers.

1001.2 Flood loads. Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions up to the Local Design Flood Elevation as determined in Section 102.3.

1001.3 Elevation. Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be elevated such that the lowest floor, including basement, is elevated to or above the Local Design Flood Elevation as determined in Section 102.3 and

in accordance with ASCE 24. Utility lines shall be designed and elevated in accordance with N.J.A.C. 7:13.

1001.4 Enclosures below base flood elevation. Fully enclosed areas below the design flood elevation shall be constructed in accordance with Section 801.2 and with ASCE 24 for new construction and substantial improvements. Existing enclosures such as a basement or crawlspace having a floor that is below grade along all adjoining exterior walls shall be abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13 when the project has been determined to be a substantial improvement by the Floodplain Administrator.

1001.5 Flood-damage resistant materials. Flood-damage-resistant materials shall be used below the Local Design Flood Elevation determined in Section 102.3.

1001.6 Protection of mechanical, plumbing, and electrical systems. Mechanical, plumbing, and electrical systems, equipment and components, heating, ventilation, air conditioning, plumbing fixtures, duct systems, and other service equipment, shall be elevated to or above the Local Design Flood Elevation determined in Section 102.3.

Exception: Electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall be permitted to be located below the Local Design Flood Elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the Local Design Flood Elevation in compliance with the flood-resistant construction requirements of ASCE 24. Electrical wiring systems shall be permitted to be located below the Local Design Flood Elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

SECTION 3. SEVERABILITY.

Where any section, subsection, sentence, clause, or phrase of these regulations is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared.

SECTION 4. EFFECTIVE DATE.

This ordinance shall take effect on **February 15, 2023**

Council Member Chandler made a motion to open the Public Hearing on Ordinance 2023-4, second by Council Member Stern. There were no comments from the public. Council Member Chandler made a motion to close the Public Hearing on Ordinance 2023-4, second by Council Member Stern with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2023-4, second by Council Member Gnatt with all members present voting in favor with the exception of Ms. Angarone who abstained.

Mayor Davy read Ordinance 2023-5 by title.

**BOROUGH OF PENNINGTON
ORDINANCE 2023-5**

**AN ORDINANCE AMENDING THE BOROUGH NUISANCE ORDINANCE TO PROHIBIT
INTRUSIVE OUTDOOR LIGHTING**

WHEREAS, the Borough Nuisance Ordinance, Chapter 136 of the Code of the Borough of Pennington, seeks to protect and promote the public health through the control, abatement and prevention of conditions injurious to the public health and safety;

WHEREAS, the Nuisance Ordinance prohibits conditions and activities deemed to be detrimental or a threat to the public health or environment or an annoyance interfering with the comfort and well-being of the residents of the Borough;

WHEREAS, Borough Council finds and determines that outdoor lighting fixtures that illuminate beyond the property on which they are installed, when left on during the late night and early morning hours, unreasonably disrupt the peace and privacy of neighboring residents and endanger public health;

WHEREAS, amending the Nuisance Ordinance to prohibit these conditions will provide a mechanism for abatement as well as enforcement when appropriate;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that Chapter 136 of the Code of the Borough of Pennington, at Section 136-3, is hereby amended to include the following prohibitions:

“136-3. Nuisances Defined and Prohibited.
* * *

(21) Outdoor lighting fixtures that are not shielded and not constructed to prevent illumination beyond the property on which they are installed, including lights controlled by motion detectors, shall be turned off between 10 P.M. and sunrise. Lighting shall be presumed to prevent illumination beyond the property if it is shielded and directed downward and no direct light is emitted above a plane extending outward from the base of the light source parallel to the ground. Illumination beyond the property between 10:00 P.M. and sunrise is prohibited.”

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

Council Member Stern made a motion to open the Public Hearing on Ordinance 2023-5, second by Council Member Chandler. There were no comments from the public. Council Member Angarone made a motion to close the Public Hearing on Ordinance 2023-5, second by Council Member Stern with all members present voting in favor. Mr. Marciante questioned that language in 21 and it was agreed to add the word “not” in front of constructed to make the language more clear. Council Member Chandler made a motion to adopt Ordinance 2023-5 as amended, second by Council Member Angarone with all members present voting in favor.

Mayor Davy read Ordinance 2023-6 by title.

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2023 - 6**

**ORDINANCE AUTHORIZING AMENDED EMPLOYMENT AGREEMENT
WITH DOUGLAS M. PINELLI AS CHIEF OF POLICE**

WHEREAS, by Ordinance 2020-14 adopted on September 8, 2020 and published September 11, 2020, Borough Council of the Borough of Pennington authorized a five-year employment agreement with Douglas M. Pinelli as Chief of Police;

WHEREAS, the Borough and Chief Pinelli executed the Agreement on September 11, 2020, to be effective as of May 4, 2020 and remain in effect to and including May 3, 2025 (“Original Agreement”);

WHEREAS, Borough Council now seeks to amend this Original Agreement in recognition of Douglas Pinelli’s meritorious service as Chief of Police and, further, to enable the Borough to compete effectively for people of his caliber in an area of critical need;

WHEREAS, the principal purpose of amendments to the Original Agreement is to adjust Chief Pinelli’s annual salary during the remaining twenty-nine months of the Original Agreement from January 1, 2023 through May 3, 2025, and except for updated language as appropriate, the substance of all other terms and conditions of the Original Agreement is intended to remain the same, and all accruals of sick, vacation and other leave shall be treated as if the Original Agreement remained in effect;

WHEREAS, a true copy of the proposed amended agreement (“Amended Agreement”) is attached to this Ordinance;

WHEREAS, the Salary provisions of the Amended Agreement, found in Article VII, establish a formula for computation of annual salary in 2023, 2024 and for the remaining months of 2025, incorporating the percentage increases awarded all salaried personnel not in bargaining units, folding into base salary the Chief’s existing EMT stipend and uniform allowance, and adding a variable additional base salary adjustment each year;

WHEREAS, the amended salary provisions will result in salary not to exceed \$134,754 in 2023, \$141,141 in 2024 and 149,383 for the remaining months of 2025;

NOW, THEREFORE, BE IT ORDAINED, by Borough Council of the Borough of Pennington, that the attached Amended Agreement is hereby approved and the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the Amended Agreement with Douglas M. Pinelli on behalf of the Borough, effective as of January 1, 2023 and extending through May 3, 2025. .

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

Council Member Gnatt made a motion to open the Public Hearing on Ordinance 2023-6, second by Council Member Chandler. There were no comments from the public. Council Member Marciante made a motion to close the Public Hearing on Ordinance 2023-6, second by Council Member Chandler with all members present voting in favor. Council Member Chandler made a motion to adopt Ordinance 2023-1, second by Council Member Gnatt with all members present voting in favor.

Committee Reports

Planning & Zoning / Personnel / Economic Development – Ms. Gnatt reported that the Planning Board met on January 11, 2023 for their Reorganization Meeting. Ms. Gnatt reported that Jim Reilly was appointed Chair and Andy Jackson was appointed Vice Chair, professional appointments and the meeting schedule for 2023 were approved and the appointment of the Application Review and Master Plan Committees were approved. Ms. Gnatt stated that the application for conversion of the TD Bank building to a Starbucks was approved after a lengthy discussion.

Ms. Gnatt stated that she attended the Economic Development Committee meeting where they approved their meeting schedule. Ms. Gnatt stated that the Holiday Walk was discussed and some ideas were discussed for 2023. Ms. Gnatt stated that Witherspoon Bread is scheduled to open in March. Ms. Gnatt stated that the Sun Bank building at 1 North Main will be converted to a precious metal/jewelry business. Ms. Gnatt stated that they heard a presentation regarding a celebration of Seward Johnson who was a Pennington Resident, more to come on that.

Public Safety /Finance & Technology / Arboretum – Mrs. Chandler reported that the Arboretum group has received a quote for the deer exclosures, but they have not yet met to discuss next steps.

Mrs. Chandler stated that Finance and Technology met and with regard to technology they discussed the availability of the document repository on the website. Mrs. Chandler stated that they discussed the use of outlook to schedule meetings and Betty will be looking into this for scheduling future meetings.

Mrs. Chandler stated that the Finance Committee took a look at preliminary numbers for the budget and it is looking as we expected with increases in items that we have no control over and we will be working very hard at possible cuts to finalize the budget.

Mrs. Chandler reported on the status of the BIOGENE traffic issue. Mrs. Chandler stated that equipment will be brought through Pennington on very large trailers and this could have a large impact on Main Street and Delaware Avenue. Chief Pinelli stated that he has been attending meetings to ensure that Pennington Borough is involved in the process. Chief Pinelli stated that this is a large concern for Pennington and he hopes that in the near future they are able find another route to move this equipment. Chief Pinelli stated that BIOGENE is on top of the requirements but the important issue for Pennington Borough is that if something happens it will shut down Pennington Borough and will limit parking on Main Street and Delaware Avenue. Mr. Valenza asked if it could be brought up at the meeting that there is a lot of mud on Pennington Rocky Hill Road and they are responsible for containing the dirt from getting on the roads.

Public Works/Open Space/Shade Tree – Ms. Stern reported that Public Works met and they had two representatives were in attendance from 120 Water and they are supposed to be following up with some additional documentation. Ms. Stern stated that another option has come up in the meantime that they are pursuing and so they may not be bringing 120 back to Council. Ms. Stern stated that they talked about Sked Street Park and met with Brett Margulis of Parks and Recreation and Mr. Marciante will report further on that. Ms. Stern stated that Public Works had originally questioned charging for water for fires that are outside the Borough and that will be discussed later in the meeting. Ms. Stern stated that after discussion at the Public Works level, this is no longer something they want to pursue. Ms. Stern stated that she did a demo of the document repository on the Borough website that is available for internal Council Committees to use and she would encourage the use of this feature. Ms. Stern stated that they started talking about a plastic bag recycling program and there will be more to come on that. Ms. Stern stated that their next meeting will be held on February 15th at noon. Ms. Stern stated that they are trying to schedule their meetings during the day to accommodate staff during their workday.

Ms. Stern stated that Open Space met and discussed the application for Supplemental Funding that is on for approval later in the meeting. Ms. Stern stated that Open Space Committee has completed a Fact Sheet that is now posted on the website that explains the criteria for identifying and prioritizing properties for consideration as open space purchases.

Ms. Stern stated that she was unable to attend the January Shade Tree meeting but the committee met and Kate Fullerton will be serving as the Chair and Jaye Berman will be serving as the Secretary. Ms. Stern stated that the February meeting has been cancelled, the next meeting will be March 14th. Ms. Stern stated that in between several members went and looked at trees in Sked Street Park that are marked to take down. Ms. Stern stated that Shade Tree members have also been attending Streetscape meetings and they will be reviewing County trees that are marked for take down.

Board of Health / Environmental Commission – Mr. Valenza stated that the Board of Health met in January for their Reorganization meeting, Steve Papernberg was reelected as Chair, Susan Perris as Vice Chair and Marjorie Kaplan as Secretary. Mr. Valenza stated that they discussed the vacancy on the Board and they have identified two people who have good experience and would be a benefit to the Board.

Mayor Davy asked Mr. Valenza to forward the names to him. Mr. Valenza stated that they discussed the proposed agreement with Hopewell Township.

Mr. Valenza reported that the Environmental Commission met in January, Joann Held will be taking over as Chair. Mr. Valenza stated that they heard a presentation on household composting and they are waiting for more information. Mr. Valenza stated that they will be looking further into household composting and the possibility of a central location for composting in the Borough.

Parks & Recreation – Mr. Marcianti stated that Parks & Recreation had a discussion about the gazebo and he told them that there were members who did not like to location close to the road, so they are going to look into a different gazebo to be placed more inside the park. Mr. Marcianti stated that they also had concerns about the proposed fire truck. Mr. Marcianti stated that Rick Smith is working on getting pricing. Mayor Davy stated that he would like to see the plan and the costs come back to Council for review and then he will be scheduling a community meeting. Ms. Stern stated that some things have been cut out and some things have been modified from the original proposal but it is still quite costly.

Mr. Marcinate stated that they also discussed a request from Hopewell Township Recreation for use of Kunkel Park for their Art in the Park program. Mr. Marcianti stated that were concerns raised by Public Works regarding paint on the tables and equipment and now that we have new equipment and tables we should maybe get an escrow/retainer in case there are damages. Mr. Marcianti stated that he has heard the Pennington residents are charged more to attend and that does not seem right. Mrs. Chandler stated that she is in favor of the program and she likes the idea of a retainer in case there are damages. Mayor Davy stated that Pennington residents should not be charged more when they are using our park at no charge to them. Mr. Nieman was asked to follow up with Hopewell Township and let them know that they can use the park, the fee will be waived, they will be required to protect the tables and equipment and Pennington residents should be charged the same as Hopewell Township. Mr. Marcianti stated that Parks and Recreation would like a lighted community sign to advertise Borough events. Chief Pinelli stated that the cost is anywhere from \$15k to \$20k. Mayor Davy stated that the Finance Committee will consider that under Capital requests.

Historic Preservation / Library / Construction – Ms. Angarone had no report for Construction. Ms. Angarone reported that the Library has various program scheduled for February. Ms. Angarone stated that she was unable to attend the Historic Preservation meeting but she has notes, an application was heard for 15 W. Delaware for window replacement and a Certificate of Appropriateness was issued with four conditions.

Ms. Angarone stated that the Master Plan Committee has asked for assistance from Historic Preservation, there will be more to come on that. Ms. Angarone stated that Historic Preservation may be looking for a consultant to assist with obtaining Certified Local Government Certification, more to come on that. Ms. Angarone stated that they are also working on some updates for the website to educate residents on what they do and particularly requirements if you live in the Historic District. Ms. Angarone stated that they are also looking at a Notice of Unauthorized Work for residences in the Historic District who do work without approval.

Senior Advisory Board – Mayor Davy had no report for Senior Advisory Board.

COUNCIL DISCUSSION

Charge for Water for Fires – Mrs. Chandler stated that she asked that this be discussed because a recent fire in Hopewell Township required about 200,000 gallons of water which amounts to about \$2,000 and she is fine with Public Works decision not to pursue this, but she would like Walter to weigh in on whether this sets a precedent for future uses of water outside of Pennington. Mr. Bliss stated that he does not think going after a homeowner for water charges, but if Council wants to have something in place he would suggest an ordinance to put all of the details on the record. Mr. Bliss stated that he did not feel that seeking payment from a resident or insurance company after the fact without have an ordinance in place would be difficult. Ms. Angarone stated that she is troubled that we don't seem to know the details on this, how often does this take place, is the water metered and so forth. There was some discussion of water used outside of Pennington for things other than fires. Mr. Marcianti stated that some towns have a charge for fire hydrants and that should be looked at.

Sked Street Park Improvements – Mayor Davy stated that this was covered already.

Communications Plan Update – Ms. Angarone stated that the Communications Work Group met with the Borough Administrator and talked through some of the ideas that have been brought up and at this time the work group would like to take the following actions: post an e-alert to let residents know that the agendas have been posted for a few months to get residents in the habit of going to website to view agendas. Ms. Angarone stated that they are working on a seasonal calendar which would have deadlines and meeting dates all in one place and trigger reminders for upcoming events and deadlines. Ms. Angarone stated that they are looking at promoting the e-alerts with messaging on email signatures, water bills and at the beginning of each meeting. Ms. Angarone will be sending out instructions on how to set up the message in email accounts. Ms. Angarone stated that they spoke with the Borough Administrator

regarding nametags for Council Members to wear when they are at public events, such as the Holiday Walk. Ms. Angarone stated that they will be meeting with Committee Chairs three times per year Department Heads. Ms. Stern stated that we currently have about 1,100 subscribers on the e-alert system but it is important to keep pushing the word out about the e-alert system.

Hopewell Township Request – Kunkel Park – Art in the Park – Waiver of Fees – Mayor Davy state that this has already been discussed.

NEW BUSINESS

**BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.1**

RESOLUTION AUTHORIZING REFUNDS

BE IT RESOLVED that a refund be issued from the Developer’s Escrow Fund to Michael Rheinhardt, 30 E. Welling Avenue, Pennington, NJ 08534 for an escrow fee collected in error for Planning Board Application 23-001 in the amount of \$1,000.00.

BE IT RESOLVED that a refund be issued from the Current Fund to Michael Rheinhardt, 30 E. Welling Avenue, Pennington, NJ 08534 for an application fee collected in error in connection with Planning Board Application 23-001 in the amount of \$250.00.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	S				Marciante	X			
Chandler	M				Stern	X			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.1, second by Council Member Angarone with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.2**

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 \$ 4,189,960.45 from the following accounts:

Current	\$ 3,417,129.61
W/S Operating	\$ 209,126.70
General Capital	\$ 433,724.84
W/S Capital	\$ 35,245.48
Grant Fund	\$ 18,328.10
Developer’s Escrow	\$ 3,005.32
Other Trust Fund	\$ 66,283.30
Animal Control	\$ 5,402.97
Recreation	\$ 1.31
Open Space	\$ 537.82
COAH Trust	\$ 1,175.00
TOTAL	\$ 4,189,960.45

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	X			
Gnatt	S				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.2, second by Council Member Gnatt with all members present voting in favor.

BOROUGH OF PENNINGTON
RESOLUTION 2023–2.3
RESOLUTION AUTHORIZING AMENDMENTS TO THE
2023 TEMPORARY BUDGET

WHEREAS, the 2023 Budget for the Borough of Pennington has not been adopted; and

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

NOW, THEREFORE, BE IT RESOLVED, that the following additional appropriations be made in the 2023 Temporary Budget for the Current Account.

Administration	Salaries	\$15,000.00
Mayor and Council	Other Expense	\$1,000.00
Finance	Other Expense	\$10,000.00
Historic Preservation	Other Expense	\$500.00
Planning Board	Salaries	\$5,000.00
Planning Board	Other Expense	\$3,000.00
Construction	Salaries	\$15,000.00
Group Insurance	Other Expense	\$40,000.00
Police	Salaries	\$100,000.00
Police	Other Expense	\$20,000.00
Prosecutor	Other Expense	\$5,200.00
Streets	Salaries	\$50,000.00
Streets	Other Expense	\$25,000.00
Trash	Salaries	\$50,000.00
Trash	Other Expense	\$50,000.00
Library	Salaries	\$15,000.00
Library	Other Expense	\$25,000.00
Electricity	Other Expense	\$10,000.00
Telephone	Other Expense	\$5,000.00
Gas, Fuel, Lubricants	Other Expense	\$5,000.00
PERS	Other Expense	\$97,888.22
PFRS	Other Expense	\$161,880.00
Social Security	Other Expense	\$20,000.00
Shared Services – Senior Services	Other Expense	\$100.00
Municipal Court	Salaries	\$10,000.00
Municipal Court	Other Expense	\$5,000.00
Total		\$744,568.22

BE IT FURTHER RESOLVED, that the following additional funds be appropriated for the 2023 Temporary Budget for the Water and Sewer Fund:

Stonybrook Treatment Costs	Other Expense	\$107,000.00
Group Insurance	Other Expense	\$20,000.00
PERS	Other Expense	\$41,852.10
Social Security	Other Expense	\$5,000.00
TOTAL		\$173,852.10

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	S			
Chandler	M				Stern	X			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.3, second by Council Member Marciante with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.4**

**STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
GREEN ACRES PROGRAM**

ENABLING RESOLUTION for SUPPLEMENTAL FUNDING REQUEST

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

WHEREAS, the Borough of Pennington has previously obtained a Green Acres loan of \$ N/A and/or a Green Acres grant of \$1,375,000 from the State to fund the following project(s):

Pennington Greenbelt Planning Incentive; and

WHEREAS, the Borough of Pennington desires to further the public interest by requesting an additional Green Acres loan of \$ N/A and/or an additional Green Acres grant of \$300,000 to fund the project(s); and

WHEREAS, the State shall determine if the supplemental funding request is complete and in conformance with the scope and intent of the Green Acres Program, and notify the applicant of the amount of the funding award; and

WHEREAS, the applicant is willing to use the State’s funds in accordance with its rules, regulations and applicable statutes, and is willing to enter into an Amendment of the Agreement with the State for the above-named project;

NOW, THEREFORE, the governing body/board resolves that:

- 1. Mayor James Davy or the successor to the office of Mayor is hereby authorized to:
 - (a) request such a loan and/or such a grant,
 - (b) provide additional information and furnish such documents as may be required, and
 - (c) act as the authorized correspondent of the above-named applicant; and
- 2. The applicant agrees to provide the local government/nonprofit share if a match is required.
- 3. The applicant agrees to comply with all applicable federal, state, and local laws, rules, and regulations in its performance of the project.
- 4. This resolution shall take effect immediately.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone				abstain	Marciante	X			
Chandler	M				Stern	X			
Gnatt	S				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.4, second by Council Member Gnatt with all members present voting in favor with the exception of Ms. Angarone who abstained.

**BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.5**

RESOLUTION AUTHORIZING HVAC MAINTENANCE AGREEMENTS WITH McCLOSKEY MECHANICAL CONTRACTORS FOR BOROUGH FACILITIES THROUGH COOPERATIVE PRICING SYSTEM AGREEMENT WITH THE HUNTERDON COUNTY EDUCATIONAL SERVICES COMMISSION

WHEREAS, the Superintendent of Public Works has identified the need for HVAC preventative maintenance agreements for Borough Hall, Public Works and the Senior Center; and

WHEREAS, the Superintendent has determined that the necessary HVAC preventative maintenance services are available through McCloskey Mechanical Contractors, located at 445 Lower Landing Road, Blackwood, NJ 08012 through the Hunterdon County Educational Services Commission; and

WHEREAS, Pennington Borough joined the Hunterdon Council Educational Services Commission by Resolution 2021-9.8 and approval was granted September 21, 2022; and

WHEREAS, McCloskey Mechanical Contractors is an authorized dealer for the desired HVAC preventative maintenance services and has provided the Borough with a quote dated 10/05/22 for Borough Hall in the amount of \$2,420.85, a quote dated 10/5/22 for Public Works in the amount of \$837.20 and a quote dated 10/5/22 for the Senior Center in the amount of \$1,093.10; and

WHEREAS, the Chief Financial Officer has certified that funds are available for this purchase in the 2023 Borough Property budget line 3-01-26-310-000-227 and 3-01-26-310-000-228;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that the aforesaid HVAC preventative maintenance agreements for Borough buildings through the Hunterdon County Educational Services Commission, are hereby authorized in an amount not to exceed \$4,351.15 as per the three quotes from McCloskey Mechanical Contractors dated 10/5/2022.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	X			
Gnatt	S				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.5, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.6**

RESOLUTION AUTHORIZING PURCHASE OF ALCOTEST 9510 EVIDENTIAL BREATH TEST SYSTEM UNDER STATE CONTRACT T-3031 FROM DRAGER, INC.

WHEREAS, the Chief of Police of the Pennington Police Department has submitted a request to purchase a New Jersey Alcotest 9510 Evidential Breath Test System; and

WHEREAS, the Public Safety Committee of the Borough of Pennington has approved this purchase as part of the Capital Plan for 2023; and

WHEREAS, the Chief of Police has determined that the Alcotest 9510 Breath Test System is available under State Contract T-3031from Drager, Inc., located at 3135 Quarry Road, Telford, PA 18969; and

WHEREAS, Drager, Inc. has provided the Borough with price quotation #SR12523G dated January 25, 2023 in the amount of \$19,305.00; and

WHEREAS, the Chief Financial Officer has certified that funds are available for these purchases in the General Capital Fund under Ordinance 2021-10; and

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington that the aforesaid purchase of a New Jersey Alcotest 9510 Evidential Breath Test System under State Contract T-3031is hereby authorized in an amount not to exceed \$19,305.00 as per quote dated January 25, 2023 from Drager, Inc.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	S				Marciante	X			
Chandler	M				Stern	X			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.6, second by Council Member Angarone with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.7**

RESOLUTION ESTABLISHING ON-LINE BANKING AND CREDIT CARD ACCEPTANCE FOR THE PAYMENT OF TAX AND UTILITY CHARGES FOR THE YEAR 2023

WHEREAS, under New Jersey State Statute 40A:5-43 and New Jersey Administrative Code 5:30-9.1 through 5:30-9.10, local municipal units are permitted to offer residents electronic payments; and

WHEREAS, subject to those provisions the Borough of Pennington seeks to offer to its residents on-line payment for tax and utility charges in the form of on-line banking and credit cards; and

WHEREAS, the Borough’s current tax and utility software provider, Edmunds GovTech, has the ability to act as service provider for the acceptance of electronic payments, and will do so at a charge of \$1,341.06 per billing module, for a total of \$2,682.12 for the year 2023; and

WHEREAS, The Bank of Princeton has agreed to reimburse the Borough the fees charged by Edmunds GovTech, as described above; and

WHEREAS, under the provisions of the aforementioned statute and administrative code, Edmunds GovTech has named Links2Gov as their secured payment provider; and

WHEREAS, the charges paid by the property owner to the provider will be \$1.05 per banking transaction, and up to 3.0% on each credit card transaction; and

WHEREAS, this agreement shall be in place for one year;

NOW, THEREFORE, BE IT RESOLVED, that the Borough Council of the Borough of Pennington approves the acceptance of electronic payments as outlined above.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Chief Financial Officer and the Tax and Utility Collector.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	X			
Gnatt	S				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.7, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023-2.8**

A RESOLUTION AUTHORIZING AN AGREEMENT WITH OCCUPATIONAL HEALTH, A PROGRAM OF PENN MEDICINE PRINCETON MEDICAL CENTER FOR ALCOHOL AND DRUG TESTING SERVICES AND OTHER SERVICES FOR THE BOROUGH OF PENNINGTON FOR THE YEAR 2023

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

WHEREAS, Occupational Health Services, a program of Penn Medicine Princeton Medical Center (“Occupational Health”) is experienced in and capable of providing such services and has provided the attached Price Quotation;

WHEREAS, the Borough seeks to enter into a contract with Occupational Health for the provision of specific services through Occupational Health Services in accordance with the Price Quotation;

WHEREAS, the Borough agrees to the annual flat fee of \$1,500.00 for Substance Abuse Testing Randomization Program and agrees to the fees per service (ranging from \$68.00 to \$150.00) for DOT Drug Screen, Breath Alcohol Test and Breath Alcohol Test Confirmation (if required); and

WHEREAS, the Borough also seeks to contract with Occupational Health to provide Return to Work and Fitness for Duty Evaluations and agrees to the Return to Work Evaluation fee of \$115.00 and Fitness for Duty Evaluation Fee of \$175.00 as per the attached proposal; and

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

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

WHEREAS, Occupational Health shall comply with requirements for Anti-Discrimination and Affirmative Action as set forth in the annexed Schedule A;

WHEREAS, total fees of Occupational Health pursuant to the attached Price Quotation, including expenses, shall not exceed \$5,000.00 without the prior written approval of Borough Council; and

WHEREAS, the Chief Financial Officer of the Borough has certified that funds are available for this contract in Account #: 3-01-26-305-000-250;

NOW THEREFORE BE IT HEREBY RESOLVED, that the Mayor of the Borough is hereby authorized to accept the attached Price Quotation and, in accordance with its terms, enter into a contract with Occupational Health on behalf of the Borough for the provision of Alcohol and Drug Testing Services for the remainder of the year 2023.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	X			
Gnatt	S				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.8, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023-2.9**

**RESOLUTION AUTHORIZING BOROUGH OF PENNINGTON TO ENTER INTO
A SHARED SERVICES AGREEMENT WITH HOPEWELL TOWNSHIP FOR
EMERGENCY AND POLICE DISPATCH SERVICES
FOR THE YEARS 2023 AND 2024**

WHEREAS, the Borough of Pennington desires to contract with Hopewell Township for the provision of emergency and police dispatch services; and

WHEREAS, the Uniform Shared Services and Consolidation Act permits a local unit to enter into a contract with another local unit for the provision of any services which any party to the agreement is empowered to render within its own jurisdiction; and

WHEREAS, the term of the proposed contract, entitled “Shared Services Agreement Police Dispatching And Emergency Communication Services Between The Township Of Hopewell And Borough Of Pennington”, shall be for two years beginning January 1, 2023 and continue through December 31, 2024; and

WHEREAS, the cost to the Borough for police dispatch services as outlined in the Shared Services agreement would be \$76,222.00 for 2023 and \$77,746.00 for 2024;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute the aforesaid Shared Services Agreement with Hopewell Township for the provision of emergency and police dispatch services during the period January 1, 2023 through December 31, 2024; and

BE IT FURTHER RESOLVED that the aforesaid Agreement shall be substantially in the form attached to this Resolution, subject to approval by the Borough Attorney.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	X			
Gnatt	S				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.9, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023-2.10**

**RESOLUTION AUTHORIZING LEASE-PURCHASE AGREEMENT FOR ACQUISITION OF
NEW 2023 CHEVROLET TAHOE PATROL VEHICLE FOR THE POLICE DEPARTMENT**

WHEREAS, the Pennington Chief of Police has identified the need for a new patrol vehicle and related equipment for use by the Police Department;

WHEREAS, by Resolution 2022-9.5, Borough Council authorized purchase of a 2023 Ford Police Interceptor Utility Patrol Vehicle (“Ford Patrol Vehicle”) from National Auto Fleet Group, through the Borough’s membership in the National Joint Powers Alliance (now Sourcewell), for a purchase price of \$67,693.93;

WHEREAS, in order to effectuate the acquisition of the Ford Patrol Vehicle, because purchase of a patrol vehicle cannot be financed by bond funding, the Borough entered into a lease-purchase agreement for that vehicle with Lease Servicing Center, Inc., dba NCL Government Capital, requiring payments over four years at \$19,751.06 per year beginning September 30, 2023;

WHEREAS, a copy of that lease-purchase agreement, entitled “Government Obligation Contract,” is attached to this Resolution;

WHEREAS, it was subsequently learned that due to supply issues, the Ford Patrol Vehicle will not be available until 2024;

WHEREAS, by Resolution 2023-1.34, Borough Council therefore authorized cancellation of the purchase of the Ford Patrol Vehicle and authorized the purchase instead of a 2023 Chevrolet Tahoe Pursuit 4WD vehicle (“Chevrolet Patrol Vehicle”), available at Mall Chevrolet through ECSNJ Cooperative Pricing, for a purchase price of \$61,887.26;

WHEREAS, pursuant to Resolution 1.34, the purchase of the Ford Patrol Vehicle has been cancelled; but the attached Government Obligation Contract remains in effect and is available for transfer to the acquisition of the Chevrolet Patrol Vehicle;

WHEREAS, Leasing Service Center, Inc., dba NCL Government Capital, has proposed transferring the lease from the Ford Patrol Vehicle to the Chevrolet Patrol Vehicle and modifying the terms of the lease to reflect the lower purchase price of the Chevrolet Patrol Vehicle, providing for four annual payments at \$18,111.63, beginning September 30, 2023;

WHEREAS, funds are available for the proposed lease-purchase arrangement;

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

1. The Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the attached Government Obligation Contract on behalf of the Borough with such amendments as needed to provide for the acquisition of the Chevrolet Patrol Vehicle based on four annual payments of \$18,111.63, beginning on September 30, 2023, subject to approval as to form by the Borough Attorney.
2. Except to the extent of any inconsistency with the above Resolution, the Resolution 2023-1.34 shall remain in full force and effect.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	S			
Chandler	M				Stern	X			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.10, second by Council Member Marciante with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.11**

**RESOLUTION AUTHORIZING BOROUGH OF PENNINGTON TO ENTER INTO
A SHARED SERVICES AGREEMENT WITH HOPEWELL BOROUGH AND
HOPEWELL TOWNSHIP FOR SENIOR SERVICES COORDINATOR FOR THE
YEAR 2023**

WHEREAS, the Borough of Pennington desires to contract with Hopewell Borough and Hopewell Township for the provision of Senior Services; and

WHEREAS, the Uniform Shared Services and Consolidation Act permits a local unit to enter into a contract with another local unit for the provision of any services which any party to the agreement is empowered to render within its own jurisdiction; and

WHEREAS, the term of the proposed contract, entitled “Senior Services Agreement Between Borough of Hopewell, Borough of Pennington and the Township of Hopewell”, shall be for one year beginning January 1, 2023 and continue through December 31, 2023; and

WHEREAS, the cost to the Borough for senior services coordinator services as outlined in the Shared Services agreement is \$5,100.00, which represents a \$100.00 increase over the previous year;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to execute the aforesaid Shared Services Agreement with Hopewell Borough and Hopewell Township for the services of a senior services coordinator during the period January 1, 2023 through December 31, 2023; and

BE IT FURTHER RESOLVED that the aforesaid Agreement shall be substantially in the form attached to this Resolution, subject to approval as to form by the Borough Attorney; and

BE IT FURTHER RESOLVED, this Resolution supercedes and replaces Resolution 2023-1.26.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	M			
Chandler	X				Stern	X			
Gnatt	S				Valenza	X			

Council Member Marciante made a motion to approve Resolution 2023-2.11, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023-2.12**

**RESOLUTION AUTHORIZING EXCEL ENVIRONMENTAL
RESOURCES, INC. TO APPLY FOR ADDITIONAL FUNDING FROM THE
HAZARDOUS DISCHARGE SITE REMEDIATION FUND (HDSRF) FOR SUPPLEMENTAL
REMEDIAL INVESTIGATION OF THE PENNINGTON BOROUGH SANITARY LANDFILL AND
SURROUNDING AREA**

WHEREAS, the State of New Jersey Department of Environmental Protection (NJDEP) through the Hazardous Discharge Site Remediation Fund (HDSRF), has grant funds available to municipalities for the purpose of funding preliminary assessments, site investigations and remedial investigations to determine the existence or extent of hazardous substance discharge conditions on the property; and

WHEREAS, the Borough of Pennington (the “Borough”) wishes to conduct supplemental remedial investigation with respect to the Pennington Borough Sanitary Landfill, Block 206, Lots 4, 5 and 12, located on Delaware Avenue (hereafter the “Property”).

WHEREAS, Excel Environmental Resources, Inc. (“Excel”) is qualified to prepare and submit all Applications for such funding;

WHEREAS, the Borough owns the parcels referenced above and is committed to redevelop the Property within three years after the remediation is complete.

NOW THEREFORE BE IT RESOLVED by the Municipal Council of the Borough of Pennington, in the County of Mercer, and State of New Jersey as follows:

- 1. Excel is hereby authorized and directed to apply for grant funding in order to conduct supplemental remedial investigation activities for the above-described parcels.
- 2. The Mayor and other appropriate Borough Officials are authorized to execute any and all documents necessary in order to apply for the aforesaid grant.
- 3. In the event that funding is approved pursuant to a grant issued in favor of the Borough, Excel shall be authorized and directed to implement supplemental remedial investigation activities for the above described parcels in accordance with a contract to be approved by the Borough and the NJDEP, but only to the extent that NJDEP grant funds are available for payment for the aforesaid services.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone				abstain	Marciante	X			
Chandler	M				Stern	S			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.12 second by Council Member Stern with all members present voting in favor with the exception of Ms. Angarone who abstained.

BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.13

RESOLUTION APPROVING LIST OF ENGINEERING PROJECTS WITH BOROUGH ENGINEER FOR THE YEAR 2023

WHEREAS, Borough Council seeks to approve a list for certain engineering projects for 2023 prior to adoption of the budget; and

WHEREAS, attached to this resolution is a Project List identifying projects that the Borough Engineer recommends, subject to approval by Borough Council; and

WHEREAS, the Project List includes projects that may require engineering services during the year although the estimated costs of the required services has not yet been determined; and

WHEREAS, those projects not yet estimated may require further action by Borough Council and certification as to availability of funds by the Chief Financial Officer once an amount is determined; and

WHEREAS, although the Project List identifies projects totaling \$35,000.00 payable from the Current Fund, \$43,750.00 payable from Water and Sewer and \$194,000.00 from Capital Ordinances, **it is understood that there is no guarantee that all of these projects will be undertaken this year**; and

WHEREAS, it is further understood and agreed that the Engineer shall not begin work on any project without explicit written direction and a signed purchase order from the Borough Administrator;

WHEREAS, the Chief Financial Officer of the Borough has certified that funds are available in the respective engineering budgets and/or Capital Ordinances for the projects identified on the Project List;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the projects on the attached Project List are hereby approved subject to specific authorization to proceed and issuance of one or more signed purchase orders by the Borough Administrator as stated above.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	S			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.13, second by Council Member Stern with all members present voting in favor.

BOROUGH OF PENNINGTON
RESOLUTION 2023 – 2.14

RESOLUTION AUTHORIZING PURCHASE OF NEW 2023 CHEVROLET TAHOE SSW 4WD VEHICLE FOR THE PUBLIC WORKS DEPARTMENT IN ACCORDANCE WITH QUOTATION BY MALL CHEVROLET THROUGH ESCNJ AND RESCINDING RESOLUTION 2023-9.4

WHEREAS, the Superintendent of Public Works has identified the need to purchase a new vehicle for the Public Works Department; and

WHEREAS, the Superintendent determined that the required vehicle and equipment was available from National Auto Fleet Group through Sourcewell (formerly the National Joint Powers Alliance); and

WHEREAS, the purchase of a 2023 Ford F-150 (WIE) XLT 4WD Supercrew 6.5’ box 157 Truck was authorized by Resolution 2023-9.4; and

WHEREAS, due to supply issues, the vehicle will not be available until 2024; and

WHEREAS, the Superintendent of Public Works has determined that Mall Chevrolet has a 2023 Chevrolet Tahoe SSV 4WD vehicle available at through ECSNJ Cooperative Pricing Contract 20/21-09; and

WHEREAS, Pennington Borough joined ECSNJ effective August 14, 2013 by Resolution 2013-7.4; and

WHEREAS, Mall Chevrolet located in Cherry Hill, NJ is an authorized dealer for the desired vehicle and has provided the Borough with Quote # ESCNJ10/21-09 dated January 23, 2023, by which it would sell to the Borough One 2023 Chevy Tahoe SSV 4WD with related equipment for a total price of \$60,152.65; and

WHEREAS, the Patrol Vehicle is available to purchase through ECSNJ in compliance with the Local Public Contracts Law without further public bidding; and

WHEREAS, the Chief Financial Officer has certified that funds are available for this purchase in the Capital Budget under Ordinance 2022-6;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington (a) that the purchase of One (1) 2023 Chevrolet Tahoe SSV 4WD for the price of \$60,152.65 for the Pennington Borough Public Works Department pursuant to the attached proposal from Mall Chevrolet (Quote #ESCNJ 20/21-09 dated 1/23/23 is hereby authorized; and (b) the Mayor and Borough Clerk are authorized to execute such purchase orders and other documents as are needed to effectuate this purchase; and

BE IT FURTHER RESOLVED, that Resolution 2022-9.4, authorizing the purchase of a 2023 Ford F-150 (WIE) XLT 4WD Supercrew 6.5’ Box 157 Truck is hereby rescinded.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	S			
Chandler	M				Stern	X			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.14, second by Council Member Marciante with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023-2.15**

**RESOLUTION AWARDDING CONTRACT FOR CONTINUATION OF JANITORIAL SERVICES
TO EAGLE JANITORIAL SERVICES FOR THE YEAR 2023**

WHEREAS, the Borough of Pennington seeks to contract with a qualified janitorial service for cleaning services for the building, including the library and the police department, for the year 2022; and

WHEREAS, Eagle Janitorial Services of Pennington (“Eagle”) has submitted a proposal dated February 2, 2023 which would have Eagle continue to provide these services 4 days per week, except as otherwise specified, at the rate of \$1,250.00 per month;

WHEREAS, the Eagle proposal contains a specific description of tasks and related frequency of service and is comprehensive in its coverage;

WHEREAS, the work shall include all labor, supervision, material and equipment necessary to perform the services, except as indicated;

WHEREAS, special services including carpet cleaning, stripping and re-waxing of hard surface floors and cleaning of exterior windows are not included in the service but are available subject to separate quotation;

WHEREAS, Eagle has previously provided cleaning services to the Borough and has performed satisfactorily although their services have been provided five (5) days per week;

WHEREAS, the Borough wishes to continue these services but for only four (4) days per week effective March 1, 2023 through December 31, 2023 and Eagle agrees to modify its proposal accordingly;

WHEREAS, with Borough consent, Eagle has performed services five (5) days per week during January and February, 2023, at a rate of \$1,457.50 per month, and the extra amount due for these two months must be added to the total contract amount for 2023;

WHEREAS, before the agreement may be effective, Eagle Janitorial Services shall supply proof of general, contract and property damage liability insurance as well as employer’s liability/workers compensation with minimum limits of \$1,000,000 or as otherwise required by law, respectively, naming the Borough of Pennington as an additional insured;

WHEREAS, approval of this contract complies with the Code of the Borough of Pennington as well as N.J.S.A. 19:44A-20.5 effective January 1, 2006, which prohibit the award of certain contracts to any person or business entity which makes reportable contributions to local political or candidate committees representing member of the governing body; and

WHEREAS, Eagle Janitorial Services will be required to complete and submit a sworn Business Entity Disclosure Certification which certifies that the firm has not made and shall not make any political contribution prohibited by the relevant provisions of either statute or the Borough Code concerning pay-to-play; and

WHEREAS, Eagle Janitorial Services shall comply with requirements for Anti-Discrimination and Affirmative Action as set forth in the annexed Exhibit A; and

WHEREAS, the Chief Financial Officer of the Borough has certified that funds for these services are available in account #: 3-01-26-310-000-227 with a portion of the contract to be charged to the Library budget;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Borough Administrator is hereby authorized to issue an appropriate purchase order and accept as a binding contract the attached proposal by Eagle Janitorial Services dated February 2, 2023, modified only as to term, for a contract price not to exceed \$12,500.00 for the remainder of the calendar year 2023; and

BE IT FURTHER RESOLVED, that payment of \$1,457.50 per month for January and February 2023 is further authorized; and

BE IT FURTHER RESOLVED, that notice of award of the contract shall be published in the official newspaper as required by law.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	X			
Gnatt	S				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.15, second by Council Member Gnatt with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023-2.16**

RESOLUTION AUTHORIZING CONTRACT WITH WATER RESOURCE MANAGEMENT FOR SERVICES AS WATER AND SEWER COMPLIANCE OFFICER AND FOR PREPARATION OF CONSUMER CONFIDENCE REPORT AND LEAD SERVICE LINE REPLACEMENT DOCUMENTATION

WHEREAS, the Borough seeks to enter into a contract with Water Resource Management to provide professional services as Water and Sewer Compliance Officer for the Borough in 2023;

WHEREAS, the Borough also seeks the services of Water Resource Management for preparation of Consumer Confidence Report and Lead Service Line Replacement Documentation;

WHEREAS, Water Resource Management has supplied a letter dated November 2, 2022 describing the services it will provide as Water and Sewer Compliance Officer and with respect as well to Consumer Confidence Report and Lead Service Line Replacement Documentation; and

WHEREAS, as further described in the Compliance Officer Proposal, Water Resource Management will provide the Compliance Officer services for a flat fee of \$425 per month, the Consumer

Confidence Report for not to exceed \$2,750 and the Lead Service Line Documentation for not to exceed \$2,200;

WHEREAS, at the Borough’s request, Water Resource Management also provides for the performance of emergency call out and additional professional services for work beyond the scope of services described in the Compliance Officer Proposal on an hourly basis at the rate of \$137.50 per hour plus additional costs as needed on a case by case basis;

WHEREAS, Water Resource Management and its personnel hold all required New Jersey DEP licenses required to perform the services described in the Compliance Officer Proposal and the Additional Services Proposal;

WHEREAS, the Chief Financial Officer has certified that funds necessary to pay for these services are available in account #: 3-05-55-501-000-260;

NOW, THEREFORE, BE IT RESOLVED, by Borough Council of the Borough of Pennington, that the attached Proposal by Water Resource Management is hereby accepted and Water Resource Management is hereby appointed Water and Sewer Compliance Officer for Pennington Borough for 2023 and also charged with performing the additional services as described above, subject to the following conditions:

- 1. that the Compliance Officer Proposal be amended to ensure compliance by Water Resource Management with Anti-Discrimination and Affirmative Action requirements of the State of New Jersey as set forth in the annexed Exhibit A;
- 2. that the Compliance Officer Proposal be further amended to provide that the contract between Water Resource Management and the Borough shall be terminable on 30 days prior written notice by either party;
- 3. that the Additional Services Proposal be supplemented by a provision that expenditures for additional services and costs under that Proposal not exceed on an annual basis \$1,000.00 unless approved in advance, in writing, by Borough Council;
- 4. that Water Resource Management demonstrate coverage by sufficient professional liability insurance, to be approved by the Borough Attorney;
- 5. that the Mayor and/or Borough Administrator are authorized to issue such purchase orders and contract documents as further necessary to retain and pay for the services of Water Resource Management as Water and Sewer Compliance Officer consistent with the Compliance Officer Proposal, for preparation of Consumer Confidence Report and Lead Service Line Replacement Documentation in accordance with the related Proposals, and for the additional services and costs covered by the Additional Services Proposal, and the terms and conditions of this Resolution; and
- 6. that no work shall begin under this Resolution and agreement until approved in advance and in writing by Borough Council and a related purchase order has been issued.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	X				Marciante	X			
Chandler	M				Stern	S			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.16, second by Council Member Stern with all members present voting in favor.

**BOROUGH OF PENNINGTON
RESOLUTION 2023-2.17**

**RESOLUTION AUTHORIZING SHARED SERVICES
AGREEMENT WITH HOPEWELL TOWNSHIP FOR HEALTH SERVICES**

WHEREAS, pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq.) and Title 8, Chapter 52 of the New Jersey Administrative Code, the Borough of Pennington seeks to enter into the attached shared services agreement with Hopewell Township (“Township”) for the provision of Health Services to the Borough;

WHEREAS, the Township Health Department is an experienced health services agency qualified to perform public health services as provided by law;

WHEREAS, all services performed by the Township Health Department on behalf of the Borough shall use either Health Department staff or contracts with outside public health agencies and shall comply with all applicable State laws, regulations and standards, including the standards set forth in Title 8, Chapter 52 of the New Jersey Administrative Code;

WHEREAS, the Township Health Department will provide properly licensed personnel within the jurisdiction of the Borough to carry out the public health activities described under “Scope of Services” in the attached Agreement;

WHEREAS, the Township will not be responsible for providing the services described under “Exclusions” in the attached Agreement;

WHEREAS, the annual fees which the Borough agrees to pay to the Township for services under the agreement are as follows:

April 1, 2023 - December 31, 2023:	\$50,000.00 per annum, prorated
January 1, 2024 - December 31, 2024:	\$51,000.00
January 1, 2025 – December 31, 2025	\$52,020.00
January 1, 2026 – December 31, 2026	\$53,060.00
January 1, 2027 - December 31, 2027	\$54,121.00

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into a shared services agreement with Hopewell Township for the provision of health services, such agreement to comply in substance with the proposed agreement annexed to this resolution, subject to final approval as to form by the Borough Attorney.

Record of Council Vote on Passage									
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Angarone	S				Marciante	X			
Chandler	M				Stern	X			
Gnatt	X				Valenza	X			

Council Member Chandler made a motion to approve Resolution 2023-2.7, second by Council Member Angarone with all members present voting in favor.

PROFESSIONAL REPORTS

Borough Administrator – Mr. Neiman reported that he has begun looking at alternatives to the State Health Benefits to hopefully find a cost savings. Mr. Neiman stated that the State Health Benefits increase of 25% this year is a big hit to the budget. Mr. Neiman stated that he and Mona Habiby went on a tour to get familiar with the town. Mr. Neiman stated that he is working on ideas presented by the communication committee beginning with ordering name tags for Council members. Mr. Neiman stated that he continues to work on personnel issues in the Police Department.

Borough Attorney – Mr. Bliss had nothing further to report except that he will be reporting later on the Hopewell PILOT litigation and also a tax appeal issue for a property on Route 31.

Chief Doug Pinelli – Chief Pinelli reported that officers are attending training for alcotest and other items, vehicles are out getting upfitted. Chief Pinelli stated other than that it has been relatively quiet.

Superintendent of Public Works – Mr. Smith stated that he had nothing further to report.

Borough Clerk – Mrs. Sterling had nothing further to report.

Public Comment

Mayor Davy asked that anyone wishing to speak, please raise your hand so the Borough Clerk can acknowledge you, please state your name and address for the record and limit comments to the Governing Body to a maximum of 3 minutes.

Mr. Kurt Pedersen of 436 Sked Street stated that when he was Chair of Parks and Recreation and the tables were installed, they were laid out in such a way to allow a gazebo, but the plans were put on hold due to a lack of funds. Mrs. Chandler asked if Mr. Pedersen has any plans or documents from that time, she would appreciate if he would share them.

DRAFT

Regular Meeting
February 6, 2023
Page 46

AT, 9:30 PM, following the Closed Session the meeting was adjourned.

Respectfully submitted,

Elizabeth Sterling
Borough Clerk