

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. Alan Walker, In his capacity as Secretary for
the Department of Community and Economic
Development,

Petitioner,

v.

City of Harrisburg,

Respondent.

No. 569 M.D. 2011

ORDER

AND NOW this 23rd day of September, 2013, following review of the modified recovery plan for the City of Harrisburg ["City"] filed with this Court on August 26, 2013 ["Harrisburg Strong Plan" or "Plan"], as well as consideration of the arguments offered at the Hearing, the representations contained in the Harrisburg Strong Plan, the record of this Case, the testimony offered at the Hearing, and any other evidence presented, the Court makes the following findings of fact and conclusions of law:

1. On February 6, 2012, the Receiver filed with the Court a preliminary recovery plan for the City ["Preliminary Plan"].

2. Pursuant to Section 703(d) of the Municipalities Financial Recovery Act of July 10, 1987, P.L. 246 (Act 47), *as amended*, 53 P.S. § 11701.703(d), the Preliminary Plan was confirmed by order of this Court entered on March 9, 2012 ["Preliminary Plan Order"]. In accordance with the standard set forth in Section 703(d) of Act 47, the Court found that the Preliminary Plan was not arbitrary or capricious, and that it was not wholly inadequate to alleviate the fiscal emergency of the City.

3. Pursuant to the Preliminary Plan, as reflected in the Harrisburg Strong Plan, the periodic reports submitted to the Court by the Receiver, and as otherwise evidenced at the Hearing, since the approval of the Preliminary Plan, the Receiver has undertaken certain steps, in cooperation with City officials, to increase City revenue and reduce City expenses ["Preliminary Plan Initiatives"].

4. Based on the representations contained in the Harrisburg Strong Plan and the evidence otherwise submitted to the Court, the Receiver has also engaged in negotiations with various key creditors of the City and has achieved a comprehensive set of consensual agreements with those creditors, all as more fully reflected in the Harrisburg Strong Plan and the supporting exhibits thereto.

5. In undertaking his duties as Receiver, the Receiver has capably exercised his duties and obligations as set forth in Act 47.

6. Based on the Certificates of Service filed of record in this case, due and sufficient notice of the filing of the Harrisburg Strong Plan and the hearing thereon has been provided.

7. Based on the representations contained in the Harrisburg Strong Plan and the evidence otherwise submitted to the Court, the Harrisburg Strong Plan is consensual in that virtually all creditors have agreed to the Plan and that fact, in and of itself, forms a substantial basis to confirm the Plan. Because Act 47 does not permit the Court to impose contractual concessions, the consensual agreements reflected in the Plan could not have been implemented over creditor objections.

8. Further, the transactions contemplated by the Plan need to be effectuated in order for the City to continue to provide necessary public services and avoid running out of cash in a matter of a few months.

9. While not specifically required under applicable law, this Court finds that the Plan is feasible in that there is a realistic prospect that the funds provided or to be provided through the asset monetizations, the operational initiatives, the budgetary adjustments reflected in the Plan, and other potential future funding sources described in the Plan will allow the City to, among other things, balance its annual budget through 2016 and restructure and/or eliminate significant debt obligations owed by the City.

10. A key component to the Plan is the sale of the Incinerator,¹ according to the terms set forth in the Plan (the "Incinerator Transaction"). As supported by the evidence submitted to the Court, the Incinerator Transaction will permit the retirement of significant incinerator indebtedness and will result, together with proceeds of the Parking Transaction next referenced, in the total elimination of significant Incinerator debt obligations of the City. City Council has approved the Incinerator Transaction, and the related Asset Purchase Agreement and Waste Disposal Agreement, as evidenced by the resolution approving such Incinerator Transaction (the "Incinerator Resolution").

11. A second critical component to the Plan is the closing and funding of the Parking Transaction. As supported by the evidence submitted to the Court, the Parking Transaction will provide essential funding to the City that, provided the closing and funding of such transaction occurs by early December 2013, can allow it to, among other things, balance its budget in 2013, achieve balanced budgets in years 2014-2016, meet its restructured debt service obligations, and be benefited by fundings for City infrastructure improvements, economic development within the City and the initiation of a healthcare trust fund. As evidenced by the resolution approving the Parking Transaction submitted to the Court (the "Parking Resolution"), City Council has

¹ Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Plan.

approved the essential structure of the Parking Transaction, the detailed terms of which are set forth in the Plan and the Amended Term Sheet attached to the Parking Resolution. Based upon the representations made at the Hearing, it is anticipated that, in the near term, the City will enact the ordinance necessary to effectuate the Parking Transaction (the "Parking Ordinance") and, as a condition thereof, will approve certain key documentation that will effectuate the Parking Transaction, including, without limitation, an Asset Transfer Agreement, which documents City Council will review to determine and assure their conformity to the principles contained in the Harrisburg Strong Plan.

12. A third important component to the Harrisburg Strong Plan is the significant reduction of City labor costs, through the cooperation of the FOP and AFSCME, and their agreement to material modifications to their labor contracts through 2016. As evidenced by the resolutions and ordinances related to the modification of the FOP contract (the "FOP Contract Modification") and the modification of the AFSCME contract (the "AFSCME Contract Modification"), City Council has approved such contract modifications. The Court understands that negotiations with the International Association of Firefighters ("IAFF") are on-going, but that it is anticipated that a resolution thereof can be expected before the implementation of the Harrisburg Strong Plan.

13. A fourth significant component to the Harrisburg Strong Plan is the settlement and restructuring of debt obligations owed by the City to various creditors that have been, or will be, reflected in written consensual settlement agreements, the terms of which are more fully described in the Plan (the "Creditor Settlement Agreements"). The settlement and restructuring of these debt obligations constitute an important component of the Plan's feasibility. The Ambac Settlement Agreement has already been memorialized in a written settlement agreement and

submitted to the Court. Based on representations at the Hearing, the remainder of the Creditor Settlement Agreements will be documented in accordance with the terms of the Plan.

14. The transactions and other operational initiatives and actions contemplated with respect to the water and sewer systems (the "Water & Sewer Transactions") are a significant component to sustaining and enhancing the stability and vitality of the City that will result from the implementation of the Harrisburg Strong Plan and the Court finds such proposed Water & Sewer Transactions to be in the best interests of the City.

15. As supported by evidence submitted to the Court, an additional critical component of the Harrisburg Strong Plan, conditioned on the Harrisburg Strong Plan's consummation, is the implementation of a 1% increase in the Earned Income Tax on City residents ("EIT Tax") for the City's budget years 2014-2016, which EIT Tax the City Council has approved, as evidenced by the ordinance approving such tax ("EIT Tax Ordinance"). The Court finds that, without such funding, the City would not be able to achieve a balanced budget for its 2014-2016 fiscal years, including payments on the City's rescheduled debt obligations. Given the essential need of the proposed EIT Tax, the Court finds that approval of such tax, pursuant to its powers in Chapter 7 of Act 47, is warranted.

16. Based on the representations contained in the Harrisburg Strong Plan, the Strong EDC, the Strong IIC and the Harrisburg OPEB Trust are significant components to sustaining and enhancing the stability and vitality of the City that will result from the implementation of the Harrisburg Strong Plan.

17. Pursuant to Section 703(e) of Act 47, 53 P.S. § 11701.703(e), the Court finds that the Harrisburg Strong Plan is neither arbitrary nor capricious, and it is not wholly inadequate, but rather there is a reasonable likelihood that it can alleviate the fiscal emergency of the City.

18. The Court acknowledges that, even upon confirmation of the Plan, its implementation is contingent upon the satisfaction or waiver of the conditions to the consummation of the various components to the Harrisburg Strong Plan set forth in the Plan (the "Conditions to Consummation"). The Court recognizes that the implementation of the Plan is subject to fluctuations in the tax-exempt bond market, because, among the Conditions to Consummation is the condition that the proceeds of the Incinerator Transaction and the Parking Transaction available for payment to certain creditors reach a certain minimum threshold; and, in turn, achieving that minimum is materially affected by the cost of securing tax-exempt financing in the market at the time of the anticipated consummation of the Plan.

Now, therefore, it is hereby ORDERED:

- A. The Harrisburg Strong Plan is hereby CONFIRMED pursuant to 703(e) of Act 47.
- B. Subject to and upon the satisfaction or waiver of the Conditions to Consummation, the Receiver and/or the City, including all elected officials, as applicable, are hereby authorized and required to take all actions necessary to implement the various of components of the Plan, in accordance with the terms of the Plan.
- C. Without limiting the generality of the Paragraphs A and B hereof, the consummation of the Incinerator Transaction is hereby authorized according to the terms set forth in the Plan, and the Incinerator Asset Purchase Agreement and the Waste Disposal Agreement, substantially in the form of, respectively, Exhibit 1 and Exhibit 2 to the Plan, are hereby approved (the "Incinerator Agreements"). In addition, the distribution of proceeds resulting from such Incinerator Transaction pursuant to the terms of the Plan is hereby approved. The

Receiver and/or the City, including all elected officials, as applicable, are hereby authorized and required to take action necessary to effectuate the Incinerator Transaction pursuant to the terms of the Plan, including, without limitation and as applicable, finalizing and executing any relevant agreements, resolutions, ordinances and any other necessary documentation. The Receiver is hereby authorized and required to take action necessary to cause the distribution of the resulting proceeds from such transaction pursuant to the terms of the Plan.

- D. Without limiting the generality of Paragraphs A and B hereof, the consummation of the Parking Transaction according to the terms of the Plan and the Amended Term Sheet, submitted as Exhibit 3 (Amended) to the Plan, is hereby approved. In addition, the distribution of proceeds resulting from such Parking Transaction pursuant to the terms of the Plan is hereby approved. Subject to the approval and effectiveness of the Parking Ordinance, the Receiver and/or the City, including all elected officials, as applicable, are hereby authorized and required to take action necessary to effectuate the Parking Transaction pursuant to the terms of the Plan, including, without limitation and as applicable, finalizing and executing any relevant agreements, resolutions, ordinances and any other necessary documentation. As part of the effectuation of the Parking Transaction, the Receiver is hereby authorized and required to take action necessary to cause the distribution of the resulting proceeds from such transaction pursuant to the terms of the Plan.
- E. Without limiting the generality of Paragraphs A and B hereof, the consummation of each of the FOP Contract Modification and the AFSCME Contract

Modification is hereby approved. Such FOP Contract Modification and AFSCME Contract Modification, substantially in the form submitted respectively as Exhibit 4 and Exhibit 5 to the Plan, are hereby approved. The Receiver and/or the City, including all elected officials, as applicable, are hereby authorized and required to take action necessary to effectuate the FOP Contract Modification and the AFSCME Contract Modification, including, without limitation and as applicable, finalizing and executing any relevant agreements, resolutions, ordinances and any other necessary documentation.

- F. Without limiting the generality of Paragraphs A and B hereof, the documentation and/or consummation of each of the Creditor Settlement Agreements presented as an exhibit to the Plan, or as otherwise placed in evidence, are hereby approved. The Receiver and the City, including all elected officials, as applicable, are hereby authorized and required to take action necessary to effectuate the Creditor Settlement Agreements in accordance with the terms presented to the Court, including, without limitation and as applicable, finalizing and executing any relevant agreements, resolutions, ordinances and any other necessary documentation. Any Creditor Settlement Agreements that remain to be documented will be documented in accordance with the terms of the Plan and filed with the Court thereafter. To the extent deemed necessary and appropriate by the Receiver, the subject creditors, the City, or City Council, such written settlement agreements shall be submitted to the Court for its approval.
- G. Subject to the satisfaction or waiver of the Conditions to Consummation and the closing and funding of the Incinerator Transaction and the Parking Transaction,

the Court, pursuant to Chapter 7 of Act 47, hereby authorizes and requires the City, including all elected officials, to take action necessary to, in accordance with the EIT Tax Ordinance approved by City Council, implement the EIT Tax for years 2014-2016, without the need for further approval of this Court.

H. Subject to the satisfaction or waiver of the Conditions to Consummation and the closing and funding of the Incinerator Transaction and the Parking Transaction, the creation, implementation and funding of each of the Strong EDC, Strong IIC and the Harrisburg OPEB Trust, pursuant to the terms of the Plan, are hereby approved. Thereupon, the Receiver and/or the City, including all elected officials, as applicable, are hereby authorized and required to take action necessary to effectuate the creation, implementation and funding of each of the Strong EDC, Strong IIC and the Harrisburg OPEB Trust, pursuant to the terms of the Plan, including, without limitation and as applicable, finalizing and executing any relevant agreements, resolutions, ordinances and any other necessary documentation.

I. Upon the satisfaction or waiver of the Conditions to Consummation, the Receiver shall submit to the Court notice that such conditions have been satisfied or waived. Conversely, in the event the Conditions to Consummation are not satisfied or waived, the Receiver will report that such conditions have not been satisfied or waived and will advise the Court as to how the Receiver intends to proceed with respect to carrying out his duties and obligations as Receiver.

J. As set forth in Part Twelve of the Plan, the Court shall retain jurisdiction over the Plan and the implementation thereof, including, without limitation, over any subsequent modifications, if any, to the Plan.

A handwritten signature in black ink that reads "Bonnie B. Leadbetter". The signature is written in a cursive style with a large, stylized "B" at the beginning.

BONNIE BRIGANCE LEADBETTER, Judge