

Parking RFP/ City Inspections

MFRAC Meeting
March 14, 2023

Purpose of this MFRAC Presentation

- At last weeks' Council meeting (March 8, 2023), the mayor and three members of City Council refused to move forward on two items which are important to addressing quality of life and health and safety issues in Chester:
 - Authorizing an RFP for temporary Parking Management Services and comprehensive parking study
 - Hiring an individual for the position of Deputy Director of Inspectors
- The Receiver is bringing these matters to the MFRAC committee for discussion in the event that he needs to go to Court to address them

Parking RFP

Parking Situation In Chester

- The parking contract with PFS has been the subject of multiple MFRAC meetings and the Receiver's team has spent considerable time trying to fix Chester's parking situation
- Despite a court ruling that the parking contract is void and the Receiver's multiple attempts to have City Council issue an RFP so that parking enforcement can begin again, the Mayor and three members of City Council (not Councilman Roots) have refused to allow that to happen
 - The most recent incident occurred last week when, by a 4-1 vote, the same group of elected officials refused to move forward with a parking RFP

The Parking Contract With PFS Is Void

- On September 19, 2022, the Commonwealth Court found that the parking contract between the City and PFS VII, LLC was **VOID** and that the Receiver may terminate the parking contract.
- Specifically, the Court wrote: “[T]his Court concludes that the City failed to comply with the advertising and competitive bidding requirements of the Third Class City Code, and, as a result, the parking contract is void.” (Decision at p. 19)

Decision in Parking Contract Matter

- Further, the Court wrote on page 21 of its decision:
 - “Here, this Court is not faced with a technical defect in the execution of a public contract, such as a missing signature or a failure to reduce an oral agreement to writing, that can be remedied by subsequent ratification. Receiver contends, and this Court agrees, that the City failed to comply with the mandatory competitive bidding procedures in awarding the contract to PFS, thereby rendering the contract void. It is well settled that ‘[the] mandatory requirements for competitive bidding exist to invite competition and to guard against favoritism, improvidence, extravagance, fraud and corruption in the award of municipal contracts.’” *Fedorko*, 755 A.2d at 122.

What Does it Mean for a Contract to Be Void?

- A “void” contract essentially means that it never existed in the first place. The services of that “contract” can no longer be performed under the law.
- The Receiver cannot agree to modify the contract with PFS as there is no contract because it is void.

Rejection of Parking Contract in Bankruptcy

- The Receiver has also sought to terminate the parking contract in bankruptcy court (which is a different process)
 - This is called “contract rejection”
- The bankruptcy court held a hearing on the Receiver’s motion to reject the PFS on February 27, 2023. Although we are still awaiting a final ruling, the bankruptcy judge stated at the hearing that she was inclined to reject the contract
- Rejecting the contract means that it is terminated

What Happened After the Court Decision?

- At the September 22, 2022, MFRAC the Receiver provided his next steps which were:
 - At the City Council meeting on September 23, 2022, the City issue authorization for a parking RFP that would engage a vendor to perform the following services:
 - Enforce current parking regulations including the resident parking permit program
 - Develop a comprehensive parking plan for the City via a study
 - Implement and manage a parking program for the City
 - City Council refused to issue authorization at that meeting saying that they had questions (Mayor and CM Roots absent from that meeting)
 - After that meeting Receiver met with the three councilmembers to understand why the parking RFP authorization wasn't moved forward

What Happened After the Court Decision?

Continued

- September 28, 2022: Receiver sends termination letter to PFS with effective date of October 1, 2022
- September 29, 2022: City Solicitor emails Receiver indicating City has questions regarding the RFP and requests a meeting (Receiver set meeting for October 5, 2022)
- October 5, 2022: Receiver, City Council and City Solicitor meet to discuss questions. Questions include Parking Authority issues.
- October 6, 2022: Receiver contacts Acting Chair of Parking Authority Board Duane Lee to set up a meeting to discuss parking RFP. Meeting is set for October 11

What Happened After the Court Decision?

Continued

- October 11, 2022: Receiver meets with Parking Authority Board members to discuss situation and RFP. Later that day, Chief of Staff Leonard Lightner sends Parking Authority Board draft RFP
- October 11-17, 2022: Chief of Staff Lightner meets with City officials regarding draft RFP and also corresponds with Receiver. Modified parking RFP document was completed.
- October 24, 2022: Chief of Staff Lightner emails Acting Parking Authority Board Chair Duane Lee regarding Parking Authority's position on the parking RFP
- October 28, 2022: Mr. Lee responds that he is favor of sending out the parking RFP however other authority board members had questions
 - Chief of Staff Lightner follows up to ask for those questions to be sent, but they never were

What Happened After the Court Decision?

Continued

- November 8, 2022: Receiver files Plan Modification
- November 23, 2022: Receiver Chief of Staff asks Chief of Staff Lightner to again reach out to the parking authority to see if they have any questions. No response
- February 14, 2023: Full Plan Modification approved by Commonwealth Court

What Happened After the Court Decision?

Continued

- February 15, 2023: Receiver calls meeting regarding parking RFP. Agrees to allow Mayor to appoint three members of RFP committee. Mayor initially appoints himself, Councilman Morgan and police Commissioner Gretskey. Receiver confirmed that City did not have any further issues. Chief of Staff Lightner sends out parking RFP for final comments.
- Schedule was agreed to as follows (Noted in meeting minutes written by Chief of Staff Lightner) :
 - February 27, 2023: Deadline for any further comments
 - March 2, 2023: Final RFP will be sent to Legal
 - March 6, 2023: RFP will be considered at deliberative meeting
 - March 8, 2023: Authorization to release RFP made at regular Council meeting

What Happened After the Court Decision?

Continued

- February 21, 2023: Receiver Chief of Staff follows up via email with Mayor Kirkland, Councilman Morgan, Councilman Roots, and City Solicitor Schuster to ask if there were any issues. No response
- February 27, 2023: Receiver Chief of Staff again follows up via email with Mayor Kirkland, Councilman Morgan, Councilman Roots, and City Solicitor Schuster to ask if there were any issues. City Solicitor responds to ask that parking RFP be sent to him to be put on agenda. No response from elected officials

What Happened After the Court Decision?

Continued

- March 1, 2023: Receiver, Councilmember Roots and Chief of Staff Lightner met at scheduled recovery plan meeting. Mayor and Councilmember Morgan invited, but were absent. Did not provide a reason for absence
- March 6, 2023: Authorization for parking RFP considered at Council deliberative session. Item remains on agenda for consideration at March 8, 2023, regular Council meeting
- March 8, 2023: Despite weeks of planning without objection, the Mayor and City Council voted 4-1 not to advance a request for proposals (RFP) for temporary parking management services and a comprehensive study of the City's parking needs. (Councilmember Roots voted in favor of issuing the RFP).

Mayor's Statements at Council Meeting

- Explaining his vote not to approve the parking RFP at the March 8, 2023 Council meeting, Mayor Kirkland gave three reasons which can be viewed on the City's website at <https://www.chestercity.com/live/>:
 - A parking study has already been done (Time stamp on video at 19:17:30)
 - Parking contract should have been modified instead of terminated
 - “My biggest issue with this now is that we have modified other things along with our Receiver by being in receivership. I would have hoped that we could have modified the parking situation here in the City of Chester.” (Time stamp on video at 19:17:35)
 - Receiver did not have the authority to enter into an agreement with Widener (Time stamp on video at 19:18:18)

Response to Mayor's Statements

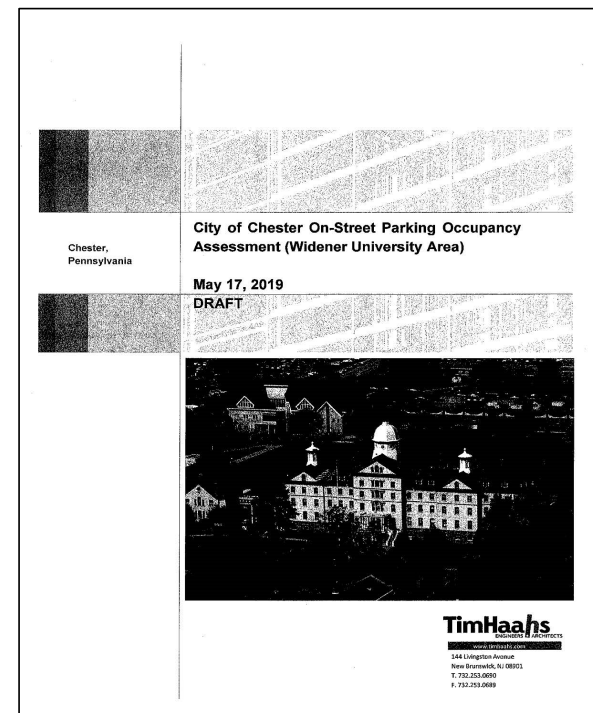
Parking Study Has Already Been Done

- The Receiver's Office has only been able to find one parking study which was **a draft** titled "City of Chester On-Street Parking Occupancy Assessment (Widener University Area" and dated May 17, 2019
- That study was attached as Exhibit E to the City's and PFS' December 16, 2019, filing in the Delaware County Court of Common Pleas injunction matter with Widener University
- Assuming this is the study that the Mayor is referencing (and if isn't, we'd like a copy of the one that he is), this study is not adequate for what the Receiver is trying to accomplish

Response to Mayor's Statements

Parking Study Has Already Been Done

- Parking study:
 - Cover page and all pages are marked "DRAFT"
 - Only focuses on the area around Widener and is not City-wide
 - Dated May 17, 2019
 - After the City signed the contracts with PFS
 - April 25, 2018
 - September 5, 2018
 - Also after Widener began the litigation (January 2, 2019)



Response to Mayor's Statements

Parking Study Has Already Been Done

- Significant problems with parking study:
 - 1. Receiver wants a comprehensive study of parking throughout the entire City. This study only focuses on the areas around Widener's campus. It does not include downtown, areas around Crozer or the soccer stadium
 - 2. The study is marked "DRAFT" which means it is not finalized. (This was the copy filed with the Delaware County Court of Common Pleas)
 - 3. A comprehensive study needs to take place **before** a contract is entered into. This study was conducted **after** the City entered into the contracts.
 - Study dated May 17, 2019 but City entered into contracts with PFS on April 5, 2018 and September 5, 2018. This is completely backwards.
 - Study appears to have been prompted by Widener's litigation which was filed on January 2, 2019. There would be no other logical reason to conduct such a study at that time.

Response to Mayor's Statements

Parking Study Has Already Been Done

- Significant problems (continued)
 - 4. Study is too old. Study was conducted almost four years ago and prior to the COVID-19 pandemic. A timely comprehensive study, not just of the area around Widener University, that takes into account current parking needs is necessary.

Response to Mayor's Statements

Parking Contract Should Have Been Modified Instead of Terminated

- The Commonwealth Court found that the contract was void because the City did not follow proper procurement regulations. A void contract cannot be modified because it never existed in the first place and therefore there is nothing to modify
- PFS admitted that the contract did not make sense financially unless it included Widener's campus. However, an injunction involving the Widener campus has been in place since 2019 and, even if the City was successful, it would take years of litigation to resolve.
- The contract terms are so bad for the City, it remains inconceivable to the Receiver how the City even agreed to it in the first place
- Despite dealing with this matter for over two years, the Mayor and City Council have never provided their suggestions as to how the contract should be modified

Response to Mayor's Statements

Receiver Did Not Have Authority to Enter Into an Agreement with Widener


- The agreement with Widener has nothing to do with contracting for temporary parking enforcement and a comprehensive study
- The City was receiving next to nothing from the parking contract with PFS and was not going to for the foreseeable future because of the injunction
 - The \$325,000 that the City received last year from Widener was about the same (and perhaps more) than the City received from the entire parking contract to date

Agreement with Widener – Discussed at 12-13-2022 and 12-28-2021 MFRAC Meetings

- 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.
- Starting in 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 and budgeted this payment for 2023. 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.




City Parking Contract
Background

MFRAC Meeting
December 28, 2021




RECEIVER FOR THE CITY OF CHESTER

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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



RECEIVER FOR THE CITY OF CHESTER

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Response to Mayor's Statements

Receiver Did Not Have Authority to Enter Into an Agreement with Widener

- If the majority of City elected officials believe that the Receiver exceeded his authority to enter into the agreement with Widener, Act 47 gives them the right to go to court and challenge the decision which they have not done:
 - Section 709(b) of Act 47 states: “Any elected or appointed official of a distressed municipality or authority may petition Commonwealth Court to enjoin any action of the receiver that is contrary to this chapter.”

Response to Mayor's Statements

Receiver Did Not Have Authority to Enter Into an Agreement with Widener

- However, if the Mayor and other members of City Council want to try to void the agreement with Widener, the City will need to:
 - 1. Pay back the \$325,000 provided by Widener in 2022
 - 2. Find \$325,000 to fill the budget gap in 2023 (note that the Mayor and City Council approved a budget that included the \$325,000 from Widener)
- It is confusing to the Receiver why the City would challenge this agreement now since an injunction has been in place since 2019 forbidding meters to be put on Widener's campus. Furthermore, the Commonwealth Court has already found the parking contract to be void, meaning that there is little likelihood of PFS winning this case.

Parking Discussion

- An RFP for temporary parking services and a comprehensive parking study is ready to be sent out. The Receiver and the City's Chief of Staff are ready to have the parking RFP released. The issue right now is that the Mayor and three City Council members are refusing to proceed.
- The Receiver would like to discuss what needs to happen to get this parking RFP out.

City Inspections

City Inspections

Hiring of Deputy Director of Inspectors

- At the March 8, 2023, Council meeting, the Mayor and three members of Council (not Councilmember Roots) refused to move forward with the hiring of a qualified individual for the position of Deputy Director of Inspections
 - Based on the comments at the Council Meeting (which can be seen at <https://www.chestercity.com/live/>), the main complaint was that the individual being considered for the position was not from Chester
- This position is necessary to manage several important codes-related programs which impact the health and safety of residents. Chief of Staff Leonard Lightner briefly touched on improvements that he wanted to make in this area during the February 28, 2023, MFRAC meeting
- The salary and benefits of this position was included in the 2023 budget which was passed unanimously in December 2022

City Inspections

Hiring of Deputy Director of Inspectors

- The Deputy Director of Inspectors position would oversee the following programs which relate to health and safety and would also supervise inspectors who would enforce them:
 - Rental Registration Program (currently, Chester is one of the few cities in Pennsylvania that does not have such a program)
 - Ensures that landlords keep rental properties up to code
 - Vacant Property Registry Program
 - Addresses blighted properties
 - Enforcement of Lead Ordinance
 - Pre-sale Program (ensures that any residential building being sold is code compliant)

City Inspections

Hiring of Deputy Director of Inspectors

- The City posted the position of Deputy Director of Inspectors from December 23, 2022, through February 14, 2023, on all City of Chester social media platforms, in City Hall and on the Union board
- The job description included the following experience requirement:
 - Minimum of five year's experience code enforcement, rental registration, vacant property, pre-sales, property maintenance programs accounting, or a related field; or any equivalent combination of training and experience which provides the required knowledge, skills, and abilities, or in community or economic development, community revitalization, housing or building construction, property management, or construction project management, including three years of such supervisory experience as disciplining, evaluating the performance of, and recommending the hiring, firing and promotion of subordinate staff.
- The City received five applications

City Inspections

Hiring of Deputy Director of Inspectors

- A subcommittee of two City staff (one from HR department and the Building Code Official) and a member of the Receiver's team (economic development/codes lead) interviewed the candidates and made a recommendation to the Chief of Staff
 - The recommended individual met the experience requirement noted in the previous slide
- The Chief of Staff accepted the subcommittee's recommendation and directed that an offer letter be sent to the individual which was sent on March 2, 2023
 - Note: The Receiver is supportive of offering the position to this individual
- On March 8, 2023, the mayor and three members of City Council refused to ratify the hire (Councilmember Roots was in favor of doing so)

City Inspections

Hiring of Deputy Director of Inspectors

- The Receiver would like to move forward with hiring this individual for the Deputy Director of Inspectors as it is critical to the health and safety of Chester's residents that an individual with professional experience managing similar programs in other communities be hired
 - This individual has experience managing similar programs in the City of Allentown
- The Recovery Plan provides the Receiver with the ability to hire and fire City employees:
 - "The Receiver shall have the sole ability to initiate or approve any hiring; enact layoffs and/or terminations; convert full-time positions to part-time; restructure department operations including through consolidations or outsourcing; or reassign personnel, subject to the provisions of collective bargaining agreements if applicable."

End