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DOWNINGTOWN BOROUGH VOTES TO RE-BID KARDON PARK PROPERTY

At its meeting on September 21, 2011, Downingtown Borough Council members voted to re-bid the sale of a portion of the Kardon Park property. The vote came after developers J. Loew Associates and Progressive Housing Ventures, LLC advised the Borough that protracted litigation regarding the Borough's ability to sell the property and legal challenges to development plans approved by East Caln Township have made the economic viability of the current agreement between Progressive, Loew and the Borough untenable as currently structured. Recently, Borough Councilwoman, Ann Feldman challenged East Caln's approval of a portion of the development plan comprising 70 units. Although that appeal was dismissed by Chester County Court, Feldman has continued to appeal to the Commonwealth Court of Pennsylvania. Previously, in another lawsuit, Feldman and an abutting property owner challenged the Borough's right to sell other portions of the development plan and that matter is still in litigation.

"The latest appeal of the development approval of the Millrace project in East Caln Township as well as ongoing litigation brought by Feldman and Kim Manufacturing regarding the Borough's right to sell other portions of the Kardon Park property have caused substantial delays and economic expenditures far in excess of what was originally anticipated when we entered into our current agreement with the Borough back in 2007" said Sarah Peck of Progressive Housing Ventures. "While we appreciate the fact that the Borough has been unable to grant approvals and settle on this ground due to the unanticipated actions of others, the original purchase price no longer makes economic sense in today's real estate environment." The developers have advised the Borough that they are willing to continue to defend the Borough's right to sell part of the property but will require a reduction in the purchase price to do so and to make the project economically viable in the event that the litigation is ultimately successful.

Council President Jamie Bruton acknowledged that the Orphans Court decision leaves the majority of the environmentally contaminated land with limited value and exposes the public to the an unsightly and potentially dangerous ground condition unless a private developer purchases the property and cleans up the contamination at private expense. It is therefore in the Borough's interests to appeal the Orphans Court decision through to conclusion. However, Bruton stated that before any reduction in purchase price can be agreed to, Borough Council feels it is essential to expose the property to a re-bid in order to determine whether there are any other competent developers willing to participate on equal or better terms than J. Loew and Progressive Housing. "This is the best way to protect the taxpayers' interests and truly seek the highest and best value for the property," says Bruton. A new successful bidder, if one were to emerge, would have to agree to step in the current developers' place and continue the litigation to conclusion. They would also have to pay the full purchase price within 60 days of bid acceptance as required by the State Borough code. Should a new bidder be selected, the current developers have agreed to step aside and assign over their rights upon payment by the new developer for the costs of testing, reports, rezoning and current value of approvals of the Millrace development.

Council President Jamie Bruton acknowledged that the Borough had no idea that its original decision to sell a portion of Kardon Park for a development and upgraded public park would be the subject of legal challenges. "In light of this seemingly endless litigation and coupled with market realities in the housing industry this provides a mechanism for the current or future developers – not the Borough taxpayers – to pay most of the funds needed to protect the Borough's interests in court. If they are successful, Borough taxpayers can finally receive sale proceeds for the unused ground that is not now used as a park, and can also see the contaminated property cleaned up at a private developer's expense, all while new tax ratables are generated for the Borough and school district.

J. Loew and Progressive Housing indicate that they hope to remain the developer of the project after the re-bid process is complete, albeit at a purchase price that reflects current market conditions and the unanticipated costs of legal opposition that arose only after the original purchase price was agreed to. "We still very much believe in the project and the benefits it will create for the community including affordably priced housing for seniors and first time homebuyers that is green construction and walkable to Main Street stores and to public transit," Peck said.