

CITY OF LEWES
BOARD OF PUBLIC WORKS
Board Meeting Minutes
June 15,2021

The Tuesday, June 15, 2021, board meeting of the Lewes Board of Public Works was held at 9:00 A.M. at City Hall Council Chambers.

1. WELCOME, CALL TO MEETING TO ORDER

President Lee called the meeting to order at 9:00 A.M.

2. ROLL CALL

Board Members:

D. Preston Lee, P.E.
A. Thomas Owen
Richard Nichols
Thomas Panetta
Earl Webb

Ex-Officio Members:

Theodore Becker, Mayor
Darrin Gordon, General Manager
Michael Hoffman, Legal Counsel

Others Present:

Austin Calaman, Assistant General Manager
Sharon Sexton, Administrative Assistant
Ann Marie Townshend, City Manager
Emmett Foraker

3. ADJOURN TO THE EXECUTIVE SESSION

***ACTION:** President Lee made a motion to adjourn to Executive Session, Mr. Webb seconded the motion, which passed unanimously.*

RETURN TO OPEN SESSION

***ACTION:** Mr. Owen made a motion to return to open session, and Mr. Panetta seconded the motion which passed unanimously.*

4. Open forum/general discussion of a Memorandum of Understanding with the Mayor and City Council and proposed revision to the Lewes BPW Charter to resolve the conflict between the City of Lewes and the Lewes BPW. INFORMATION/DISCUSSION/ACTION. (D. Preston Lee)

Mr. Hoffman stated that the Memorandum of Understanding that is before President Lee and Board Members for discussion and consideration and that this document was a product of many discussions aimed at improving the relationship between the City of Lewes and the BPW. Mr. Hoffman stated that the document before the Board was identified as Draft Version dated June 14, 2021, as it was sent last night to the City Council by the City Solicitor. Mr. Hoffman's understanding is that this is intended not be perfect document but is instead intended to be a springboard for better collaboration, cooperation, and discussion between the City of Lewes and the BPW. Notably this document by its terms terminates after a period of two years but does not mean the City and the BPW will only collaborate, cooperate, and discuss issues affecting both entities for a period of two years. To the contrary, termination will incentivize continued dialogue and cooperation going forward. There is also a companion agenda item this morning concerning the proposed amendments to the BPW Charter.

There was a technical glitch with the streaming and Ms. Townshend requested that the link be reposted. This task was completed, and it was Mr. Hoffman's recommended that President Lee make a motion to go back into open session and begin with agenda item number four again.

RETURN TO OPEN SESSION

ACTION: *Mr. Owen moved to return to open session, Mr. Panetta seconded the motion, which passed unanimously.*

Mr. Hoffman restated the following: the Memorandum of Understanding that is before President Lee and Board Members for discussion and consideration and that this document was a product of many discussions aimed at improving the relationship between the City of Lewes and the BPW. Mr. Hoffman stated that the document before the Board was identified as Draft Version dated June 14, 2021, as it was sent last night to the City Council by the City Solicitor. Mr. Hoffman's understanding is that this is intended not be perfect document but is instead intended to be a springboard for better collaboration, cooperation, and discussion between the City of Lewes and the BPW. Notably this document by its terms terminates after a period of two years but does not mean the City and the BPW will only collaborate, cooperate, and discuss issues affecting both entities for a period of two years. To the contrary, termination will incentivize continued dialogue and cooperation going forward. There is also a companion agenda item this morning concerning the proposed amendments to the BPW Charter.

Mr. Hoffman stated that there are two key amendments proposed. First, the BPW Charter would be amended to require the Mayor and City Council prior consent to expand utility service to any territory outside the City of Lewes municipal limits. Second, the BPW Charter would also be amended to resolve uncertainty created by a recent Delaware Superior Court decision by expressly provided Lewes BPW the general power to sue and be sued with the caveat that the Lewes BPW lacks the ability to sue and be sued by the City of Lewes for a period of five years. The proposed amendments before the Board today is the version of the draft charter amendment as sent to Lewes BPW council last night by the City Solicitor.

Mayor Becker stated that this provision of two years in Section 15, was supposed to be five years and it is not correct. Mr. Hoffman stated that this was the version that the BPW had. Mayor Becker said that it was not caught by Mr. Mandalas.

City Manager, Ms. Townshend was concerned with the wording stating that it expires at five years should be corrected to reviewed, as that is what was discussed. Mayor Becker stated that neither change made it in the document, and it was not the provision that was agreed to by council last evening. Mayor Becker stated he would leave the room if further discussion was needed.

President Lee took a census of the Board of whether continue in Open Session or return to Executive Session. The Board decided to remain Open Session to discuss. Mr. Panetta questioned what the correction to the synopsis was. Mr. Hoffman stated that in the synopsis of the charter amendment still reflects two years and would be changed to five years and we would capture that change in a motion.

Mr. Hoffman recommended having a discussion and then a motion could be made. Mr. Hoffman reminded the Board that they have the option could go back into Executive Session at any time. Mr. Webb questioned if we had the actual language. Mayor Becker stated that it needs to be reassess and reevaluated at the end of the term of five years. Mayor Becker stated that the term sunseting should have been removed. The agreement was that at the end of five years renegotiation would occur. Mr. Hoffman questioned if the intent was to have renegotiation built in after the five years expires. Mayor Becker said that it was not necessarily to expire but to reassess, reevaluate, and reconvene to see where we stand on these items at the end of five years.

Ms. Townshend stated that if there was an unintended consequence within the five years, both parties should agree to renegotiate that item. Mayor Becker felt that two years was too short, and five years gave an opportunity build a stronger relationship. Mr. Hoffman stated that because of the bi-lateral contract if both parties agree to negotiate, it can be done at any time. Mr. Panetta confirmed the City's request was to change the termination wording to renegotiation. Mayor Becker agreed and recommended to change language of sunseting as well.

Mr. Panetta questioned when city council will have another election. Mayor Becker stated that extending the term would get the Board through a complete cycle and that there needed to be more time to build a relationship. Mayor Becker and President Lee had a prior conversation yesterday and that they that 5 years was an acceptable and reasonable number. Mr. Panetta questioned if the City Council would be willing to accept 2025. Mayor Becker responded that it seemed to be consistent with the sued and be sued provision at five years. Mr. Panetta argued that the MOYU covers more than that. Mayor Becker agreed but believes five years is a reasonable number and gets the Board through a complete election cycle and more.

Mr. Hoffman recommended that it would benefit the Board to return to Executive Session.

ACTION: *Mr. Owen motioned to adjourn to executive session, and Earl Webb seconded, which passed unanimously.*

RETURN TO OPEN SESSION

ACTION: *President Lee motioned to open session, Mr. Owen moved to return to open session, and Mr. Webb seconded the motion which passed unanimously.*

President Lee stated the meeting will resume with Item four on the agenda. Mr. Hoffman stated that following the discussion, the Board did revise Section 15 of the provision. Section 15 will be revised to read: Section 15 Renegotiation/New Agreement. This MOU and all obligations here under shall be reviewed and renegotiated and the parties shall agree on a new agreement to apply going forward prior to July 1, 2026. Mr. Hoffman stated that it can be incorporated into the motion if the Board so chooses today and would become the direction going forward.

Mr. Hoffman read motion to authorize Board President Lee to execute the Memorandum of Understanding of the City of Lewes. Said document being Draft Version June 14, 2021 v.1, as it was sent to the BPW council last night by the City Solicitor, with the understanding that the General Manger is directed to provide the Mayor and City Council with a list of the property to be listed within Section 10, to be jointly titled in the City and the BPW and with the understanding that Section 15 will be revised per the City's request. To provide as follows Section 15 Renegotiation/New Agreement. This MOU and all obligations here under shall be reviewed and renegotiated and the parties shall agree on a new agreement to apply going forward prior to July 1, 2026.

ACTION: *Mr. Owen made a motion to authorize the Board President Lee to execute the Memorandum of Understanding of the City of Lewes, and Mr. Panetta seconded the motion.*

Mr. Panetta clarified the revisions to section 15 as requested by the City of Lewes, is intended to put a hard stop on the agreement and that it will be renegotiated and reviewed and that would be completed by 2026. Mr. Panetta agreed that it does not mean that the BPW will not stop cooperating with the city, but an end date is needed. Mr. Owen agreed that the agreement needs to be renegotiated and if it is not then it terminates. Mr. Owen reenforced that it is a bi-lateral agreement, and the two parties can renegotiate any time.

The motion passed unanimously.

ACTION: *Mr. Panetta made a motion to approve the proposed amendments to the BPW Charter as provided in the draft charter amendment as that document was sent to the BPW council last night by the City Solicitor with the caveat that the synopsis be amended to reflect that each*

incorporated entity his prohibited to sue other entity for a period of five years to reflect Section Two of proposed amendment. Mr. Owen seconded the motion.

President Lee stated this is a beginning of the end and believes that the two entities can both work cooperatively and communicate thoroughly, be upfront with each other, and make this a whole new start. President Lee stated that he is happy at this point.

Mayor Becker stated that he is happy at this point and appreciates the efforts made to work with the city. Mayor Becker stated that they had come along way and looks forward to working with the Lewes BPW. Mayor Becker will take these approved changes before City Council for consideration on Friday morning and does not anticipate any problems. Mayor Becker restated that he looks forward to working together moving forward.

Mr. Panetta wanted to thank Senator Lopez for facilitating negotiations that have gone on and President Lee for leading negotiations for the BPW side that has gone on for nearly three years. President Lee added that they want to thank Representative Smyk. Mayor Becker agreed and wanted to thank Representative Schwartzkopf for the helpful dialogue.

Mr. Webb added that during the election that this was the issue heard on both sides. Mr. Webb stated elections matter and that they listened to their constituents, collaborated, and is looking forward to putting this issue behind them.

Mr. Owen stated this is a good document and like most negotiations each party does not necessarily get 100% of what the BPW want, but everyone gets something. Mr. Owen stated he is in favor of it.

The motion passed unanimously.

Mike Hoffman stated that the Board is expected to meet on Monday and the expectation is that the Board will consider a formal resolution that will formally present the charter amendment to Senator Lopez and Representative Smyk. Mr. Hoffman will draft this document and circulate for the Monday meeting.

5. Open forum/general discussion of approach to fill pending vacancy of General Manager position. INFORMATION/DISCUSSION/ACTION. (D. Preston Lee)

President Lee contacted RKL about a search for the General Manager replacement and was referred to Beth Rosenberger, who RKL works with. President Lee had a follow-up call and spoke with Beth Rosenberger in general terms of how she conducts searches and rates. She charges by the hour, \$75-\$85, or by the percentage of the salary of the person selected. President Lee emailed Beth Rosenberger requesting a formal proposal and received proposal from RKL, and the rate had doubled and did not mention Ms. Rosenberger. President Lee is disappointed and, in a quandary, to move forward. Mr. Owen questioned if Ms. Rosenberger will be the one searching for the new hire. President Lee stated that the proposal does not say who be conducting the

search. Mr. Webb stated that it sounds as if RKL subcontracted her, and the Board would now be paying both sides. Mr. Owen questioned if it is required to post the job publicly in BPW bylaws. Mr. Hoffman stated that a public bid is not required.

President Lee would like to contact RKL and negotiate rate. Mr. Owen suggested that the Board look around for another "headhunter type". Mr. Panetta stated that time is an issue. Mr. Panetta questions if an estimate is given for an amount of time. President Lee stated that no estimate of time was give.

Mr. Webb addressed Mr. Gordon and asked what his recommendation would be given that he has been through this process. Mr. Gordon stated that he was not going to offer his recommendation and that the BPW has an Assistant General Manager for that purpose, and he is a great one. President Lee not disregarding that BPW has great Assistant General Manager, but whether the BPW should be searching broader.

Mr. Owen recommends that we go back to RKL and clarify terms, such as who they are recommending. Mr. Owen questions if Ms. Rosenberger was a RKL staff member. President Lee stated that Ms. Rosenberger is not a RKL employee, but a consultant. Mr. Owen questions, if Ms. Rosenberger is a person the Board would want to hire. President responded that she seems competent and confident she could find a person to fill the position. Mr. Owen recommended that the Board BPW notify RKL we are not interested and go with Ms. Rosenberger. President Lee stated that we cannot go around RKL.

Mr. Panetta stated that we have interviewed Mr. Calaman, but from a prudency perspective the Board must validate, and this is what this is about. Mr. Panetta recommends the Board accepts the RKL proposal and try to renegotiate rate. President Lee questioned if the Board should advertise locally, such as indeed or APPA. Ms. Townshend stated that with RKL, the Board is paying for a headhunter and if there is a viable candidate, the headhunter may not be needed. Ms. Townshend suggested that the Board put the ad through DEMEC and would cut costs significantly. Mayor Becker stated that advertising locally would expedite the process and a headhunter would vet the candidates which would slow down the process.

Mr. Webb stated he supports advertising locally. President Lee questioned who is going to place the advertisements. Mr. Panetta stated that this position requires a certain niche and that is what the Board will pay a headhunter for.

Mr. Foraker, member of the public, questioned who would employees report to during this hiring period when Mr. Gordon is gone? President Lee stated the logical solution would be that employees report to Mr. Calaman and there will further discussion another time.

Mr. Panetta stated that the number of applications the Board would receive would be overwhelming and would like to go with RKL after trying to negotiate the rates. Mr. Owen recommended going to both RKL and APPA. President Lee stated that when he spoke with Ms. Rosenberger, he had mentioned those sources, such as APPA, and she stated that was great news

to have upfront. Mr. Panetta stated that it would need to be added to the contract if we find candidate separate from RKL and would just pay the hourly rate. Mayor Becker stated that RKL would be entitled to a finder's fee if they turn up the candidate.

Mr. Owen question if the proposal stated hourly rates. President Lee stated the average rate is \$150 and other team member rates varied. Mr. Webb questioned how much time we would give RKL because that will influence the decision. Mayor Becker stated that RKL will give an estimate of timelines, such as a month to find a list of candidates. Mr. Owen wants language to state that the contract will be terminated if candidate found by the BPW.

Action: *Mr. Owen made a motion that the Board will move forward with the RKL proposal with the option to use other sources to find candidates. Mr. Panetta added an amendment to the motion, that President will negotiate lower rates. Mr. Hoffman added an amendment that if the Board chooses to proceed with a candidate of their own, it may terminate at any time.*

Mr. Webb seconded the motion, which passed unanimously.

6. Adjournment

The meeting adjourned at 12:00 P.M.

Respectfully Submitted,
Sharon Sexton
Administrative assistant