

MEMORANDUM

From: Commissioner Mark C. Scott, Esq.

To: The People of Berks County

RE: Alternative to the Sale of Berks Heim

Dated: June 26, 2018

Introduction

The current controversy regarding the proposed sale of Berks Heim has been viewed as a matter of two difficult choices: raise taxes to offset losses or sell the facility. Today I will propose a third more appealing approach that may preserve the Heim as a County owned asset while eliminating the losses that would necessitate a tax increase.

Recognizing the passion and commitment of those who wish to retain our County home, I will temporarily suspend my support for a sale of the Heim in the sincere hope that interested parties can reach a reasonable compromise by means of the proposal described in this memorandum. I will begin with an overview of the factors supporting and weighing against the proposed sale, followed by a description of initiatives that may render the sale unnecessary and secure Berks Heim for the foreseeable future.

CONSIDERATIONS SUPPORTING SALE OF BERK'S HEIM

Throughout its history, Berks Heim has suffered from an erratic financial performance, at times generating large losses while at others, large profits. Over the long run, the Heim has essentially broken even. However, current forecasts based upon a reasoned analysis suggest a long term negative trend is impending. The factors supporting the worsening losses we project include the following:

FLAT REVENUE

Berks Heim derives most of its revenue from Medicaid payments covering 80% of its residents. The Medicaid rate is established by State and Federal authorities and has increased a total of less than ten percent over the past decade despite a much greater increase in actual operating costs. The County has to date received no encouragement to the effect that Medicaid payment rates will increase at any point in the future.

Intergovernmental transfer funds provide some additional income, but are unpredictable, volatile, and have been suspended in the recent past.

An important third source of revenue is private pay residency which has experienced some daily rate growth over the years. However, private pay applies to only a fifth of Heim residents and is subject to competition from other institutions many of which have lower operating costs.

MANAGED CARE

Circa 2020, State contracted care managers will become gatekeepers for Medicaid clients nearing or already receiving nursing home care. These for profit managers will have every incentive to delay entry into residential care by prolonging cheaper in-home assisted living and thereafter selecting or promoting least expensive residential facilities. As a high cost, high daily rate option, Berks Heim may be at a competitive disadvantage under this scenario. Accordingly,

managed care portends greater competition, lower negotiated bed rates, and perhaps diminished occupancy percentages. Berks Heim financial projections assume a 98% occupancy of its 420 beds. A substantial impairment of this enviable occupancy rate could dramatically exacerbate projected losses in the near future.

SHORT TERM REHABILITATION

To its credit, Heim management has recently and successfully augmented revenue by using vacant beds and underutilized equipment for rehabilitation services marketed to other institutions such as hospitals. Other facilities have also seized upon this opportunity of late, creating a more competitive market, possibly resulting in declining income for Berks Heim.

COLLECTIVE BARGAINING AGREEMENTS

With the exception of a small management complement, collective bargaining agreements with SEIU Healthcare PA

and the United Food and Commercial Workers Union govern the County's management of its labor force at Berks Heim. Contract provisions regarding wage rate increases, payment of overtime, vacations, holidays, personal and sick days, and other benefits are generous and significantly in excess of industry standards in many instances. Among the more onerous contract provisions are the following:

- Continuous annual wage growth in excess of inflation. SEIU Article 4.1, UFCW Article 10A.
- Double-time payment for non-scheduled work, computed by including premium pay and shift differential in the hourly rate. SEIU Article 8.3, UFCW Article 14B.
- Although full time employees are required to work every other weekend as part of their regularly scheduled work week, Saturday and Sunday hours are paid at one and one-half (1 ½) the regular hourly rate including

shift differential and any other premium pay. SEIU Article 4.5, UFCW Article 10D.

- Overtime is paid for work in excess of 7.5 hours per day and for hours in excess of 75 per pay period (two weeks). SEIU Article 8.2, UFCW Article C.3.
- SEIU employees are eligible for twelve (12) paid sick days per year which if unused accumulate up to a maximum of 40 days, the balance of which are paid at retirement. SEIU Article 16.
- UFCW employees are eligible for nine (9) paid sick days per year, which unused may not accumulate. UFCW Article 17.
- Upon employment, SEIU employees receive three weeks (15 days) vacation which escalates with longevity and, if unused may accumulate up to 35 days, the balance of which will be paid upon retirement, resignation, or discharge. SEIU Article 15.1.

- UFCW employees may accumulate unused vacation pay up to 45 days, the balance of which will be paid upon retirement, resignation, or discharge. UFCW Article 16A, E.
- SEIU employees receive a paid birthday as a “holiday” and are paid double time if they elect to work on a birthday. SEIU Article 8.1, 14.3 (i). Thus, an RN working on a birthday is paid \$494.40.
- The County has in place a light duty policy for Heim employees who are injured when NOT at work. No maximum time period pertains to such light duty eligibility.

The foregoing contract provisions likely result in excess annual operating costs in the millions of dollars versus similar capacity privately operated nursing homes, whether for profit or non-profit.

For example, elimination of the regularly scheduled weekend overtime provision applicable to SEIU employees alone would reduce

annual wage expense by roughly \$700,000. In addition the County Budget Department estimates that each year a wage freeze (foregoing a 2.5% SEIU and UFCW annual increase) will result in savings in excess of \$500,000.

Clearly, were the Heim labor agreements more closely aligned with the compensation , working conditions, benefits and scheduling prevalent in private facilities, not to mention among the County's non-union workforce, the projected losses would be diminished or disappear, and current Medicaid rates would suffice to cover operating costs long into the future.

PENSION OBLIGATIONS

Of 533 Heim employees 450 are pension benefit eligible and represent 18% or \$750,000 of the County's annual pension contribution expense. A sale of the facility would freeze the number of eligible pension participants and amortize the related annual expense over time.

Union membership should be mindful that the County's defined benefit pension is a luxury few private sector employees enjoy. A nurse

earning an annual salary of \$50,000 will receive \$800 in annual income upon retirement for every year worked, or \$16,000 annually after only twenty years of employment. And that amount will be augmented by employee contributions and compounding. In addition, employee contributions to the pension earn a guaranteed 4 ½%, a rate of return difficult to achieve in today's market.

DEBT REDUCTION

The County owes a balance of 20.5 million dollars on its original borrowing obligation to construct the new Berk's Heim. A sale and loan payoff would eliminate annual debt service of \$723,000 for 2019 and, assuming a sale price in the neighborhood of 40 million dollars, leave a cash balance of some 20 million dollars available for other important capital projects such as constructing a new, more efficient jail.

CONSIDERATIONS WEIGHING AGAINST A SALE

From my perspective, arguments against a sale of Berk's Heim are based upon subjective perceptions involving loss of a superior end of life healthcare resource, an expectation of diminished quality of care in a privately operated Heim, and a sense of civic pride of ownership and tradition. These arguments and perceptions are not to be dismissed or trivialized. They are very real among a substantial portion of Berks' citizens. Indeed, in my opinion and the opinion of others whom I respect, the community's attachment to the Heim is extraordinary and probably unequaled in other counties operating public facilities.

Apart from the intangible virtues attributed to the Heim, it is without question a modern, efficient, well managed institution. To date it is highly regarded and competitive in many respects versus alternative facilities. It continues to provide the greatest percentage of care to the indigent with 80% Medicaid beds. And, to their credit, Berk's Heim

also receives the support of numerous volunteers whose efforts in support of resident care would be diminished or lost upon sale.

From a personal perspective I take considerable pride in having played a pivotal role in building a NEW Heim facility in 2003 and, with the support of former Commissioner Timothy Reiver, right-sizing it at 420 beds versus the previously recommended 625.

PROPOSED ALTERNATIVE TO SALE

A Berk's Heim that operates efficiently, requiring no taxpayer subsidy to supplement its operating revenues, need not be sold. It may remain the revered community asset it has always been. This preferred outcome may be achieved by means of the following two initiatives:

1. Labor Contract Negotiation

The first step toward long term operating independence will be the willingness of SEIU and UFCW to modify their contracts so as to achieve significant labor expense reduction. In this regard, all of the

costly, above market contract provisions to which I have referred should be open for discussion. As a matter of good faith, the County should disclose in detail its financial projections and the factual assumptions upon which they are predicated. The Unions and County should quickly select negotiating representatives including legal counsel and schedule exploratory discussions as soon as possible. The overriding objective for the duration of any negotiations must be the long term financial viability of Berk's Heim as an independent operating unit of County government.

For my part, I will commit to a suspension of support for a sale of the Heim for an initial period of sixty days commencing July 15, 2018, and for an extension of time thereafter given mutual consent of all parties. If at any time both SEIU and UFCW state in writing a refusal to negotiate or fail to appear at scheduled negotiating sessions, I will then reinstate my support for a sale of Berk's Heim forthwith.

2. Creation of a Berk's Heim Endowment

As an incentive to labor contract concessions and to further ensure the financial independence and long term viability of the Heim, I propose the creation of an endowment fund to serve as a secondary financial resource. The endowment would be established for specific Heim purposes including supplemental operating revenue during lean years or for unforeseen exigencies. The endowment funds would be controlled by a trustee, preferably the Berks County Community Foundation, and would not be accessible to the Commissioners except upon request to and approval from the trustee. Initial funding of the endowment would be derived of fifty percent of the value of union concessions measured against the contracts currently in place. Thus in compromising their current compensation and/or benefit package, the unions would be building an independently controlled buffer against the financial losses that have prompted Commissioners to consider selling the Heim now and in the past.

Beyond union concessions and just as importantly, I call upon our Berks County community as a whole, in particular businesses, charities, and affluent individuals, to join in funding a Heim endowment. Surely the Heim's formerly hard working, responsible retirees facing their twilight years under Medicaid are every bit as deserving of community support as are other groups currently receiving assistance. A contribution to the Heim Endowment would serve to enhance the importance of merit as a criterion for charitable giving.

Acknowledgements

In drafting this memorandum I have been encouraged by informal discussions with union representatives who have portrayed a willingness among their members to consider contractual compromise. We owe them the courtesy of that opportunity. I also wish to thank members of the County Budget and Human Relations Departments, and Terry Brennan, Berks Heim Administrator, as well

as Kevin Murphy of the Berks County Community Foundation, for the information and insights that made my proposal possible.

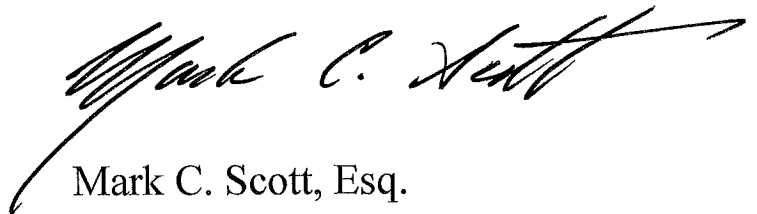
Conclusion

Salvation of Berks Heim as we know it will in the first instance require significant compromise by the unions. It is in their best interest to do so, as a sale will surely result in diminished wages and benefits, as well as loss of secure retirement income from a generous pension. To make union sacrifices more palatable I have proposed devoting a portion of them to an endowment that will serve as an investment in the long term viability of the Heim as a component of County government. Again, progress toward a compromise I can support must begin with a willingness of our represented employees to embrace concessions that will enable Berks Heim to compete in an increasingly competitive environment. Neither the Commissioners nor the unions created that environment. But we must grapple with it

together in concert with the community as a whole if we are to succeed.

In this memo I have emphasized the importance of the long run. I am not interested in and will not support a short term fix that fails to address the trends and uncertainties that threaten the Heim and will eventually raise the specter of yet another sale proposal in a few years. Only significant, lasting expense reduction, supplemented by private endowment reserve funding can secure the Heim's long term future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark C. Scott". The signature is written in a cursive style with a long, sweeping underline that extends to the left and then curves back under the name.

Mark C. Scott, Esq.

Commissioner