

Plan Modification and Bankruptcy Update

MFRAC Meeting
December 13, 2022

What Happened Since the Last MFRAC Meeting?

- On November 8th, the Receiver filed a Plan Modification in Pennsylvania Commonwealth Court to modify his Amended Recovery Plan. This is a state court matter involving operational impediments the Receiver has encountered in performing his duties under Pennsylvania's Act 47.
 - Based on a compromise plan offered by Councilmember Roots, the Receiver revised the Plan Modification and filed it on December 9th.
- On November 10th, the Receiver filed a chapter 9 bankruptcy proceeding on behalf of the City of Chester in the Eastern District of Pennsylvania. This is a federal proceeding.

How Are These Two Court Proceedings Different?

- The bankruptcy matter primarily addresses the City's finances and financial condition.
- The plan modification in Commonwealth Court addresses City and Authority management and operations.
 - Note: At a bankruptcy hearing on November 22, 2022, attorneys for the Chester Water Authority asked the Receiver whether the term “authority” as used in the Plan Modification referred to the Chester Water Authority. The Receiver clarified that it did not and the parties agreed that the Receiver would file a supplement to the Plan Modification to that effect.
 - On December 5, 2022, the Receiver filed a supplement to the plan modification with Commonwealth Court that stated “Pursuant to an agreement between the Receiver and the Chester Water Authority, the use of the term ‘authority’ or ‘Authority’ throughout the modification does not include the Chester Water Authority.” The Receiver reaffirms this for the purposes of the revised plan modification filed on December 9th.

How Are These Two Court Proceedings Different? (continued)

- In a chapter 9 bankruptcy, a bankruptcy judge's role is primarily to determine eligibility and to determine confirmation of a plan of adjustment if one is brought to her.
- Issues regarding the City's political or governmental powers are excluded from the bankruptcy judge's authority by section 904 of the bankruptcy code.
- The attorney for City elected officials asked the bankruptcy judge not to let the Plan Modification matter move forward, but the bankruptcy judge denied that request and hearings on the Plan Modification matter will begin on December 19th in Philadelphia.

Plan Modification Update

Plan Modification Update

- Since the Receiver filed the Plan Modification in Commonwealth Court on November 8th, he has had discussions with City elected officials to see if agreement could be reached on the Plan Modification.
- Councilmember Stefan Roots proposed a compromise plan to the Receiver that the Receiver has agreed to and filed with Court as a revised Plan Modification on December 9th. The other City elected officials did not agree to Councilmember Roots' proposal.

Why Did the Receiver File the Plan Modification?

- Under Act 47, the Receiver must ensure that the City provides “vital and necessary services” to its residents.
 - Providing services is not just a function of money. It also requires that policies, personnel and technology can address the tasks.
- The Receiver filed the plan modification to address primarily City operational issues in order to ensure that the City is providing vital and necessary services to Chester residents.
 - Currently, City elected officials serve as department heads and direct the day-to-day operations of the City which is unusual for a municipality of this size.
- An overarching goal of many of the plan modification provisions is to ensure that the City has appropriate policies and professional management to run operations.

Plan Modification Overview

- The Plan Modification is divided into several sections and includes initiatives in each section.
 - Initiatives in the existing Amended Recovery Plan (confirmed by the Commonwealth Court on June 8, 2021) that are not specifically modified by initiative number in the Plan Modification will remain as is.
- The Plan Modification sections with initiatives are:
 - Administrative Duties and Professional Management
 - Core Internal Administrative Functions and Ethics
 - Parking
 - Stormwater Authority of the City of Chester
 - Economic Development

Plan Modification Provisions

Administrative Duties and Professional Management

- This section of the Plan Modification seeks to ensure professional management of the City's operations and therefore ensure the provision of vital and necessary services.
- The Receiver believes that the current administrative duties of elected officials effectively serving as autonomous department heads who can act (or not act) without consequence undermines the Receiver's and the Chief Operating Officer's abilities to do their jobs.
 - In the current structure, there is no ability for the COO or the Receiver suspend an elected official's administrative abilities to serve as a department head if they refuse to follow City policies and therefore it is impossible to hold them accountable and fairly enforce City-wide policies.
 - The current structure does nothing to ensure that individuals serving as department heads are even qualified for those positions.
 - City departments still effectively operate on their own with little coordination between them and no clear person who is "in charge."

Plan Modification Provisions (continued)

Administrative Duties and Professional Management

- The plan modification suspends the administrative duties of City elected officials with respect to day-to-day operations and transferring those duties to qualified employees and contractors as determined by the City's Chief Operating Officer/Chief of Staff.
 - Note: The Plan Modification also includes converting the position of Chief Operating Officer to the title of "Chief of Staff" which is already in the City's Administrative Code and has similar responsibilities to the Chief Operating Officer. The Chief Operating Officer position would no longer exist and the City would just have a "Chief of Staff." This individual would report to the Receiver.

Plan Modification Provisions (continued)

Administrative Duties and Professional Management

- City elected officials would chair committees whose role would be to provide input to the Receiver and the COO/Chief of Staff regarding policies that fall within the subject matter area of the respective committee. The City would determine the form, subject matter and membership of those committees.
- Note: This was one of the changes proposed by Councilmember Roots and agreed to by the Receiver.

Plan Modification Provisions (continued)

Administrative Duties and Professional Management

- City employees must follow the directives of the COO/Chief of Staff relating to any matter in the line of their employment.
- City elected officials shall not interfere with the directives of the COO/Chief of Staff or the Receiver. Authority Board members shall not interfere with the directives of the Receiver.
- All City elected officials, employees and contractors shall be required to provide any information in furtherance of their responsibilities that the Receiver of the COO/Chief of Staff requests. (Applies also to authorities).

Plan Modification Provisions (continued)

Administrative Duties and Professional Management

- Receiver shall have the ability to conduct or have conducted operational, financial or forensic audits or studies of any part of the City or any Authority. City and Authority officials and employees must comply.
- Receiver shall have the authority to direct the City or Authority to remove items from their Council or Board agendas.
 - Receiver has encountered numerous situations where agenda items have appeared on Council agendas that the Receiver was not made aware of in a timely fashion so that he and his team could study them and ascertain their impact on the City's finances or operations.

Plan Modification Provisions

Core Internal Administrative Functions and Ethics

- This section of the Plan Modification seeks to create a basic level of core internal vital and necessary services including human resources, finance, procurement and legal.
- Since the Receiver's appointment, the Receiver has had to spend considerable time trying to both develop and manage around significant deficiencies in core internal service areas.
- Because these deficiencies are so fundamental, the Receiver cannot ignore them, and the time he and his team need to spend on these issues is time that they cannot spend on other pressing City issues.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Human Resources Issues
 - Lack of basic City-wide employment policies and procedures (e.g., FMLA policy, etc.)
 - Inconsistent administration and enforcement of policies and procedures that do exist
 - Personnel decisions made by elected officials without consulting human resources or legal
 - No centralized attendance or leave management
 - Lack of basic human resources tools such as organizational charts and complete job descriptions
 - Lack of management of employees on workers compensation or leave
 - Inability to conduct basic employment investigations
 - Allowing Mayor, City Solicitor, Councilman Morgan, former CFO and three employees in the HR department to remain on an expensive health care plan that had been discontinued for all other active employees.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Human Resources Initiatives
 - Receiver shall continue to have the ability to hire and fire City employees.
 - Receiver shall have sole ability to hire contractors (either individuals or firms) on behalf of City or Authority to perform services for the City or Authority.
 - Substitute Receiver for City Council in determining whether to waive residency requirement for a position.
 - If Receiver, COO/Chief of Staff, and City elected officials cannot agree on human resources policies and procedures, Receiver will submit the policy or procedure to the Commonwealth Court in the form of a plan modification and all parties will ask the Court to render a decision within 21 days of the filing. The City would be represented by the City Solicitor in those matters. (Also proposed by Councilmember Roots and agreed to by the Receiver).

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Human Resources Initiatives (continued)
 - All City officials and employees must comply with City human resources policies and procedures. Receiver may ensure compliance through the COO/Chief of Staff including but not limited to termination.
 - Receiver may conduct investigations into City and Authority personnel matters and to review and approve any such investigation conducted by the City or Authority.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Finance Issues
 - Repeated incorrect payroll payments to employees requiring recalculations and retroactive adjustments
 - Lack of basic financial reports such as budget-to-actual reports
 - Extremely late audits (2019 audit should be released very soon)
 - Lack of internal controls resulting in situations such as the “phishing” incident
 - Lack of budget process with departments such that departments do not know what their budgets are or how much they have left to spend
 - Failure to seek reimbursement money for awarded grants
 - IRS penalties of \$750,000 because of incorrect and late payroll reports
 - Backlog of bills needed to be paid
 - Repeated instances of insurance companies sending discontinuation notices for lack of timely payment
 - Inability to produce expenditure reports to the Receiver or City Council in a reasonable time prior to Council meetings at which they are approved.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Finance Initiatives
 - Receiver shall have the ability to ensure that City or Authority has proper internal controls and is following them.
 - City must provide Accounts Payable listings prior to any check run and at least 24 hours prior to any transfer of funds.
 - Expenditure reports must be provided to the Receiver and City Council members at least 6 days prior to any Council meeting at which they will be approved.
 - Receiver shall have sole ability to determine the auditing firm who will perform City or Authority audits.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Finance Initiatives (continued)
 - City elected officials shall be required to pass any budget or budget amendment as directed by the Receiver that does not violate Section 703(c)(1) which prohibits the recovery plan from unilaterally raising taxes.
 - Receiver shall have sole ability to direct how City ARPA funds are spent and any current or future federal or Commonwealth funds. This shall include but not be limited to Community Development Block Grant (CDBG) program funds. Additionally, the Receiver shall have the ability to develop policies and procedures regarding such spending and the reporting thereof which all City officials and employees must comply with.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Procurement Issues
 - Lack of clear and transparent procurement policies and procedures and application thereof
- Procurement Initiatives
 - If Receiver, COO/Chief of Staff, and City elected officials cannot agree on procurement policies and procedures, Receiver will submit the policy or procedure to the Commonwealth Court in the form of a plan modification and all parties will ask the Court to render a decision within 21 days of the filing. The City would be represented by the City Solicitor in those matters. Same for authorities.
 - City officials and employees, including the City Solicitor, shall promptly execute contracts.
 - Receiver shall have sole ability to determine the members of a selection committee for a City or Authority request for proposals or any other procurement where a selection committee is convened. At least one member of City Council or Authority Board member as appropriate for the procurement will be on any selection committee.
 - Receiver shall have the power to sign contract and agreements on behalf of the City and any authority.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Legal Issues
 - Inability for City departments to receive timely legal advice
 - Lack of training and guidance to departments to avoid employment liability and other liability
- Legal Initiatives
 - The City Solicitor shall provide timely written legal advice to City departments. This shall include but not be limited to the drafting and review of contracts and agreements.
 - Should the City Solicitor become aware of a situation where a City official or employee is not complying with an Order of Commonwealth Court or with a confirmed recovery plan or plan modification, he shall immediately instruct the City Official or employee to comply and he shall immediately inform the Receiver.

Plan Modification Provisions (continued)

Core Internal Administrative Functions and Ethics

- Ethics Issues
 - To attract investment and be attractive for companies to do business in the City, the City must be perceived as an ethical place to do business.
- Ethics Initiatives
 - If Receiver, COO/Chief of Staff, and City elected officials cannot agree on ethics policies and procedures, Receiver will submit the policy or procedure to the Commonwealth Court in the form of a plan modification and all parties will ask the Court to render a decision within 21 days of the filing. The City would be represented by the City Solicitor in those matters. Same for authorities. (Also proposed by Councilmember Roots and agreed to by the Receiver).
 - Receiver shall have the ability to initiate and conduct investigations. City and Authority officials and employees shall be required to comply with these investigations. The Receiver's ability to conduct these investigations does not prohibit City or Authority officials from conducting investigations of their own.

Plan Modification Provisions (continued)

Parking

- On September 19, 2022, the Commonwealth Court ruled that the City's parking contract was void because the City did not follow proper procurement procedures.
- Since that time, the Receiver has tried to move forward with obtaining the services of another parking manager and having an independent parking study conducted that is in the best interests of the residents and business of Chester.
 - The Receiver has met with both City officials and Parking Authority officials.
- Another RFP has not been issued because of a disagreement with City officials as to the composition of the selection committee.
- The Receiver believes that the management of any parking contractor can be done by the City and that the City does not need a separate parking authority.

Plan Modification Provisions (continued)

Parking

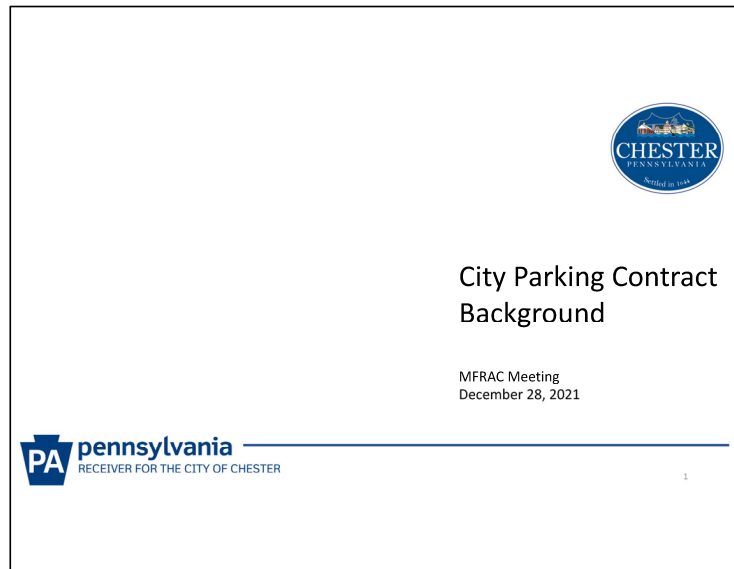
- Parking Initiatives
 - The City shall dissolve or terminate the Parking Authority at the Receiver's direction.
 - The Receiver is specifically authorized to contract with a vendor for the provision of parking services including but not limited to enforcement, design of a comprehensive parking plan and implementation of a comprehensive parking plan. This authorization shall include but not be limited to the ability to issue a request for proposals, determine the selection committee, negotiate and execute a contract with a vendor for parking services including for equipment. This Receiver may do so either through the City or the Parking Authority.

Agreement with Widener

- Because the Receiver has received some questions from City elected officials about the parking agreement he executed with Widener University, we would like to remind MFRAC that Widener's offer was discussed at MFRAC on December 28, 2021 (See next slide).
 - Widener's offer was also specifically discussed in the Receiver's brief to Commonwealth Court (see pages 54-56) filed on July 12, 2022.
- The City will receive \$3.25 million over 10 years (\$325,000/year) that is being used to fund general fund operations. The City already received its \$325,000 payment for 2022. The 2022 payment is already more than the City received in four years from the parking contract it entered into.
- The agreement makes no change to the residential parking permit program.

Agreement with Widener (continued)

Widener's offer was discussed at the December 28, 2021 MFRAC.



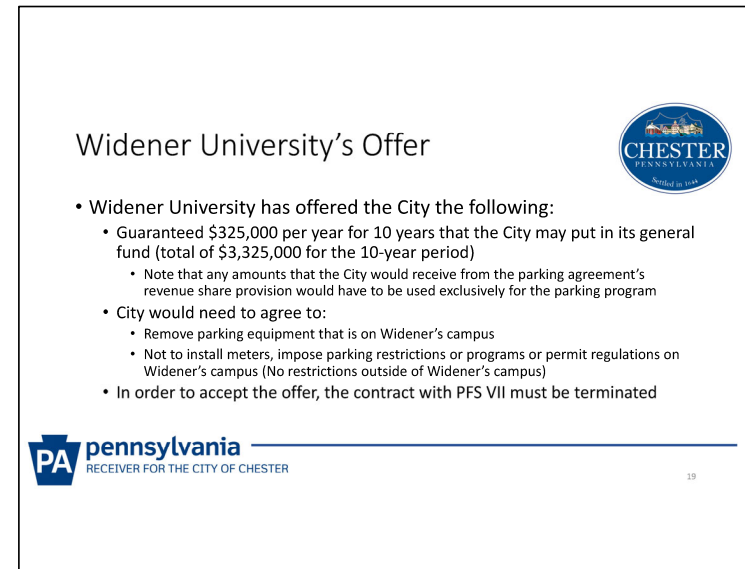
CHESTER PENNSYLVANIA
Settled in 1844

City Parking Contract Background

MFRAC Meeting
December 28, 2021

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CHESTER PENNSYLVANIA
Settled in 1844

Widener University's Offer

- Widener University has offered the City the following:
 - Guaranteed \$325,000 per year for 10 years that the City may put in its general fund (total of \$3,325,000 for the 10-year period)
 - Note that any amounts that the City would receive from the parking agreement's revenue share provision would have to be used exclusively for the parking program
 - City would need to agree to:
 - Remove parking equipment that is on Widener's campus
 - Not to install meters, impose parking restrictions or programs or permit regulations on Widener's campus (No restrictions outside of Widener's campus)
 - In order to accept the offer, the contract with PFS VII must be terminated

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Plan Modification Provisions (continued)

Stormwater Authority

- Stormwater Authority Issues
 - The Stormwater Authority of the City of Chester (“SAC”) is an authority as defined by Section 701 of Act 47 and therefore subject to the Receiver’s jurisdiction under Act 47.
 - SAC levies fees on residents and businesses in Chester who must also pay Chester’s high taxes and fees. The 2021 SAC budget listed stormwater revenue excluding certificate fees to be \$3,482,608.51 which is approximately 35% of the City’s expected property tax revenues for 2023.
 - According to the SAC’s 2021 audit, SAC engaged the services of a collection agency in July 2021 and reports that the collection firm began the collections process on approximately 3,800 parcels.
 - As of November 4, 2022, the Delaware County public access court system lists 1,588 municipal liens that SAC has placed on residents and businesses in Chester for stormwater payments owed.
 - SAC has also applied for and received millions of dollars in loans from Pennvest for projects. Per SAC’s 2021 audit, the total funding provided by Pennvest at the time was \$33,084,91. These loans will need to be repaid through fees charged to SAC customers.

Plan Modification Provisions (continued)

Stormwater Authority

- Stormwater Authority Initiatives
 - The Receiver shall have the sole ability to and discretion to monetize any authority as defined in Section 701 of Act 47 including but not limited to the Parking Authority and the Stormwater Authority
 - The plan modification also references “authorities” in other initiatives including:
 - Ability for Receiver to conduct or have conducted operational, financial or forensic audits or studies of any part of an Authority.
 - Ability for Receiver to hire contractors to perform services on behalf of the Authority.
 - Ability for Receiver to conduct investigations.
 - Ability to ensure proper internal controls for spending money.
 - Ability to select an auditor.
 - Ability to develop procurement and ethics policies (same process as outlined for City)
 - Ability to determine members of an RFP selection committee.
 - Ability to sign contracts and agreements on behalf of authority.

Plan Modification Provisions (continued)

Economic Development

- Economic Development Issues
 - Initiative ECD03 in the Amended Recovery Plan provided that the City would work collaboratively with the Delaware County Planning Department, the Delaware Valley Regional Planning Commission, and DCED in updating the City's 2012 comprehensive plan.
 - A comprehensive plan serves as the primary resource document for long-term land use planning decisions.
 - The City received a grant from DCED to pay for this study. However, due to delays in from the City Planner in providing information to the selected vendor, the Receiver paused the update so as not to waste taxpayer dollars.
 - The Receiver wishes to restart this study, but must ensure that City and authority officials will cooperate.

Plan Modification Provisions (continued)

Economic Development

- Economic Development Initiatives
 - City and Authority officials and employees shall be required to cooperate with the Municipal Comprehensive Plan update by providing the information that vendor requires, participating fully in the process, fully engaging the Receiver's team in every aspect of the process and not further delaying the update. The Receiver may terminate any City or Authority official or employee who does not comply with this initiative.
 - Any economic development incentive for a particular project must be approved by the Receiver.

Plan Modification Hearing

- The Commonwealth Court will hold a confirmation hearing on the Receiver's plan modification beginning at 9:30am on Monday, December 19, 2022, in Courtroom Number 1, 9th Floor, The Widener Building, 1339 Chestnut Street in Philadelphia. If the hearing continues beyond Monday, it will reconvene the following day at the same time and location each subsequent day until the matter is concluded.
- Live-streaming is not available from this location.

Bankruptcy Update

Bankruptcy Update

- At a hearing on Thursday, December 15th, the bankruptcy court will address the City's motion to appoint a judicial mediator.
- Also at that hearing, the bankruptcy court will address Aqua Pennsylvania's motion to lift the stay on the CWA litigation.
 - The City, CWA and Chester County filed separate objections opposing Aqua's motion in favor of trying to seek resolution through mediation.

Message to City Vendors

- In order to ensure the City is able to provide vital and necessary services to residents and to avoid disruptions to residents caused by the bankruptcy case, the City is looking to work with trade vendors and pay undisputed claims of trade vendors in the ordinary course so long as those trade vendors commit to continue to provide services and goods to the City on the same terms as existed before the bankruptcy filing.

How to Stay Informed

- City claims agent bankruptcy website located at:
 - www.donlinrecano.com/chesterpa
- Receiver website located at:
 - www.chesterreceivership.com
- Receiver Facebook page located at:
 - <https://www.facebook.com/ChesterReceivership>
 - Note: The Receiver uses Facebook as it provides the most convenient way for Chester residents to receive updates and to watch meetings.