



801 Burrows Run Road
Chadds Ford, PA 19317

BOARD OF SUPERVISORS MEETING via ZOOM MINUTES

October 7, 2020
7:00 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, Director of Planning & Zoning; Roger Lysle, Director of Public Works, Matt Gordon, Acting Chief of Police, Dave Sander, Solicitor

1. CALL TO ORDER

Chairman Leff called the meeting to order at 7:00 p.m., explained how the meeting was going to proceed and offered a COVID-19 update. Hoffman reminded everyone to not forget the hand sanitizer and masks when going out with cases on the rise and Stevens commented on the risks of loneliness and the importance of staying in touch virtually.

2. TOWNSHIP RECOVERY UPDATE

Ratliff had no update to give as we are awaiting updates on the proceedings. Leff asked if COVID-19 was impacting this and Ratliff confirmed and explained that due to the pandemic, the courts are prioritizing those cases of violent crimes and those that are already incarcerated, neither of which apply to the former Township Manager. He went on to say that the Township is waiting to hear an update on non-trial procedures.

3. EXECUTIVE SESSION ANNOUNCEMENT (ACTION ITEM)

Hoffman reported an executive session was held on October 7th to discuss potential litigation.

4. OLD BUSINESS

There was no old business.

5. NEW BUSINESS (ACTION ITEMS)

a. Review Revolving Water Fund (MS4) Contract

Ratliff introduced David Athey, the Township Stormwater Engineer with AECOM who provided a presentation that overviewed the Municipal Separate Storm Sewer System (MS4) and the Township's current Total Maximum Daily Load (TMDL) Plan, which has been submitted to the Department of Environmental Protection (DEP) and is awaiting their approval. Ratliff also introduced Ashely Allen Jones, Founder and CEO of i2 Capital. The Township has worked together with both Athey and Jones to

develop the proposed negotiated public-private partnership agreement with the Revolving Water Fund (RWF).

Discussion from Athey's MS4 Presentation:

(www.kennett.pa.us/DocumentCenter/View/4395)

- Leff asked for clarification regarding the map showing impacted streams in Chester County. Athey explained that about every two (2) years there is a state-wide assessment of streams. Those streams shown in red are considered impaired (not meeting its standard) and those in blue are stressed, but not yet impaired. Hoffman asked how often the streams are sampled and Athey said he was not sure. There was further discussion about what those samples look for including the impacts of agriculture on the health of streams.
- Stevens asked Athey to elaborate on the possible easements and agreements that will be necessary on private property as part of the current TMDL Plan. Athey explained how they identified communities that do not currently have storm water basins with the hopes of adding one. The Township would be responsible for maintenance, so there would have to be an easement or agreement in place to allow for that, or the Township would have to outright buy that piece of property. Stevens further asked how those properties with streams running through them would be impacted. Athey said there are a variety of projects that have been recommended. He said damming up a stream would be bad practice, but stream restorations are advantageous.
- Hoffman asked if the streambank restoration the residents at Kendal-Crosslands Communities completed in 2019 could retroactively be considered for credit in the TMDL Plan. Athey said perhaps, that he and Ratliff would investigate that further.
- Leff asked if the Township could mandate a private property owner to contribute to storm water basin on their property. Ratliff answered that would run counter to the municipality's planning code. Athey added that the Township could add a basin to their own properties, but there is not a lot of land owned by the Township with a lot of impervious surfaces which would require this type of management.
- Ratliff commented that the approach to the TMDL to meet the Township's short-term requirements of 110 tons of sediment reduction in the Red Clay is a diverse approach, which is what DEP would require, and that having multiple projects adds strength to the Township's TMDL Plan. He also pointed out that the Kennett Area Parks Authority and the Brandywine Red Clay Alliance were instrumental in the restoration of the Anson B. Nixon stream and great partners of the Township.
- Hoffman asked how the amount of credits are determined for each project. Athey explained how DEP has efficiency tables that are used to determine the credit values based on the kind of structure (dry pond, wet pond, infiltration basin, bioswale, etc.). She also asked who would be responsible for retrofitting basins in communities with HOAs and who would be responsible for those costs. Athey said they are working on the assumption that these will be Township expenditures. There were further discussions about the potential for cost sharing with HOA's and the 2021 budget implications, but all agreed these discussions are not yet ready to be decided on.
- Ratliff said the Revolving Water Fund is one way the Township is looking to meet their TMDL Plan.
- Stevens asked for further clarification on what the Township was concerned about, mud on the side of the street or chemicals and sediment in the streams, and Athey explained a little of both.
- Stevens asked to compare the price of what it would cost the Township to remove the nine (9) tons by themselves compared to the ~\$155,000 it would cost utilizing the RWF. Ratliff said utilizing the RWF equates to about a 40% cost savings.
- Leff summarized that the short-term, five (5) year plan, would cost about \$100,000 per year and then years five (5) through 15 would be almost double that; and while that seems like a lot of money, it not only meets DEP's requirements but also helps improve the quality of the Township.
- Peter Doehring (5 Nine Gates Rd) asked via Zoom chat, "can you describe if and how protected and properly managed open space help to keep streams healthy, especially relative to the impact of a housing development." Athey answered that it is hard to make that correlation unless the open spaces are near a stream. Ratliff added that for the regulatory program, the existence (or lack) of protected open space is not really a part of the determination of the total sediment load or the load reductions.

Discussion from Allen Jones's RWF Presentation:
(www.kennett.pa.us/DocumentCenter/View/4396)

- Ashley Allen Jones introduced Richie Jones, former head of The Nature Conservancy and current Counsel for RWF, who explained their model of the Water Fund as downstream beneficiaries invest in upstream conservation to return downstream clean water benefits. He further explained how he and Allen Jones took that model and a step further to work out a way to have the funds remain in a perpetual loop as well.
- Ratliff thanked Athey, Allen Jones and Jones for their work on this and stated he thinks the Township has an opportunity to be a part of something remarkable. With the RWF the Township would be paying ~\$8 per pound compared to ~\$11 or ~\$12 without RWF for the first five (5) years which comes out to ~\$70,000 plus whatever would have been spent on Operations and Maintenance (O&M) costs. Ratliff explained that he thinks the real value is in the outyears of the TMDL Plan. Being the test case for DEP is also an advantage that could serve as a model for other municipalities in the Commonwealth.
- Stevens commented that while this sounds positive, he has other questions. Ratliff pointed out that the Township Solicitor Dave Sander has been involved in the negotiations and in the writing of the contract and is comfortable with it from a legal perspective.

Motion presented by Hoffman to authorize the Township Manager to sign the enclosed contract with the Revolving Water Fund pending approval of the Pennsylvania Department of Environmental Protection for reasons outlined in the MS4 Credit Acquisition- Revolving Water Fund Contract Policy Briefing Summary. Stevens seconded the motion. The motion was passed unanimously after the following discussion.

Discussion:

- Leff summarized the Briefing Summary that Ratliff provided the Board of Supervisors.
- Stevens asked if there was a way to change course if years down the road it was decided that the Township did not want to utilize the RWF. Ratliff spoke to the confidence in the projects RWF has lined up for this first permit cycle. Jones explained the structure of this pay-for-success contract being contingent upon DEP's approval and the safeguards that are put into place. Athey said that if at the end of the first five-year cycle, the Township would be able to consider another way to meet the loads if they were not satisfied for some reason, but agreed with Jones that there is not a likely scenario that the Township would not be satisfied. Ratliff added that backing out after only a year or two would put the Township in a difficult position to meet the regulatory obligations. Heinrich said that this contract would be agreeing to the ~\$155,000 for the first five years.
- Hoffman asked if there was concern for large algae blooms because of nitrogen and phosphorous in the watershed. Allen Jones said yes, that was a concern. Hoffman also asked about the metrics that would be used to measure the success of these projects, which Allen Jones and Jones explained in detail. There was also discussion about before and after sampling and the complexities those samples entails.
- Leff asked if all the projects were in Kennett Township, and if there would be an option with DEP to look at less expensive projects outside the Township. Jones explained that DEP said if a project is in the same HUC12, which is a measurement or size of a watershed, and there is an intermunicipal agreement with the municipality where the project is installed, then it would be possible to get credit. Kennett's only option would be with East Marlborough Township, who at this time is not looking to share their ag credits. Allen Jones added that there is the possibility that DEP would expand their radius beyond the current one mile outside of the urban area for projects in the future.
- After Leff asked if the parties involved with the RWF were for profit or not for profit, then there was discussion by Allen Jones and Jones about the structure of the companies behind this initiative and some of the finance structures behind RWF.

- Richard Gaw (Chester County Press) asked via Zoom chat, “Would there be a way for the speaker to identify the locations of these four projects, within the township?” Allen Jones agreed to pass those details on to Gaw after the meeting.
- Ratliff commented that it is easy for municipal governments to get stuck in the process meeting regulations. That, however, is not the charge of the Board of Supervisors. Kennett tries to lead with conservation and environmental improvement and enhancement, and this public-private partnership is a wonderful opportunity to lead with that priority while also meeting government regulations.
- Stevens explained why he was in favor of this motion, even though it is a lot of information, especially since it has been vetted by the Township’s Counsel.

b. Consider the October 7th Bill Voucher in the Amount of \$282,909.83

www.kennett.pa.us/DocumentCenter/View/4318

Motion presented by Hoffman to approve the October 7, 2020 Bill Voucher in the amount of \$282,909.83. Total transfers equal \$210,913.45. Stevens seconded the motion. The motion was passed unanimously after the following discussion.

Discussion:

- Leff asked for an update on the audit and Heinrich said they are diving into a couple more items then have to write the report.
- Leff asked for more details about the payments to Delta Development Group, whether the Township is still utilizing them for grant work. Heinrich and Ratliff confirmed and detailed the grant work they have been involved with.

c. Consider Filming on Kennett Owned Property

Motion presented by Hoffman to authorize the Township Manager to sign the location agreement as presented in the October 7, 2020 Board Packet. Stevens seconded the motion. The motion was passed unanimously after the following discussion.

Discussion:

- Hoffman commented that Kennett Township has unique buildings, and it is a nice thing to allow them to be used as a setting.
- Leff asked if the Township would be paid for this. Ratliff answered that the Township would be receiving a donation for allowing them to use public property.
- Stevens suggested forming a committee to try to figure out how to encourage more things like this given how photogenic the Township is. Hoffman added to this discussion.
- Ratliff said that the donation would be deposited into the Open Space Fund.
- Diane McGovern (345 E. Hillendale) asked via Zoom chat, “will this mean that residents cannot use the property?” Ratliff stated that is not an issue with this proposed contract.
- Leff asked about the duration of filming and Ratliff answered one day.

d. Active Litigation – Authorization to Defend

Motion presented by Hoffman to authorize Kilkenny Law, the Township’s Solicitor, to defend Richard Leff and David Sander in a lawsuit followed by the Edward James Artz Trust. Stevens seconded the motion. The motion was passed unanimously after the following discussion.

Discussion:

- Sander stated that he was served documents and named as one of the defendants in a federal court lawsuit along with Chairman Leff plus several other defendants. He further explained what he believes the lawsuit is about, but said it is a little mysterious at this time as the documents have

been filed under seal. He would need to enter an appearance and be ready to defend if the case moves forward and that is what this motion is about.

e. **Consider 457B Retirement Plan**

(www.kennett.pa.us/DocumentCenter/View/4326)

Motion presented by Hoffman to approve creation of a new 457B retirement plan via CBIZ InR and to authorize Eden Ratliff and/or Amy Heinrich to execute any required contracts or paperwork for the plan. Stevens seconded the motion. The motion was passed unanimously after the following discussion.

Discussion:

- Heinrich directed everyone to the Board Packet recommendation for the details, but briefly summarized that this new 457B plan replaces the one the Township employees had 2019 and prior that had to be terminated as it was not a proper vehicle for townships. The Township received forgiveness from the IRS on that prior plan so there will be no tax penalties for the Township or employees. This plan is essentially the government equivalent of a 401K. Heinrich received several other proposals but CBIZ offered the lowest cost with the best options for the Township and utilizes Vanguard Index funds.
- Leff and Heinrich discussed the costs involved that are common in plans such as these.
- Hoffman commented that she was glad this plan is available as she was concerned when the IRA plan had to be terminated.
- Stevens said that this was another example of the fallout the Township went through 18 months ago. He asked if the employees could roll over what they had invested in the old plan into this new plan. Heinrich confirmed.
- Everyone thanked the Finance Department for their research and hard work spent over the last year to bring this to fruition.

6. 2021 BUDGET SCHEDULE & PROCESS

(www.kennett.pa.us/DocumentCenter/View/4319)

- Heinrich explained the budget schedule and stated that this presentation was to lay out the requests, not to make any decisions. The goal is to present a final recommendation later in the fall.
- Planning & Zoning Department:
 - Diane Hicks, Director of Planning & Zoning, explained her requests, stating that the Planning and Zoning Department is still in its infancy having only been created in January of 2020. She explained the staffing changes that have occurred leading up to January 2020 and laid out her staffing requests moving forward.
 - Hoffman asked if bringing these recommended staff onboard would decrease the cost of consultants. Hicks agreed and elaborated on the benefits of the Planner and Building Codes Official (BCO) positions.
 - Hicks said that she has a vision to build this department over the next three (3) to five (5) years and she knows that other municipalities in the area do not have the kind of department that she is hoping to be able to bring to Kennett Township.
 - Leff asked how the Economic Development Director (EDD) would work with the Planner. Hicks explained that the Township's Planner would be able to spend more time with the EDD and gave other examples as to how the Planner will help the Township. She suggested that a Planner would also think out of the box and be able to help with things like managing where people work during COVID-19. There were discussions about the differences between the EDD and a Planner and more examples of how the Planner could specifically benefit Kennett Township.
 - Ratliff added that the Planner position was approved by the Board in the 2020 budget, but they have not yet found the right candidate.

- Stevens asked if there would be benefits to sharing someone like a BCO with the Borough. Ratliff laid out the difference between a Building Code Official and a Planner, explaining that while BCOs have a relatively easy time working anywhere, the Planner is much more specific to their specific municipality.
- Stevens also asked if the Township would lose some of the reimbursements from developers the Township currently receives by utilizing contractors by having an in-house Planner. Ratliff and Heinrich explained that they would still be able to get those reimbursements with an in-house planner.
- Hoffman commented that employing staff versus consultants would provide a higher consistency in service.
- Leff asked out of the two she is requesting, which position Hicks would prefer to have hired and which she would prefer to continue to contract. She answered she would rather hire a Planner.
- Public Works Department:
 - Roger Lysle, Director of Public Works, explained his 2021 budgetary requests including adding a member to the Road Crew, improvements to specific roads, oil and chip surface treatments, drainage pipe repairs, improvements to the shop and a new lawn mower.
 - Stevens asked who used to do the mowing prior to this Department taking it over this year. Lysle answered it was contracted out to individual companies.
 - Stevens also asked if there was anyone poised to replace Lysle and if there have been any efforts made to hire women in this department. Ratliff answered that while there has not been proactive encouragement, the Township does not discriminate based on sex or any other protections in the hiring process. Lysle announced that they just hired a new Public Works Foreman to replace the one who had left. He begins on October 15th and he will be assisting Lysle in many areas. He also said that no women have applied to positions that have been posted in the past and Heinrich added that there were no women applicants for the position just hired.
 - Leff asked for more details on the proposed road projects, specifically Rosedale Road, which Lysle explained.
- Township Office Building:
 - Ratliff highlighted the increasing deficiencies of the current Township building with the growing staff including the layout, the need for additional offices, parking, mold problems, and failing structural components. He also commented on the challenges the Police Department face being on the second floor, including their safety should they need to detain a suspect and try to take them up a flight of stairs.
 - Hoffman commented on the desire to address the HVAC with air scrubbers and Stevens discussed the desire to look at geothermal options. Ratliff agreed but said he would prefer to get an assessment of the long-term spatial requirements of the building before we agree to such a costly improvement. Stevens agreed and discussed other potential options for the location of the police.
 - Ratliff and Heinrich explained that the ~\$153,000 budget as it stands includes routine maintenance and office equipment that is common with any building. It does not include any major HVAC updates, nor does it include engineering funds to explore our spatial requirements. Heinrich said she can investigate getting an estimate for that engineering, which Stevens was in favor of.
 - Leff asked for more details about the mold issue. Heinrich obliged and said it was a combination of deficiencies with the dehumidifiers in our current HVAC system and that the building was built on very wet land.
- Police Department:
 - Acting Chief Matt Gordon gave a detailed presentation of his budget requests that would enable him to be a proactive police department versus a reactive department. He explained the need for two new officers, including a potential scholarship program that would increase minorities in the department. There was abundant discussion between the Supervisors, Ratliff, Heinrich and Gordon about the scholarship program.
 - Leff asked about part-time versus full-time positions and if getting only one full-time staff would be able to fill the gap of two part-time officers. Gordon answered no because those part-time positions were designed to be night shift. There was also discussion of how often the KTPD calls for backup from another department and how often KTPD are called to assist other departments. Ratliff made

- sure to emphasize that the model Gordon is trying to build focuses on officer safety in a 24/7 department. They have been 24/7 for some time now, but it is currently not safe for the officers.
- Leff asked, in addition to specific numbers for back up calls, if there are any other 24/7 department that are as small (in terms of officers) as Kennett Township. While Gordon said he did not think there were any as small, he will report back.
 - Stevens commented that if Kennett Township wanted to be a modern and effective police force, Kennett would have to ante up. He and Gordon also discussed the impact undocumented individuals have on the Kennett Township Police Department.
 - Gordon explained his request for three (3) new Chevrolet Tahoe Police Pursuit Vehicles, given maintenance and recall issues with Fords. Officer Melendez studied multiple vehicles including diesel and hybrid vehicles and there was discussion by Stevens about the newer technology such as battery.
 - There was discussion about the number of officers being requested and the number of vehicles being requested. Gordon explained that regardless of the potential scholarship program, he is asking for four (4) officers for 2021, which would necessitate the purchase of three (3) vehicles, two (2) replacements and one (1) additional.
 - Leff asked if there has been consideration to add a psychologist or social worker to the Police Department. Ratliff reported that while this is not something ready for a 2021 budget request, this topic is being discussed regularly with Gordon and others from other municipalities.
 - Gordon explained his Lexipol requests which would give the Department access to attorneys, who would look at and update all of the current policies and procedures, plus provide regular training to ensure all officers know those current policies and procedures.
 - Gordon outlined his request for in car cameras and led discussions on all the recording devices they use (license plate readers and body cams).
 - There were discussions about the requests for firearms and desktop computers.

7. PUBLIC COMMENT

- There was no public comment.

8. MOTION TO ADJOURN

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

The meeting adjourned at 11:07 p.m.

Respectfully submitted,
Eden R. Ratliff
Township Secretary