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## Board of Supervisors Minutes

March 3, 2021 | 7:01 | Remote Meeting Via Zoom

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**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 & Zoning Director; Roger Lysle, Public Works Director; Matt Gordon, Acting Chief of Police; Dave Sander, Solicitor

### 1. Call to Order

Vice-Chair Whitney Hoffman called the meeting to order at 7:01 p.m. and explained that Chairman Leff was unable to join the beginning of the meeting but would be joining eventually.

### 2. Township Recovery Update

Manager Ratliff said there was no update however the Township continues to appreciate the work of the District Attorney's office and recounted a meeting held earlier in the week with them.

### 3. Executive Session Announcements

Solicitor Sander had no Executive Sessions to announce.

### 4. Kennett Greenway Presentation

([www.kennett.pa.us/DocumentCenter/View/4599](http://www.kennett.pa.us/DocumentCenter/View/4599))

There was discussion about the order of the agenda, and Stevens, Hoffman and Ratliff agreed to proceed with the Kennett Greenway Presentation prior to any Township business matters. Ratliff introduced Christina Norland, Executive Director of Kennett Trails Alliance and Chair of Kennett Township Trails and Sidewalks Committee who began the Presentation. Also presenting was Jennifer Dowdell of Biohabitats and Claire Agre of Unknown Studies. The full Kennett Greenway Presentation, which focused on the recent survey results, is available at the link above.

#### Discussion

- Stevens stated that a comprehensive trail has been a high priority of the Township since he has been a Supervisor but said the subject of Greenway was not verbalized until 2015. He asked if he was correct in his timeline. Norland said she believed so, that the name "Kennett Greenway" began then but stated she was not a part of the project at that time. She also summarized other initiatives in the Borough and Township that laid the groundwork to become the "Kennett Greenway."
- Hoffman asked about a wayfinding strategy for this project. Agre explained that in this phase of preliminary engineering, that is not part of the scope of work, but said that would not be something considered in a vacuum to think about the large network.
- Matt Sabo (805 Nutes Farm La) commented via Zoom chat, "If we are setting themes for the overall early phase design, intrusion into houses and neighborhoods bordering preserved land should be an early topic of discussion." He elaborated and spoke to the history of trails being installed along open space and Hoffman said there is sensitivity to privacy but it is a balancing act. Leff also commented on this topic.

*(Richard Leff joined the meeting at 7:55 p.m.)*

- Hunt Bartine (21 Southridge Dr) asked via Zoom chat, “Was cost a consideration or noted in the survey?” Agre said that while it was not a specific question in the survey, cost did come up as one of the top concerns.
- Ratliff thanked Agre and Dowdell for their work on this part of the project and asked if the Supervisors had any initial thoughts or comments. Stevens said that he found the process to date to be very interesting, valuable, and encouraging. He did think some of the survey questions were too simplistic. He said he valued the feedback of the community regarding their lack of support of a one-way option and spoke of the history of this project. Hoffman was impressed with the number of people who engaged with the survey and appreciated that people from surrounding municipalities also participated. Leff and Hoffman shared excitement at the options that are being investigated and the participation of the community.
- Richard Gaw (Chester County Press) asked regarding the estimated Board vote of approval on April 7<sup>th</sup>, what would be the next phase of this project. Ratliff explained the current process and said that while the options are being studied by the consultants to allow the Supervisors to make an informed decision, there is no way to predict what those options will look like and which option the Board will support. If we get the grant extension, the clock will reset as the grant money would have to be spent by June 30, 2022. Norland added that the public feedback during preliminary engineering will likely evolve what is presented. She said nothing presented now is final and there will be one more round of drawings after April.
- Hoffman thanked Norland, Dowdell and Agre for their work and said she is looking forward to the preliminary engineering results.
- John Wilkens (138 Round Hill Rd) voiced his concern on the proposed scheduled April 7<sup>th</sup> decision and questioned if there was enough time to really take in the comments from the community. Ratliff acknowledged the timeline we are trying to follow but stated that he does not feel the Board would rush into a decision on this matter if more time were needed come April 7<sup>th</sup>.

## 5. Meeting Minutes

### a. December 7, 2020

([www.kennett.pa.us/DocumentCenter/View/4598](http://www.kennett.pa.us/DocumentCenter/View/4598))

**Motion presented by Hoffman to adopt the December 7<sup>th</sup> Board of Supervisors Special Meeting minutes. Stevens seconded. Motion passed 3-0.**

## 6. Old Business

There was no old business.

## 7. New Business

### a. Consider March 3<sup>rd</sup> Bill Voucher

([www.kennett.pa.us/DocumentCenter/View/4595](http://www.kennett.pa.us/DocumentCenter/View/4595))

**Motion presented by Hoffman to approve the March 3<sup>rd</sup> Bill Voucher in the amount of \$285,011.06 and approve total transfers in the amount of \$30,912.15. Stevens seconded. Motion passed 3-0.**

Discussion

- Hoffman said she had all her questions answered prior to the meeting.

### b. Consider Kennett Apartments (The Flats) Escrow Release 2

([www.kennett.pa.us/DocumentCenter/View/4596](http://www.kennett.pa.us/DocumentCenter/View/4596))

**Motion presented by Hoffman to approve the Kennett Apartments (The Flats at Kennett) Escrow Release No. 2 in the amount of 1,204,077.90. Motion seconded by Stevens. Motion did not pass after the following discussion as Stevens opposed and Leff and Hoffman abstained.**

Discussion

- Stevens voiced his concern about a statement on the recorded plan that stated the builders would use their best efforts to get a passage/easement to (Anson B. Nixon) Park. He said there were multiple discussions at the

Board level about this, but it has not been done. He wanted to hear from the owners on what those best efforts were before he approves this release.

- Ratliff stated that the Board is not in a legal position to withhold the escrow release tonight.
- Hicks recounted the efforts that had been made by the owner to come up with an agreement for a trail with an abutting property. That agreement was never reached after trying numerous times, the owner reported this to the Township and the Supervisors accepted their best efforts at that time.
- Discussion continued surrounding the Board's past action on this plan and the ambiguity of "best efforts."
- Solicitor Sander offered his opinion that if this was a condition of plan approval that it is appropriate to ask the developer what the best efforts were if that was part of conditional use.
- Hoffman summarized some of the history of this land development and said she would prefer something in writing stating what they did or attempted. She feels that conditions that are listed for conditional use should be met or have documentation as to why they were not.
- Ratliff stated that this was not the final escrow release for this project and asked Sander to offer an option on the fact that the Board is not in a legal position to withhold this release. Ratliff also asked if the Township can still exercise this as a condition of final completion of this plan as he believes there absolutely should be a trail. Sander said that unless the Board disagrees with the engineer's opinion, they should accept this escrow release. However, he said, he does not recommend approving any final escrow release or signing off on the completion of this project until they provide assurances that they have attempted their best efforts. He then offered his recollections on the plan development process.
- Hoffman asked if it was appropriate to table this until the next meeting as she is concerned the remaining escrow balance will be too low to complete a trail. Heinrich reported that the 45-day time frame to release it would have past before the next meeting. Sander did not recommend tabling this and explained his reasons.
- Ratliff commented on the deadline and suggested there could potentially be legal trouble if the Board does not act on this release tonight. Sander stated that if it was certified for release by the Township engineer, it should be released. Heinrich confirmed it was certified by AECOM and the only way to object would be on the grounds of something specific in the AECOM letter. Sander agreed and said he did not want to be taken to court over this and that there was still time to get answers for the trail.
- Stevens said he would vote "no."
- Leff said he wants to know what measures they took and also what options still exist for this trail.
- Stevens said that the other option puts residents of the Flats on Millers Hill where there are no sidewalks and that is not a safe option. It is important to not only go as direct as possible to the Park, but to go as safely as possible. He wants to hear from the developers.
- Ratliff agreed that it would be good to hear from the developer especially since he was not there when this land development plan first began. He offered to schedule that.
- Leff said that while there is a motion and a second, there is a lot of discomfort as to whether or not the work has been done to the supervisor's satisfaction. Ratliff stated the Municipalities Planning Code (MPC) provides for the process of escrow releases and that process is for the engineer to certify the work, which was done on a line-by-line basis. The MPC specifies 45 days to approve the release, or it is automatically assumed approved. He said if the Board takes no action, it will still be assumed completed.
- Discussions continued about what options the Board does and does not have as well as the specifics of the time requirements.
- Stevens commented that he feels there is leverage with the ~1.2M of this escrow release and the ~\$400,000 that still remains and that he does not think the developer will file against the Township as he believes there are other current projects from the same developer underway in either the Borough or the Township.
- Ratliff stated that he thinks we should negotiate within the limits of the state statutes. Hoffman agrees but is interested in drawing a line.
- Sander stated that if the Board was going to withhold this escrow only because they feel best efforts to install a trail were not met, he thinks that will end in court, and not end well.
- Ratliff suggested the Board not call for a vote, allow the 45-day limit to automatically approve the release, but use the opportunity to make a statement to the developer with a letter asking for them to meet and explain their efforts on the trail. Stevens said he was calling for a vote and would vote no.
- Sander explained the potential outcome if the Township is taken to court; a judge could rule allow the release, with interest plus any damages the developer received from not paying their contractors.
- Heinrich offered another option, but Sander again said it is thin ice because it is the engineer who has the authority to recommend the escrow.

- Diane McGovern (345 E Hillendale Rd) commented via Zoom chat, “There was a discussion between this developer and the trail committee around two years ago. Do you have the minutes going back to early 2019 or late 2018?” Flack noted that the minutes were there, and she offered to pull them for the Board to review. Leff said it would be great to see what other trail options might be possible.
- Stevens commented on his thoughts of other potential options and again stated he wants to hear from the developer.
- Ratliff asked Hicks for her recollection, stating that as a conditional use approval, it would have had to have become before the Board before now. Hicks confirmed it came before the Board and referenced the March 8, 2018 review letter from AECOM which mentioned the proposed trail and the plan to purchase ground from the neighboring property owner. According to Hicks, by the time the developer determined their approach for the trail was not feasible, the Borough was planning on putting sidewalks down Walnut Street. High Associates felt that would be an option to connect. She said all of this was discussed at a Board of Supervisors meeting prior to the Board signing off and finalizing this plan.
- Sander read from the plan and agreed that the requirement of the trail is outstanding, but he does not think it is legal to withhold an escrow release based on whether they met a conditional use condition or not. Ratliff asked if the language in the conditional use and then final plan guaranteed the Township and trail and Sander said no.
- Hoffman asked about an addition internal trail that was also proposed. Hicks said that was on the original plans but could not recall why it was not followed through.
- Hoffman stated that again she wants to hold people to what was actually approved.
- Leff asked if the Township engineer could discuss this with the Board prior to any further releases. Sander said yes and Ratliff agreed as they have not yet submitted for the final escrow release.
- Upon the motion not passing, Sander said the Township will have to write a letter to the developer advising them the release was not approved and the reasons why.
- Leff summarized the outcome of the conversation and what he would like to hear at the next Board of Supervisors meeting. He asked if the Supervisors were satisfied at the next meeting could this be voted on again. Sander said yes. Ratliff said he would work with the consultants to achieve the Board’s requests.

**c. Consider Legal Agreement**

**Motion presented by Hoffman to authorize the Chair of the Board of Supervisors to sign the presented legal agreement. Stevens seconded . Motion passed 3-0 after the following discussion.**

Discussion

- Stevens asked if this was reviewed by the Township’s legal counsel and presented to the Board with the recommendation of that counsel. Ratliff confirmed.

**8. Public Comment**

Discussion

- Hoffman offered a COVID-19 update with positive case counts rising in Kennett and surrounding municipalities. She encouraged everyone to follow the recommended precautions and to register with the Chester County Hospital and/or Health Department to get a vaccine.
- Hoffman also shared the upcoming meeting tomorrow with ISPs, local municipalities, the County, the Delaware Regional Planning Commission, along with state legislators to seek ways to improve internet connectivity throughout the Township and surrounding areas. Stevens again asked about the Sunshine Law and Sander said yes if more than one Supervisor is present and enter discussions of agency business, the Sunshine Law would be violated. Ratliff commented on the difficulties of the long-standing Sunshine Law.
- Leff added comments about COVID-19 locally.
- Hillary Fowler (177 Penns Manor Dr) asked via Zoom chat, “How does that affect KCSD reopening?” Leff commented that school districts are outside of the Board’s purview and he would not want to speculate on that. Hoffman said she was unsure no longer having children in the school system. Heinrich offered information based on the emails she has received from the school district.

## 9. Adjournment

**Motion presented by Stevens to adjourn. Hoffman Seconded. Motion passed 3-0.**

The meeting adjourned at 9:09 p.m.

Respectfully submitted,  
Eden R. Ratliff  
Township Secretary