



801 Burrows Run Road  
Chadds Ford, PA 19317

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## **BOARD OF SUPERVISORS MEETING via ZOOM MINUTES**

July 1, 2020  
7:02 p.m.

**Present:** Dr. Richard L. Leff, Chairman; Whitney S. Hoffman, Vice Chair; Scudder G. Stevens, Supervisor; Eden R. Ratliff, Township Manager; Amy Heinrich, Finance/HR Director; Diane Hicks, Planning and Zoning Director; Roger Lysle, Public Works Director; Matt Gordon, Acting Chief of Police

### **1. CALL TO ORDER**

Chairman Leff called the meeting to order at 7:02 p.m. and gave a brief COVID-19 update. He shared the recent mask mandate that came from Dr. Rachel Levine stating that Pennsylvanians must wear a mask anytime they leave home.

Stevens stressed the difference between proximity distance and social distance, saying to love the people around you but at a six-foot physical distance.

Hoffman commented more about the COVID numbers and urged people to wear their masks rather than be cavaliers as this is about their health, which is not worth taking a chance on.

### **2. TOWNSHIP RECOVERY UPDATE**

Ratliff deferred a substantive recovery update to the July 15<sup>th</sup> meeting, stating that they are continuing to work closely with the District Attorney's office as they continue to work through the discovery process which will take the balance of the summer. There will also be an update about the Township's recovery efforts with the insurance from Blank Rome.

**Discussion:**

- There was no discussion

### **3. EXECUTIVE SESSION ANNOUNCEMENTS (ACTION ITEM)**

There were no executive sessions to report

### **4. OLD BUSINESS (ACTION ITEMS)**

- a. None

## 5. NEW BUSINESS (ACTION ITEMS)

### a. Open Space Loan Refinancing - presentation by Chris Bamber with PFM

Ratliff briefly introduced Chris Bamber with PFM and reminded everyone that the Board of Supervisors previously authorized the Township to pursue refinance options regarding the Open Space loan (the debt that was used to purchase the Spar Hill Farms property) and explained that they have been working to secure options that would save the Township money. That is what the following presentation will cover.

Heinrich added that goal is to take advantage of the current rate environment and refinance or refund the current Open Space loan while providing options to draw on additional money for Open Space purchases in the future. Depending on how the discussions go tonight, they will be recommending \$6 million in loan (the current is \$5 million with \$2.8 million drawn). She also explained that our current loan modification is only good until September 1<sup>st</sup>.

- i. **Introduction of PFM**
- ii. **Discuss Financing Options and Timeline**
- iii. **Authorization to Proceed**

(The full presentation is available here: [www.kennett.pa.us/DocumentCenter/View/4072](http://www.kennett.pa.us/DocumentCenter/View/4072))

During the presentation and after, the following discussion ensued:

Discussion:

- Stevens clarified that we are looking for a bank loan, not a bond issuance and as such, he asked Bamber why it was necessary to bring in PFM given the Township Manager and Finance Director's knowledge. Bamber replied that it is their expertise to advise the Township on the appropriate structures to bid and PFM's presence in the market commands a little more than an engaged interest in the Township's debt issuance, bringing in better alternatives and options than the Township doing this alone. PFM can hold the banks accountable and even though Ratliff and Heinrich are great, they are not doing this every day across multiple markets like PFM is. It takes a burden off the team.
- Heinrich added that they have identified things in the current loan structure that are not what is desirable moving forward and having someone who can prevent those things from happening is worth their weight in gold.
- Ratliff commented that both he and Heinrich have used PFM for debt issuance in both of their prior municipalities.
- Stevens clarified that when Bamber guides the Township through the request for proposals (RFP), he would be playing a more hands-on role in reviewing the bank proposals to remove some of the issues the Township has had in the past. Bamber confirmed.
- Stevens asked why bond counsel was needed to do the same thing. Bamber explained the bond counsel is there for the legal capacity, that while PFM are the "numbers people," the bond counsel are the "words people" who ensure the legal documents (drafting ordinances, closing documents, coordinating the department of community and economic debt proceedings) are prepared correctly.
- Ratliff added that the Local Government Unit Debt Act that we are governed by requires us to have bond counsel as certified by DCED to guide us through the process. Bamber confirmed.
- Stevens asked for clarification regarding who will be examining the documents – PFM or bond counsel. Bamber clarified that the bond counsel is responsible for the legal words to make it happen and he/PFM advise on the numbers and financing terms.
- Heinrich commented on the steps required by the bond counsel with the DCED, that it is an in-depth legal process.
- Stevens asked if it meant that it would be illegal for the Township to enter any loan arrangement without having bond counsel present. Bamber said that he cannot speak to legality issues as he is not a lawyer. Ratliff clarified that while it is a difficult question to answer, not having bond counsel would not meet the limitations of the Local Government Unit Debt Act and would be an unwise move by the Township. Further he explained that any debt issuance regardless of how small would require

bond counsel, and the Township has engaged bond counsel in previous debt issuance to his knowledge.

- Leff asked Bamber if he knew how many different bidders he thought we might receive. Bamber replied that typically they like to cast a wide net to 30-40 banks and expect a good response from 10% - 15%, or five to six proposals.
- Stevens asked if PFM attends PSATS convention in the spring. Bamber said yes.
- Stevens asked what kind of rates we should be looking for. Bamber provided those estimations later in the presentation.
- Heinrich commented that the payment made in October on the 2018 note did not meet the payment requirement for this year, so the Township enacted a deferral from June 1 to September 1.
- Ratliff clarified that any money drawn on this new loan would be only used for open space.
- Heinrich added that because we do not know when open space properties will become available, a revolving draw period is needed.
- Stevens asked if a revolving line of credit might be on the wish list. Bamber explained that the revolving part, to his knowledge, is not legal in Pennsylvania per the Local Government Unit Debt Act – meaning once you draw it down and pay it back, you do not have access to it again. Whatever is not drawn on does not accrue interest.
- Heinrich listed other requirements that limits what the wish list of this new loan can be.
- Hoffman asked how this compared to a home equity line of credit. Bamber said it is similar but different. In the local government world, there is no “line of credit” option in the traditional sense as it is known in the personal capacity. He went on to further explain the Local Government Unit Debt Act. He said it is better to compare it to a new mortgage – with the provision that if you borrow \$3 million but only spent \$2 million of it, the difference between what you drew down and spent would go away and you would only amortize what you have drawn. Hoffman added that she does not think we should be paying interest on money we do not intend to use, and Bamber explained that the draw feature aims to mitigate that as much as possible. Heinrich added that we also want a fixed rate for as long as possible, which also differs from a home equity line which is floating.
- Regarding the various options and overall debt services Bamber presented (page 11 of the presentation), Ratliff explained that the EIT that supports the open space fund is about \$710,000. We do not want the total amount of debt service to be that much, as there are other expenditures. Heinrich added that the problem with the 2018 loan debt service amount was exactly \$710,000 which leaves no room for other expenditures and that was part of the struggle this year, not to mention any dip from COVID. She said the Township wants a margin for maintenance of properties already owned.
- Stevens asked based on the conservative interest rates presented by Bamber, what should we ask banks for. Bamber explained that the RFP process brings out the lowest rates. PFM says to the bank this is the amount of principal, here is how it is paid back, give us your best rate.
- Leff asked for further clarification on what terms the banks are asked including options for 10 or 15 years. Bamber explained that PFM puts out a prescribed term sheet that literally describes the terms and conditions the Township, or in this case PFM on the Township’s behalf, are looking for. It is one of the advantages of utilizing a financial planner such as PFM as banks can try to take advantage of you without this type of specific, prescribed loan. He explained that what he is hoping the Board can provide tonight is direction on the amount of principal and length of term for that term sheet. The discussion continued with different calculations comparing the existing loan to the potential new loan.
- Steven asked if the interest rate is left blank on the proposal given to the banks. Bamber confirmed.
- Ratliff clarified that the action being asked of the Board is only to authorize the Township to retain PFM to put together the RFP and publish it for a response. Any further action of the responses would come before the Board at a later date.
- Heinrich asked if PFM has ever put out two RFPs, for example one for a 10-year term and one for a 15-year term. Bamber responded that they have done that in the past and it was an option. Ratliff asked if it would cost the Township more to do that to which Bamber replied that it would not. Heinrich said that she may be in favor of that if it would not hamper responses. More discussions about different calculations and terms continued.

- Hoffman asked if there needed to be a more conservative decision due to the estimated effects of COVID on the EIT for the open space fund. Heinrich said yes. The extended tax deadline is July 15<sup>th</sup>, so it is not yet known how much of the EIT is delayed versus how much will not be received.
- Stevens pointed out that PFM has discounted their fees for Kennett Township, which is appreciated. He asked Bamber if their regular fee is comparable to their competitors. Bamber stated that their fees are in par and maybe even be a little premium because they are a premium financial advisor.
- Ratliff and Heinrich agreed that the motion should be for \$6 million and over 15 years (option 2) and discussed their reasons. Heinrich stated again that they will not have to spend all of the \$6 million and Ratliff added that his expectation is to not draw down the entire \$6 million over the next 24 months based on his understanding of what is in the pipeline for potential open space. Heinrich pointed out that the interest rate between \$5 million and \$6 million is not likely to change.

**Motion presented by Hoffman to authorize the Administration to work with PFM Financial Advisors LLC as Financial Advisor, Salzmann Hughes, PC as Bond Counsel in conjunction with the issuance of General Obligation Note, Series of 2020, issued through a competitive RFP process, the proceeds of which will be used towards the refunding of the Township's existing Series of 2018 Note as well as the funding of various open space capital projects of the Township, in the total issuance amount of \$6,000,000 to be structured as shown in Option 2, namely 15 years, from PFM's July 1st presentation. Stevens seconded the motion. The motion passed unanimously following the following discussion.**

Discussion:

- Leff asked if there was usually about a .5% difference in the basis points between the 10- and 15-year term. Bamber responded that the yield curve is relatively flat right now so to say .5% might be a little conservative. He thinks it is at least 25 basis points to maybe 40. Leff added that would mean it would be a relatively smaller difference in interest rate between a 10- and a 15-year term.
- Beth Thomas (126 W Hillendale Rd) asked via Zoom chat: "I want to know how attractive Kennett Township would be to the banks with the current legal/financial issues we are facing right now?" Bamber stated that banks will certainly ask questions about what happened and PFM or the Township can provide a good response about all that has been done since, but banks get a lot of different credits. Mainly what the banks will be looking at is the financial solvency of the Township: how much fund balance does it have? What is its property tax rates? What does the overall picture look like? Bamber does not believe it will dissuade banks from bidding.
- Leff asked if the Township would be getting a rating during this process to which Bamber replied no; this is a private transaction that does not require a public rating or credit score so the Township and staff do not have to go through the time and scrutiny. Heinrich added that this was one of the reasons the Township was not considering a bond issuance, which would require that credit score. She went on to explain why she feels the Township can get the loan.
- Stevens commented that the Township has a solid income flow to support this as well as a strong commitment from the community for this use of money. He also added that, as Bamber pointed out, that what happened in Kennett is not unusual but it was discovered and aggressively attacked by bringing in highly competent individuals to straighten out the financial circumstances in six months after they had been surreptitiously twisted around for an excess of ten or so years. He listed changes made since the discovery and feels the banks will see and recognize the new solid foundation that is being built at Kennett Township and will want to work with the Township.
- Ratliff thanked Ms. Thomas for her fair question, reiterated the work that he and Heinrich have done since coming to the Township, and said he would be happy to address any of these concerns with the banks should they have any.
- Diane McGovern (345 E Hillendale Rd) asked via Zoom chat: "Will RFP require no prepayment penalty?" Bamber answered that it will be put in the term sheet that no penalty is highly preferred (meaning that it is basically required) and if it is not an option, the banks would include any prepayment options they want. He provided a couple other scenarios, but they are less likely.
- Richard Gaw (Chester County Press) asked the Board what message they feel negotiating a \$6 million loan to buy more property sends individuals in the Township who are now living through a difficult

environmental and financial environment. He commented that there may be fear that this is an irresponsible financially and downright frivolous act that does not need to be done right now. Leff responded that Kennett Township is committed to preserving open space and this is basically a refinance so that we can obtain a lower interest rate on the amount the Township is already in debt, which would lower the costs going forward. Leff also commented that the only money that would be taken out would be the existing bond amount principal, which is roughly \$2.9 million dollars. Anything beyond that, if more properties become available to purchase for preservation, would be the topic for future public debate. Gaw explained he wanted to get clarification as on paper, it looks as though the Township is spending more money.

- Stevens added that the Township is not spending more money, but rather spending open space tax money that came from a referendum that was overwhelmingly adopted and has continued to be supported by the residents ever since. Open space is in great demand in the view of the Township, which is trying to spend their money in the most efficient and economical way possible. Regarding Gaw's comment suggesting that this does not need to be done right now, Stevens said that the Township does not control when land becomes available. The Spar Hill property was discussed for many years before it became available, then when it did, the Township had to act very quickly to get it. He stated that the Township needs to be able to act quickly should more land become available that requires quick action. He also pointed to the effects of COVID and how when residents needed to get out and take a breath, they went to the parks in Kennett Township and Kennett Borough.
- Hoffman said she agreed with the other Supervisors but commented that Stevens may have misspoken in seeing buying open space as expense when it should be viewed as an investment in the future. Once it is gone, it is gone forever, and they are doing this to make sure they are managing and having smart sustained growth in the Township. She also said that when parcels come up, it is important to her that they fit into a bigger plan (the open space study) and that they can be accessible and enjoyed by all. She acknowledged that it has taken a while to get Spar Hill up and going so that it is safe for everybody and explained that there are a lot of old farm buildings there. This motion tonight is about trying to save the Township money and be as prudent as possible.
- Sue Giancola (604 Peacock Lane) commented via Zoom chat: "This is the problem — Mr. Stevens says these deals are made through "coffee-cup transactions" (or something like that). That is the problem that residents have — this is not the same Township as it was in the past (the trust level is not there; finances are a mess; and it is not business as usual). I would also agree with the issues Mr. Gaw has raised. Decisions need to change based on what has happened. Our finances are different — and decisions should not be the same as they may have been two years ago."
- Leff thanked Ms. Giancola for her comment.

**b. Consider Kennett Gateway for Preliminary Approval**

[www.kennett.pa.us/DocumentCenter/View/4122](http://www.kennett.pa.us/DocumentCenter/View/4122))

Ratliff explained that following the Planning Commission meeting last night, the Planning Commission is recommending for preliminary approval Kennett Gateway subject to some conditions.

Hicks presented the motion that was suggested by the Planning Commission found in her policy briefing summary available on the Kennett Township website. She further explained that there has been a proposed change to the Planning Commissions condition number five regarding the street maintenance agreement. Ratliff added that the language of this change was drafted by the developer's counsel and the Township's counsel and that Hicks agreed with it.

**Motion presented by Hoffman to grant preliminary approval to The Commonwealth Group's Kennett Gateway Land Development Plan contingent upon the Planning Commission's recommendations as outlined in the Kennett Gateway Policy Briefing Summary dated July 1, 2020 and incorporating counsel's recommendations for amendments to point five in the stated memo also from July 1, 2020. Stevens seconded the motion. The following discussion proceeded.**

Discussion:

- John Jaros (Counsel for the Commonwealth, developers of Kennett Gateway) thanked the Board for allowing them to join tonight's meeting and gave an overview of the proposed Kennett Gateway plan which includes 53 townhomes and almost 49,000 square foot three story mixed use building comprised of 24 apartment dwellings and 14,000 square feet of commercial area. He noted that the application before the Board tonight would include the 19 waivers as identified by the AECOM review letter dated June 3, 2020 and the preliminary land development plan application. He also explained the timeline and the challenges to move things along at an expeditious manner given the COVID-19 pandemic. He introduced Tim Jones, representing the developer and civil engineer Kevin Ember from Rettew Associates. Jaros referenced the June 3, 2020 AECOM review letter, the Thomas Comitta Associates May 22, 2020 review letter, the internal review by Kennett Township dated June 2020, and a memorandum from Sargent Matt Gordon copying Fire Chief Bruce Mitchell in regards to emergency services as it impacts the development.
- Ratliff stated that the motion should be amended to include the 19 waivers Jaros mentioned.
- Stevens offered his sympathies for this project perhaps feeling as though they are a ping pong ball going back and forth and added that this project is important for Kennett Township and the addressing of Ways Lane in totality is crucial and must start somewhere. He agrees that this should be approved but would vote against it due to the current motion and the contingencies listed in regard to Ways Lane.
- Ratliff explained that while he understands Steven's concern, it is important to note that the "if/then" language in point five was developed by both the counsel for this project and the Township counsel.
- Jaros explained the issue with Ways Lane being a private street and the right-of-way of that street. They are willing to develop Ways Lane farther by working with the abutting property owners (Chatham Financial and the Italian American Club) but cannot make that happen until they all agree. There are also current discussions with Chatham and the Italian American Club to redesign Ways Lane through the Chatham property to line up with Exelon intersection. These discussions take time. Jaros's client needs to move forward with the development proposal and use the time between preliminary and final plan approval to put more focus on this issue and make it more succinct.
- Stevens reiterated his discomfort in moving forward with a flow cart "if-one-then-two" scenario. Jaros responded by clarifying that the language in point number five only discusses a maintenance agreement. They will develop some part of Ways Lane depending on the outcome of the current discussions. He also stated that the only way Ways Lane will begin to be improved for its entirety is if this project gets started.
- Stevens asked if they could simply remove point number five. Ratliff answered that they could not as that would mean the Township would be neglecting one of its duties as outlined in the Municipalities Planning Code which states there must be a maintenance agreement on a private road like Ways Lane.
- Leff asked if the wording could be revised to say: "the private street maintenance agreement shall run to the southernmost end of the Applicant's property." Jaros and Tim Jones explained the reasons why it could not, that the stretch of Ways Lane beyond their third entrance to the property line would not be used by them, but by those not part of this property (Blosenski and mushroom farms).
- Stevens asked what happens if they do not get the others to join in on this effort. Jones agreed that is the issue and explained the right-of-way specifics and reiterated the current discussions and that they are waiting for answers.
- Leff asked for clarification from Hicks about what the Township would ask in terms of private street maintenance if there were no changes the access of Ways Lane onto East Cypress. Hicks said according to the current motion and what was outlined by the Planning Commission, the Township would ask Kennett Gateway for maintenance to the end of their property line. Leff added that having the "if/then" language, it incentivizes Kennett Gateway to work out the access point onto Cypress.
- Hoffman commented that she agrees this would help Ways Lane but understands that this process also must move forward.
- Stevens asked what happens if the mushroom owners thumb their noses at this plan, to which both Jones and Ratliff stated that they are not a part of this, only properties from Cypress to the southernmost point of the Gateway property (Chatham and the Italian American Club).
- Ratliff recommended the Board amend the current motion to include what they have been discussing.

- Stevens stated for clarification that the issue was who was going to take care of the Boy Scouts (Kennett Gateway) side of Ways Lane and who was going to take care of the Italian American Club side of Ways Lane. Jaros agreed but said Commonwealth is willing to put in a 24-foot wide cartway down to the third southern entrance. That is an improvement to the Chatham and Italian American Club property and stated that the agreement should be met before final approval. Jones added that it is an agreement for who would pay what the percentage of the road maintenance. Stevens asked if the motion could be reduced to state a maintenance agreement has to be adopted. Ratliff stated that he would recommend staying with the language that counsel has drafted as it was done in a way that protects the Township regardless of how the Ways Lane options plays out. This conversation continued and there was discussion about what would happen if this plan does not pass preliminary approval tonight.
- Leff asked when the relocation of Ways Lane would happen and Ratliff answered that being a multi-party deal, the Township is facilitating the conversation between those parties involved and the nature of the agreements could take months but actual construction could take years. It all depends on the responses from the other properties.
- Leff stated for clarification that no matter what, the private street maintenance will run to the southernmost access driveway and if Ways Lane is not relocated, it will be extended to the southernmost end of the property. Hicks confirmed.
- Hoffman said it is important to remember this is preliminary approval and there is still final plan approval so there is some time to deal with this. Jaros added that this Ways Lane improvement and corresponding maintenance agreement will be much more focused and in place than it is right now.
- Stevens again asked what happens to the plan if they still cannot get this agreement worked out by then. Ratliff commented that he agrees with Jaros, that there will be more clarity by final approval.

**Hoffman requested to withdraw the previously stated motion. Stevens agreed to the withdrawal of the previous motion.**

**Motion presented by Hoffman to grant preliminary approval to the Commonwealth Group's Kennett Gateway Land Development Plan contingent upon the Planning Commission's recommendations as outlined in the Kennett Gateway Policy Briefing Summary dated July 1, 2020 with the following conditions:**

- 1. Approve the 19 waivers as identified in the June 3, 2020 AECOM review letter**
- 2. The Applicant shall use its best efforts to enter into private street maintenance agreement(s) for Ways Lane. If Ways Lane is relocated, the extent of the private street maintenance shall run to the end of the southernmost access driveway for the Applicant's proposed development. If Ways Lane is not relocated, the extent of the private street maintenance shall run to the southernmost end of the Applicant's property. The aforementioned agreement(s), if entered into, shall comply with the requirements of Section 502.I.(5) of the Subdivision and Land Development Ordinance. If such private street maintenance agreement(s) are not entered into due to lack of agreement by required third-parties, the Applicant shall provide the Township with all documentation of the Applicant's efforts to enter into the applicable agreement(s).**

**Stevens seconded the motion. The motion was passed unanimously after the following discussion.**

- Stevens questioned what the difference was between the first motion and this one. Ratliff explained it addressed the AECOM review letter and made it cleaner. Stevens stated that it still did not do anything to clarify his confusion.

## 6. PUBLIC COMMENT

- Hoffman encouraged everyone to have a safe holiday weekend and offered to provide anyone a mask who still needs one.
- Leff added that he wanted to reinforce the statement made earlier by Stevens, that we should socialize but maintain physical distance. He also added that wearing masks really help.

## 7. MOTION TO ADJOURN

**Motion presented by Hoffman to adjourn. Stevens seconded the motion. The motion was passed unanimously with no discussion.**

The meeting adjourned at 9:30 p.m.

Respectfully submitted,  
Eden R. Ratliff  
Township Secretary