



COMMITTEE of the WHOLE

CITY COUNCIL

MINUTES
December 12, 2011
5:00 P.M.

COUNCIL MEMBERS PRESENT:

S. Marmarou, M. Goodman-Hinnershitz, F. Acosta, D. Sterner, D. Reed, J. Waltman, V. Spencer

OTHERS PRESENT:

L. Kelleher, S. Katzenmoyer, F. Denbowski, S. Haver, L. Lee, M. Setley, T. Butler, T. McMahon

Mr. Spencer called the Committee of the Whole meeting to order at 5:05 p.m.

I. Parking Authority

Mr. Setley explained that the reimbursement agreement for Parking Authority debt states that Council consent is needed. He stated that a City guarantee on this bond is not required. This bond will refinance three current bond series to decrease the current interest rate and move to a fixed 3.15 % interest rate. The Parking Authority will save \$1.2 million over ten years. He stated that this resolution is before Council for action this evening.

Mr. Lee stated that the Parking Authority is interested in reducing its interest rate.

Mr. Waltman questioned if the \$1.2 million savings was net of costs. Mr. Setley stated that it is.

Mr. Waltman questioned the savings. Mr. Setley stated that the savings is \$1.2 million over the course of ten years and stated that after ten years the bonds could revert to variable rate but that this bond issue would decrease the maximum variable rate allowable.

Mr. Waltman questioned the net impact on annual debt service. Mr. Setley stated that it would average \$150,000 annual savings.

II. Penns Commons Court Apartments

Mike Carper, Andre Perry and Ramiro Carbajal from HDC were present.

Mr. Spencer questioned why the City should move forward with this financing package. Mr. Carper stated that Penns Commons Court is one of seven properties that are being addressed through the master refinancing project of this bond issue. He stated that the bond proceeds will allow for major rehabilitations on all seven properties. He stated that this building has been in use for 30 years and that this bond issue requires the extension of the original \$750,000 investment of the City. He stated that the repayment term would be an additional 30 years and stated that the funds would be used to upgrade kitchens, heating systems, security, roof issues and other capital improvements. He stated that HDC will be making an interest payment of \$100,000 to the City in 2012. He stated that the property will continue as affordable senior housing.

Mr. Spencer stated that the City would receive \$100,000 in interest but would not receive the \$750,000 and that the City would be in second position to recoup this funding. Mr. Carper stated that this is correct.

Mr. Perry explained that the tax exempt bond series will total \$19 million for all seven properties. He stated that public hearings were held on the bond issue but that no public comment was received. He stated that this is affordable senior housing. The \$750,000 investment by the City would allow \$1 million of improvements and that it makes sense for the City to roll the debt payment forward. He stated that this same proposal is being made to the municipalities that contain all seven properties.

Mr. Spencer stated that the City has invested in this project for 20 years. He questioned if the City was able to invest for an additional 30 years. He stated that the City has made a good faith effort and that the debt is now due. He questioned if this property operates at a loss. Mr. Perry stated that it does operate at a loss. He stated that this property brings in lower rents due to rent restrictions. He stated that historically these types of investments by municipalities are reinvested to sustain the properties. He stated that this is not new funding but an extension of the existing funding to allow for the capital improvements. He stated that without this extension the property will not be rehabilitated and no interest payment will be received.

Mr. Spencer stated that the City should have the ability to use that \$750,000 toward other projects in the City. He questioned the acquisition costs included in the proposal and questioned if the project would be expanded. Mr. Carper stated that the acquisition costs include buying the existing debt. He stated that the \$100,000 interest payment is only available because of the refinancing.

Mr. Waltman stated that approval of this proposal would allow a \$1 million investment in the City but that \$750,000 of the \$1 million is City funds. Mr. Perry stated that the real benefit is the ability to make capital improvements to the property.

Mr. Waltman stated that for the next 30 years the City will have made the bulk of the investment. Mr. Perry agreed.

Mr. Waltman stated that 3/4 of this investment is being made by the City.

Ms. Goodman-Hinnershitz voiced her concern about this proposal and stated that the City is under Act 47 and that this decision impacts the funding of other projects.

Mr. Acosta voiced his concern that this sets a precedent for others to come forward for the same type of refinancing. He questioned the value of the property. Mr. Perry stated that he did not have that information but was willing to provide the appraised value.

Mr. Acosta stated that it does not make sense for the City to defer this loan due to its financial condition. He stated that the City can not be in the business of giving money away and that other organizations do not get this type of funding. Mr. Carbajal stated that the original funding is at the end of the tax investment life. He stated that the property can be sold to private owners who would not be able to remove the affordable and low income restrictions. He stated that the combination project as proposed can keep the property in proper condition. He stated that the debt cannot be repaid and that this funding will allow the apartments to remain in the community.

Mr. Acosta noted the need for additional refinancing to remove this property from the blanket loan. He stated that being in second position is a risk to the City and that HUD regulations are constantly changing and capital funds will be needed again in the future. He questioned what would happen at that time. Mr. Carper stated that HDC has been in operation for 40 years and owned this property for 20 years. He stated that improvements would need to be made again after this 30 year period. He stated that the aggregate project allows HDC to complete more renovations. He stated that rolling the funding over would show the City's commitment to this quality asset and that if the City demands repayment HDC will not continue operating the facility. He stated that it is not realistic for the City to believe that the original \$750,000 will be repaid if this proposal is not accepted. He noted HDC's hope to close this deal during January or February of 2012. He stated that \$1 million will make many improvements at this property.

Ms. Reed questioned if this property could become market rate housing through another owner if the original debt is paid. Mr. Carper stated that the property deed contains a covenant to keep it affordable housing unless the PA Housing Finance Agency (PHFA) excuses the covenant.

Ms. Reed stated that a market rate senior facility in her Council district is successful and has a waiting list. She stated that market rate would stabilize the neighborhood and help bring back a middle class. She stated that the City is full of affordable housing which has helped cause the City's financial problems. She stated that this property could become an important part of this neighborhood and have uses beyond those utilized now.

Mr. Marmarou questioned if the project would use local labor. Mr. Carper stated that he would suspect that the contractor would hire local subcontractors with local labor.

Mr. Marmarou requested assurance that local labor would be used. Mr. Carper was unable to provide that assurance.

Mr. Waltman stated that once this property is refinanced as part of the aggregate project it would be difficult to remove it. He requested a pro forma statement from HDC regarding this proposal. He stated that there are opportunity costs to the City and this information will help Council make an informed decision.

Mr. Haver stated that this project is typical of what Council will be seeing in the near future as many past projects are expiring. He stated that many similar projects were done 20 years ago. He suggested Council set policy to address these issues moving forward. He stated that if similar proposals are rejected the City will lose control of who manages these properties. He stated that HDC has performed well to date.

Mr. Waltman stated that Council is not suggesting that HDC is not a good firm. He stated that Council must request and receive the necessary information to make sound, informed decisions.

Mr. Haver stated that affordable housing is undergoing changes and that he has no recommendation but stated that HDC has been a good manager.

Mr. Carper stated that 10-15 years remain in the covenant with PHFA regarding the affordable housing.

Mr. McMahon stated that the City would receive interest on the \$750,000. Mr. Perry stated that the same term would continue as in the current agreement. He stated that the \$1 million is for hard costs only. He stated that Penns Commons is one of the poorly performing properties and stated that leveraging the others will improve this one. He stated that the City is already in second position on the loan agreement and this is also not changing.

Mr. McMahon questioned if the \$100,000 interest payment is for the past funding. Mr. Perry stated that it is.

Mr. McMahon questioned the interest on the \$750,000 rolling forward. Mr. Perry stated that it would remain at 1%.

Mr. McMahon stated that HDC is a non-profit organization. He stated that HDC has made PILOT contributions in other municipalities. Mr. Carper stated that HDC is not tax exempt at this location and has paid \$33,700 in taxes and DID fees.

Mr. Spencer questioned where the other properties are located. Mr. Carper stated that the other facilities are located in Dauphin, Ephrata, Lancaster, Bern and three in Reading. He stated that without this proposal there will be no investment in the property for the next 15 years.

Mr. Spencer stated that HUD requires units to meet certain conditions. He questioned if this is the only way to improve the condition of these units. Mr. Carper stated that it will improve the operating condition and allow the capital investment.

Mr. Spencer questioned how HDC could ensure that this same type of proposal would not come forward in another 10-20 years. Mr. Carper stated that refinancing would be proposed again in 15 years if needed.

Mr. Waltman questioned if there was another approach to this project if it is not aggregate with the other properties. He questioned if this was the best case scenario. Mr. Perry stated that it is the best case scenario. He stated that this provides the owner better control.

Mr. Waltman stated that the City is leveraging 75% in this model. He questioned if it would be possible to move forward with 50% leverage and not linking this property to the others. Mr. Perry noted his hope that federal funds would increase in the future but that this is the reality of current conditions. He stated that the \$750,000 is not new dollars but makes the interest payment possible and the investment in capital upgrades. He stated that if the proposal is rejected HDC would need to make a difficult decision about the future of the property.

Mr. Spencer questioned when the next interest payment would be payable. Mr. Perry stated that he does not have that information. He stated that he would need to review the tentative agreement. Mr. Haver stated that the interest would be due at the time the balloon occurs on the loan but can again be forgiven if there is future refinancing.

Mr. Spencer stated that the City would receive \$100,000 in 2012 and then no other payment for the next 10 years. Mr. Carper noted his willingness to review this and perhaps give the City an advance on the \$750,000.

Mr. Waltman stated that the decrease in federal funding makes the City's opportunity costs even higher.

Mr. Spencer noted the need for additional time to review this information. He reminded HDC of their willingness to provide additional information. The upcoming meeting schedule was discussed.

Mr. Sterner questioned if HDC already received the \$750,000. Mr. Carper stated that they had.

Mr. Sterner questioned if this was an extension of the current agreement. Mr. Carper stated that it is.

Mr. Sterner questioned if the City would receive the \$750,000 if the agreement is not extended. Mr. Acosta stated that it most likely would not.

Mr. Spencer again stated that the City is receiving \$100,000 after 15 years. He reminded Council that HDC was leveraging Penns Commons for funding for other properties. Mr. Carper stated that repayment of the loan would mean an increase in losses for HDC.

Mr. Spencer questioned if the property was operating at a loss. Mr. Carper stated that it is currently at a break even operation. Mr. Perry stated that HDC is a special entity and that the transfer document is also on Council's agenda for approval.

Mr. Acosta noted that this business was not created to earn a profit and that he understands that the savings will improve cash flow. He stated that HUD changes their regulations regularly and that this affects all low income housing. He noted the need to operate at break even. He questioned how HDC is positioned to continue to keep up with HUD regulations. Mr. Perry stated that the improvements will reduce the need for repairs and other maintenance. He stated that energy efficiency will also be improved and that the property will be brought up to current codes. He stated that these capital improvements will be impossible through operational income.

Mr. Carper stated that all seven properties are in different markets and that will decrease the risk of market conditions.

Mr. Waltman stated that review of the pro forma statement would answer many questions.

Ms. Reed suggested that Mr. Waltman and Mr. Acosta review the financial information and report back to the body.

Mr. Spencer suggested that the City's financial advisor also review the documents.

Mr. McMahon noted the Administration's support of the proposal.

Mr. Haver noted the need for an objective process for this proposal and all those similar moving forward.

Mr. Jones arrived at this time.

III. Legal Issues regarding the Appointment of Council President

Ms. Butler stated that the Law Department did some brief research on this topic. She stated that the Charter does not clearly define eligibility and that there is no case law which could be located. She stated her opinion that according to Charter Section 202 the applicants must have been qualified in May 2008.

Ms. Reed questioned if the same ruling was applied to open District Council seats. She noted her respect for Ms. Butler but disagreed believing that applicants should be qualified for a one year period.

Ms. Kelleher explained that the Council President seat has never been vacant.

Mr. Waltman stated that past Councils used a one year time period for applicants. He stated that this is the spirit of the Charter.

Mr. Spencer described the current unrest regarding the recent appointment to the Exeter School Board and suggested requesting an opinion from the Charter Board. He noted that it only takes one person to challenge the actions of Council and emphasized the importance of this appointment.

Mr. Acosta stated that the Charter defines the appointment process. Mr. Spencer clarified that this process is for District seats, not the President of Council.

Mr. Sterner questioned when the new President must be chosen. Ms. Butler stated that Council has 30 days to name the appointment beginning on the day of resignation. She stated that in this case it would be February 2.

Ms. Reed questioned how this would affect Council's reorganization. Ms. Butler stated that the current Vice President and Committees would remain until a President is appointed and Council chooses a new Vice President and reorganizes Committees.

Ms. Goodman-Hinnershitz stated that the current Vice President's term will have expired before reorganization occurs. Ms. Kelleher compared it to other City boards, authorities and commissions where terms continue after expiration until the person is reappointed or replaced.

Mr. Spencer stated that the public will be watching this process very carefully.

Ms. Goodman-Hinnershitz agreed with the need for an advisory opinion from the Charter Board.

Mr. Spencer noted the need to stress the timeliness of this issue to the Charter Board. Ms. Goodman-Hinnershitz suggested defining the timeline for the response.

Mr. Spencer questioned when interviews would begin. Mr. Acosta stated that interviews were planned to begin in two weeks.

Ms. Goodman-Hinnershitz noted the need to move through this process quickly.

Ms. Reed noted that the process can begin before the advisory opinion is received.

Mr. Waltman again stated that one year is in the spirit of the Charter.

Mr. Spencer questioned the interview issues. Ms. Kelleher noted the need for clarification if a sitting member of Council applies for the Presidency if this member can review other applications, choose candidates to interview, participate in the interview, and vote. Ms. Butler opined that a sitting member of Council who applies cannot be a part of the process to ensure fairness.

Mr. Acosta questioned what Ms. Butler was basing her opinion on. Ms. Butler stated that it was common fairness. She noted her willingness to research the issue.

Mr. Sterner stated that this may also be a conflict of interest.

Ms. Goodman-Hinnershitz noted her agreement in candidates not participating in the process but questioned their ability to vote. Ms. Butler expressed the opinion that they not vote as it would open the process to criticism.

Ms. Reed questioned if the issue could be challenged legally. Ms. Butler replied affirmatively.

Ms. Reed questioned if an advisory opinion from both the Charter Board and Ethics Board was necessary. Ms. Butler suggested that advisory opinions be requested from both boards.

Mr. Acosta stated that members may vote to appoint themselves as Vice President. He noted his agreement with members who apply not being part of the selection process.

Mr. Spencer noted that the President also receives a higher compensation and has more stature. He noted the need for members to consider that they will be voting to give themselves a raise.

Ms. Goodman-Hinnershitz noted the need for the process to be legal and ethical.

Ms. Reed questioned if the Ethics Board has made advisory opinions in the past. Ms. Katzenmoyer noted that they did but not on this issue.

Ms. Reed suggested that advisory opinions be requested from the Charter Board and Ethics Board.

IV. Agenda Review

Mr. Spencer stated that two ordinances were being added for introduction – transferring funds in the Water Accounts and setting the sewer rate – and a resolution will be added to appoint the Zoning Administrator.

Council reviewed this evening's agenda including the following:

- Award of Contract for the collection of residential municipal solid waste

Mr. Spencer questioned if the contractor could also clean catch basins. Mr. Jones stated that this is a very different type of work. He stated that he has never seen a hauler cleaning catch basins. He noted that this work can be contracted out but is not appropriate as part of this contract.

Mr. Spencer questioned if bags were acceptable or if all refuse needed to be in cans. Mr. Jones stated that bags are acceptable.

Mr. Spencer noted the condition of many bags placed curbside that are not in containers. He questioned the timeline on the current contract. Mr. Jones stated that it expires on December 31.

- Resolution to purchase recycling trucks

Mr. Jones stated that this purchase will bring recycling in-house.

- Ordinance amending Chapter 11 Housing

Mr. Spencer stated that this will begin to release the backlog.

Mr. Waltman questioned if this ordinance included fees. Ms. Kelleher stated that the fees were removed from this ordinance but will be included in the amendment to the fee schedule being introduced this evening.

Ms. Goodman-Hinnershitz noted her pleasure that all fees were consistently being amended through the fee schedule.

Ms. Kelleher also stated that the effective date of this ordinance will be February 1 to allow staff to prepare for the release of the backlog.

- Ordinance authorizing the lease with Olivet Boys and Girls Club at Pendorf Park

Ms. Goodman-Hinnershitz stated that she has reviewed the lease. She stated that this issue will be on the December 19 Work Session and that Mr. Palmer and Mr. Olsen would be present to answer questions. She suggested that all questions regarding the lease be directed to the Solicitor. She requested that Council take action and pass this agreement at their December 27th meeting.

Ms. Reed stated that she has done historical research on the park.

Mr. Spencer questioned who drafted the agreement. Ms. Butler stated that it was not the Law Department. Ms. Goodman-Hinnershitz stated that the agreement was prepared by Olivet and forwarded to the Law Department.

- Resolution appointing the Zoning Administrator

Ms. Kelleher stated that the starting salary is \$55,000 as a direct subordinate also earns \$55,000.

Ms. Goodman-Hinnershitz questioned if this was up for action this evening. Ms. Kelleher stated that it was.

The meeting adjourned at 6:47 pm.

Respectfully Submitted
Linda A. Kelleher, CMC, City Clerk