

SPECIAL EMERGENCY MEETING OF COUNCIL
Held in Town Hall Council Chambers
100 Central Avenue, Hammonton, N.J.
March 6, 2009 at 1:00 P.M.
Minutes can be viewed at www.townofhammonton.org

MEETING CALLED TO ORDER BY MAYOR DIDONATO

Councilman Bertino questioned Brian Howell, Town Solicitor, do the present circumstances of Kessler Hospital warrant a special emergency meeting?

Mr. Brian Howell, Town Solicitor responded, yes.

<u>ROLL CALL</u>	<u>APPROVAL OF SPECIAL EMERGENCY MEETING</u>
Mayor DiDonato – P	Y
Councilpersons:	
Barberio – P	Y
Bertino – P	Y
Lewis – P	Y
Petrongolo – P	Y
Rodio – P	Y
Wuillermin – P	Y

PRESENT ALSO

Brian Howell, Town Solicitor

PLEDGE OF ALLEGIANCE

PUBLIC NOTICE

This special emergency meeting has been posted on Town Hall bulletin board and e mailed to official newspapers today. I also contacted official newspapers by telephone. Please familiarize yourselves with the fire exit to the right and rear of the Council Chambers. Also, there is to be no smoking in the Town Hall at any time.

Kessler Hospital Representatives – Present to update council on status

Nick Cashan, Board of Directors and Kessler Task Force
Robert J. Fogg, Archer & Greiner, Attorney for Kessler Hospital
Greg Morano, Board of Directors and Task Force for Kessler Hospital
Michael Sandnes, CRO Kessler Hospital

Michael Sandnes

Mr. Sandnes updated Mayor and Council on status of Kessler Hospital and concluded that they currently do not have the cash to meet their payroll and taxes. In this event the Board of Health would close the hospital. The employees have agreed to continue to work through these difficult times and he thanked them for their dedication to the public.

Greg Morano

Mr. Morano continued that the representatives have requested to meet with the Mayor and Council of the town of Hammonton to request a loan from the Town in the amount of \$200,000 which would allow Kessler to meet their payroll obligations while they finalize, what they believe, to be a viable buyer contract negotiation. He further advised that in exchange for the loan, Kessler would put up a piece of property on Philadelphia Avenue in Egg Harbor City as collateral.

Brian Howell, Town Solicitor

Mr. Howell advised Mayor and Council that he was able to acquire a quick title search of the property. He also advised that the current statute provides a provision for Mayor and Council to afford a "voluntary contribution" to Kessler Hospital but does not provide for Mayor and Council to loan money and Kessler to pay back the loan to the Town. Therefore, should Kessler not be able to pay back the \$200,000, an argument could be made that since the statute is silent regarding a loan, they may not have to re pay the obligation. However, the Town Solicitor was confident that that argument would fail.

Councilman Bertino questioned Town Solicitor, do you feel Egg Harbor City property is sufficient collateral?

Town Solicitor responded, as far as the search conducted today, yes.

Mayor DiDonato requested Town Solicitor to further research as he believes there is another statute that would provide for the Town of Hammonton to loan Kessler Hospital money.

Councilman Wuillermin noted that the letter of intent, handed to Mayor and Council today by Mr. Greg Morano, is not yet signed. He questioned what is the guarantee that this deal will move forward? He also noted that the letter of intent is not very specific.

Town Solicitor responded there are no guarantees and noted once again that the statutes speaks only of a voluntary contribution.

Mayor DiDonato questioned if the proposed buyer has experience in operating a hospital?

Mr. Morano responded the proposed buyer has no experience and advised Mayor and Council that this deal is the last resort before closing the hospital.

Mayor DiDonato strongly advised that he is against placing the taxpayers funds in jeopardy without a guarantee being in place.

Mr. Morano again stated he cannot promise this proposed transition will be successful.

Councilman Wuillermin concurred with Mayor DiDonato, that this council understands and agrees there is an overwhelming need to keep a viable hospital in Hammonton but Mayor and Council first have an obligation to the taxpayers of Hammonton.

Mr. Nick Cashan requested Mayor and Council to act subject to the letter of intent being signed.

Councilman Wuillermin questioned when can we get a definitive answer?

Mr. Cashan advised if the Town commits, the Hospital will be able to fund their 2 weeks payroll and stay opened, and that will give them time to finalize the transaction with the potential buyer.

Councilman Rodio stated to Mr. Morano that since representatives are asking the Town to fund the \$200,000 Kessler Hospital payroll, he strongly requests Mr. Morano explain to the taxpayers why the previous deal with another potential buyer fell through at the last minute?

Mr. Morano explained that there was a signed offer from a previous potential buyer. However, Kessler Hospital attorney did not feel the bankruptcy judge would deem same as a non viable deal.

Councilman Rodio questioned Town Solicitor if he was privy to agreement?

Town Solicitor responded, no.

Councilman Rodio questioned why was the Town Solicitor not privy to the agreement?

Mr. Morano responded that the agreement included confidential matters.

Town Solicitor responded, that the potential purchaser authorized his review of the agreement, however, Kessler Attorney would not.

Mr. Cashan advised Mayor and Council on the timeline of the previous agreement which Kessler representatives did not receive back until late last Wednesday, 2 days ago.

Mayor DiDonato stated he is concerned with the fact that the previous agreement negotiation took 3-4 months and this new agreement was made in one days time. His other concern is that every time Kessler is about to finalize a purchase agreement with another entity, the deal falls through at the very last minute. He named several hospital that have expressed interest in purchasing Kessler Hospital, including Atlanticare, Virtua, Kennedy, Lady of Lourdes, Deborah, etc. He suggested that maybe Kessler representatives were not assuring the previous deals with potential buyers came to fruition in a manner that they should have. He advised that he respected the representatives for coming to Mayor and Council today and answering their questions, however, he stated that this Mayor and Council first have an obligation to the taxpayers of Hammonton.

Mr. Morano stated he understands Mayor and Council saying "no" to their request for funding, however, asked for them to understand their difficult situation.

Mayor suggested that even though we don't want to lose acute care that maybe Kessler should have temporarily closed acute care and kept the emergency room opened to the public so we would at least have that.

Mr. Robert Fogg responded that he felt the commissioner would keep the emergency room opened to the public even if the hospital was shut down.

Mr. Morano gave a personal promise to council that he would make this new and last deal happen.

Mr. Cashan gave council additional information as to what he interpreted to be the reason the previous deal fell through. He stated that the proposed agreement, at the last minute, substantially changed in a negative way.

Councilwoman Lewis questioned the representatives how they feel this new letter of intent and this new deal differs from previous proposed deals that did not come to fruition?

Mr. Morano responded that they do not feel this proposed letter of intent differs from previous letters of intent but at this time there are no other options.

Councilwoman Lewis then responded, there is no guarantee that this deal will come to fruition either.

Mr. Morano concurred.

Councilwoman Lewis questioned if the board has approached local lenders for the \$200,000 loan they are now seeking from the Town of Hammonton?

Mr. Morano responded, no, as they have not had the time.

Councilwoman Petrongolo questioned if the boards attorney has reviewed the proposal?

Mr. Fogg, Attorney for Kessler, responded, yes, he has reviewed the proposal and feels more comfortable with same as it is a much simpler agreement.

Councilman Rodio questioned why is the attorney who represented the hospital last night not present for this special emergency meeting? He further requested Kessler representatives to call their attorney to ascertain if the letter of intent has since been signed to give this council a better idea of what they are dealing with?

Town Solicitor advised he would advocate an agreement between the Town of Hammonton and Kessler Hospital with contingencies.

Councilwoman Lewis questioned what is the amount of the current outstanding receivables?

Mr. Michael Sandnes responded 25 million.

Councilwoman Lewis questioned what has this board done to attempt to collect the outstanding receivables?

Mr. Sandnes responded that is an unfair question, due to his recent hire.

Councilwoman Lewis then requested another representative answer her question?

Mr. Morano advised they have recently hired a new collection agency to handle this.

Town Solicitor noted that if this new agreement comes to fruition, the Town will benefit with continued tax revenue rather than lose same should Kessler close, since the new buyer would run a "for-profit" entity, which would result in the payment of Realestate taxes.

Mayor DiDonato stressed that many families donated personal money with the promise that Kessler Hospital would somehow regain their financial status and remain opened. Now the board is seeking additional funding from the taxpayers. He does not want to put the taxpayers at risk as this current deal may not come to fruition either.

Mr. Morano reminded the Mayor that that is the purpose for putting up the Egg Harbor City property as collateral.

Town Solicitor stated that would also be a contingency for loaning the \$200,000 to Kessler and will be placed in resolution form.

Councilman Barberio questioned is the Department of Health aware of this letter of intent and could they provide information concerning this interested company?

Mr. Fogg responded the company wishing to purchase Kessler Hospital at this time is the only one in New Jersey. They attempted to purchase another hospital, however, the municipality took over the hospital instead.

Councilman Bertino stated obviously all council's concerns should be stipulated in resolution should we approve loaning the \$200,000 to Kessler, including the anticipated pay back time.

Mr. Cashan advised they anticipate a 120 day pack back should the Town give them the loan.

5 Minute Recess

Mayor DiDonato called a 5 minute recess and requested Kessler representatives to ascertain the status of the signing of the letter of intent as they previously advised they anticipated a signature within the hour.

Resume Special Emergency Meeting

Mr. Fogg advised Mayor and Council that Attorney for Kessler has advised that the letter of intent was still being negotiated at this time but is in the final stages.

Councilman Rodio noted that from 1:00 p.m. until now you still have not progressed in obtaining a signature.

Mr. Fogg responded, yes.

Public Heard

Mayor DiDonato opened the meeting for public input.

Steve DiDonato – Bowling Lane

Mr. Steve DiDonato stated he was concerned that the law firm representing Kessler Hospital at this time employs a former member of the board at Kessler Hospital and the bankruptcy court judge may deem this a conflict in resolving this matter.

Mr. Fogg responded that he disagreed with Mr. Steve DiDonato's concern because Mr. Bucknam is no longer a member of the board at Kessler.

Mr. Steve DiDonato continued that he felt to continue utilizing the same law firm who has previously been unsuccessful in negotiating a deal with a buyer for Kessler is not good practice.

Councilman Wuillermin concurred that he felt utilizing the law firm could be a conflict since Mr. Bucknam was a former member of the board at Kessler.

Councilman Rodio questioned is Mr. Bucknam advising the task force?

Mr. Morano responded, yes, but he feels Mr. Bucknam is in favor of keeping the acute care facility.

Councilman Rodio noted for the record, that during the 5 minute recess, he received a call from the public questioning why the attorney representing Kessler is not attending this meeting.

Dorothy Orlandini – Peach Street

Ms. Orlandini questioned if Mayor and Council authorize a \$200,000 loan to Kessler Hospital, and do not receive the money back from Kessler, what would this cost be for the taxpayers?

Town Solicitor responded, approximately \$40 per household.

Close Public Heard

Mayor DiDonato, seeing no one else interested in being heard, closed the public portion of the meeting.

Mayor DiDonato then questioned will the entire Kessler Hospital Board be privy to the current negotiable deal as they currently are not?

Mr. Morano responded, yes. However, a negotiation committee was formed for the purpose of negotiating with a potential buyer with the understanding that they will report back to the entire Kessler Board.

Councilwoman Lewis, questioning Mr. Morano's response, stated the entire board can then reject any proposal negotiated by the committee?

Mr. Morano responded, yes.

Councilwoman Lewis stressed to Kessler representatives that should this deal fail, this Mayor and Council cannot have you come back asking for more money.

Everyone concurred.

Resolutions

#R028A-2009 Authorize Loan to Kessler Hospital in amount of \$200,000

#R-28A-2009

SECURED LOAN TO WILLIAM B. KESSLER MEMORIAL HOSPITAL

WHEREAS, William B. Kessler Memorial Hospital (hereinafter referred to as "Hospital") failed to pay its employees in the normal course for the week ending March 6, 2009; and

WHEREAS, the Hospital has advised Mayor and Council of the Town of Hammonton that it is in the process of negotiating a Letter of Intent with a potential buyer; and

WHEREAS, it is anticipated that the potential buyer shall post a nonrefundable deposit in the amount of three hundred thousand dollars (\$300,000.00) with the hospital on or before 5:00 p.m. on March 9, 2009; and

WHEREAS, the Hospital has requested the Town's governing body to loan the additional sum of two hundred thousand dollars (\$200,000.00) to allow the Hospital to meet its payroll obligation; and

WHEREAS, the Town desires to assist the Hospital subject to the Town being provided with adequate protection for the repayment of the aforesaid loan; and

WHEREAS, the matter was of sufficient urgency to warrant calling of an Emergency Meeting of Mayor and Council pursuant to N.J.S.A.10:4-9; and

WHEREAS, notice of the meeting was conveyed as required by the aforesaid statute.

NOW, THEREFORE, it is on this 6th day of March, 2009 RESOLVED:

1. The Town of Hammonton (hereinafter referred to as "the Town") shall lend the sum of two hundred thousand dollars (\$200,000.00) in the form of a secured loan to William B. Kessler Memorial Hospital contingent on satisfaction of the conditions set forth below.
2. The aforesaid loan shall be evidenced by a Note and secured by a Mortgage on property owned by The Foundation of William B. Kessler Hospital, Inc. (hereinafter referred to as "The Foundation") at 217 Philadelphia Avenue, Egg Harbor City, New Jersey (Tax Block 207, Lot 11.01).
3. The Foundation shall also simultaneously execute a Deed in Lieu of Foreclosure which shall be held in escrow by the Town of Hammonton to guarantee repayment in accordance with the terms set forth below.
4. The loan proceeds set forth in paragraph 1 hereof shall not be released to the Hospital until the Hospital provides a signed LOI with its prospective buyer in substantially similar form to a draft of that agreement which was provided to Mayor and Council at its emergency meeting of March 6, 2009.
5. Payment shall be further contingent upon the Hospital verifying and the Town confirming, the Hospital's receipt of and immediate access to the irrevocable, nonrefundable payment in the amount of three hundred thousand dollars (\$300,000.00) from its prospective buyer.
6. The Hospital's obligation to the Town shall be guaranteed by a Personal Guaranty executed by a minimum of five (5) members of the Kessler Memorial Hospital Board of Directors and five (5) member of The Foundation of William B. Kessler Hospital Board of Directors. The Personal Guaranty may also be signed by other residents of the Town of Hammonton (subject to approval of those signatories by Mayor and Council). Each signatory on the Personal Guaranty shall be responsible for his, her or its pro

rata share of responsibility. The Personal Guaranty, shall, at the Town's option, be enforceable prior to the Town exercising any of its real estate rights associated with the Egg Harbor City property. Any funds realized from either collection of Personal Guaranty payments or proceeds from the sale of the Egg Harbor City property shall reduce the Hospital's obligation on the Note. Any excess funds after satisfaction of all of the Town's costs, fees and expenses shall be returned to the party or entity which is entitled to reimbursement.

7. The Hospital is currently negotiating a sale of its assets to a prospective buyer. Pursuant to the terms of a proposed Letter of Understanding (hereinafter referred to as "LOI") and consistent with representations made to Mayor and Council, closing is targeted to occur in approximately one hundred twenty (120) days from March 6, 2009, at which time all sums due under the aforesaid Note shall be satisfied.
8. If loan repayment has not occurred by September 6, 2009 (one hundred eighty (180) days from March 6, 2009), the Town shall be permitted to record the Deed in Lieu of Foreclosure in its own name free from any claim of the Foundation or the Hospital and shall be entitled to demand payment from the Guarantors.
9. The Solicitor for the Town of Hammonton and the committee consisting of the Mayor and two (2) Councilpersons shall be permitted to attend negotiating sessions between the Hospital and its prospective buyer(s). The Town representatives shall be bound by any confidentiality agreement executed by the parties but shall be permitted to share details of the progress of the negotiations with the remainder of Council and to the extent necessary in enforcement of repayment of the above loan agreement.
10. The Hospital agrees to provide the Town with a milestone agreement establishing goals marking the progress of its negotiations with the prospective buyer.

Motion by Councilperson Barberio, seconded by Councilperson Bertino, resolution 28A be adopted.

ROLL CALL

Councilpersons:

Barberio – Y

Bertino – Y

Lewis – Y

Petrongolo – Y

Rodio – Y

Wuillermin – Y

Mayor DiDonato – Y

Mayor DiDonato declared the motion carried.

#R028B-2009 Authorize a Temporary Emergency Appropriation in the 2009 town budget

#R 28B-2009

WHEREAS, an emergent condition has arisen with respect to Town of Hammonton and no adequate provision has been made in the 2009 temporary appropriations for the aforesaid purpose, and N.J.S. 40A:4-20 provides for the creation of an emergency temporary appropriation for the purpose above mentioned, and

WHEREAS, the total emergency temporary resolutions adopted in the 2009 pursuant to the provisions of Chapter 96, P.L. 1951 (N.J.S. 40A:4-20) including this resolution total \$4,551,240.75

NOW, THEREFORE, BE IT RESOLVED (not less than two-thirds of all the members thereof affirmatively concurring) that in accordance with the provisions of N.J.S. 40A:4-20:

1. An emergency temporary appropriation be and the same is hereby made for a contribution to the local nonprofit hospital to contribute to the health, welfare and safety of the

community in the amount of \$200,000.00.

2. That said emergency temporary appropriation will be or has been provided for in the 2009 budget under the title of:

Contribution to Local Nonprofit Hospital

3. That one certified copy of this resolution be filed with the Director of Local Government Services.

Motion by Councilperson Bertino, seconded by Councilperson Wuillermin, resolution 28B be adopted.

ROLL CALL

Councilpersons:

Barberio – Y

Bertino – Y

Lewis – Y

Petrongolo – Y

Rodio – Y

Wuillermin – Y

Mayor DiDonato – Y

Mayor DiDonato declared the motion carried

MEETING ADJOURNED

Motion by Councilperson Rodio, seconded by Councilperson Bertino, the meeting be adjourned. Motion carried.

Minutes recorded by April Boyer Maimone, Assistant Municipal Clerk