A regular meeting of the Northampton County Council was held on the above date with the following present: John Cusick, President; Margaret L. Ferraro, Vice President; Thomas H. Dietrich; Bruce Gilbert; Kenneth M. Kraft; Lamont G. McClure, Jr.; Scott Parsons; Barbara A. Thierry; Robert F. Werner; Frank E. Flisser, Clerk to Council, and Philip D. Lauer, Solicitor to Council.

Prayer

Mr. Cusick led County Council in prayer to open the meeting.

Pledge of Allegiance

Mr. McClure led County Council in the pledge of allegiance.

Approval of the Minutes

Mr. McClure made the following motion:

Be It Moved By the Northampton County Council that the minutes of the October 25, 2011, December 1, 2011 and December 8, 2011 meetings shall be approved.

Mrs. Thierry seconded the motion.

The minutes were approved by voice acclamation. Mr. Dietrich abstained from the October 25, 2011 minutes and Messrs. Kraft, Parsons and Werner abstained from all the minutes.

Courtesy of the Floor

Mr. Ted Harris, 504 Periwinkle Place, Easton, PA - stated he was an employee of the County, but he was before County Council as a taxpayer, a concerned citizen and also a member of the County’s Safety Committee. He further stated they believed in the near future, County Council would be approached to approve a substantial amount of money to fund a remediation project in the Law Library.
Mr. Harris advised the Law Library had been closed and quarantined since September due to asbestos contamination on the books and various other locations. He further advised this library should be remediated and opened as soon as possible, however, they asked that County Council not honor the request for funding, but instead ask why this was the second time the library was being remediated.

Mr. Harris stated there was an abatement project in late 2006 and early 2007, but evidently this project was not properly implemented or the recent testing and investigation would not have produced the results that closed the library. He further stated the evidence should be simple enough to gather because there should be a Department of Environmental Protection Agency (EPA) Notification Form detailing the amount to be removed and the time it would be removed. He noted there should also be a Hazardous Waste Manifest available documenting that materials were disposed of properly, air test results for testing performed during this abatement and after the work was completed, as well as bulk sample test results from materials that were submitted for testing. He further noted that record retention should have been a requirement for most of these forms so contracts, submittals, approvals, change orders, copies of checks and billing, etc. should be available to help County Council during its inquiry.

Mr. Harris advised the results of County Council’s investigation would help determine who was responsible so they could be held accountable for making a safe environment for the employees and the public. He further advised time did not permit him to tell County Council of the other areas of concern at the Courthouse and Gracedale, but he was sure they would find out shortly.

Mr. Harris stated he wanted to bring to County Council’s attention an article published in the Express Times on September 7, 2011, titled, “County Expects Asbestos Fines” wherein the County Executive indicated EPA sanctions were likely after air quality tests. Mr. Harris further stated the previous incident he talked about was one of the many that contributed to this article. He noted the EPA had been conducting an investigation here and at Gracedale for more than a year and they were told a full report would be released.
Mr. Harris advised Mr. Stephen Barron, County Controller, had told co-workers and himself that fines could approach $1 million or more so they wondered who was going to pay for it. He further advised they were also told medical surveillance would be offered to those exposed in certain instances and to this date, not even the most serious exposures have been addressed and that was after a representative from the EPA recommended it to the County Solicitors and representatives from the Administration.

Mr. Harris stated people have asked him why it appeared only the Safety Committee was addressing these concerns, but the truth was they had enough people who were willing to speak, however, the meeting would have to be moved to Courtroom #1. He further stated they had advised these individuals to remain anonymous so they did not incur the treatment that they have been subjected to.

Mr. Harris advised there was enough documentation safely stored at various locations in the Lehigh Valley for their investigation, noting they would be willing to help them in this endeavor. He further advised for the last five years, they have been in contact with everyone from the bottom to the top, but no one was doing anything about it. Therefore, for their new term, he was asking County Council to do the right thing.

Mr. Harris stated in 2010, they discovered a manual that was issued on November 4, 2004, before the renovation projects took place, that identified the asbestos and lead in the Courthouse, which should have been disclosed. He further stated they have been asking since 2007, for information to protect the employees, outside workers and the public. He acknowledged there could be areas where it had been removed and he encouraged County Council to determine if it had been because if was not removed and destroyed properly, it was going to spread through the building.

Ms. Susan Eagle, 124 South 15th Street, Easton, PA – advised she was owed restitution from two cases with the Northampton County Court. She further advised the first case, from which she had received partial restitution, would be 11 years old on Tuesday. She noted the second case was from 2005 and the individual in that case owed her approximately $1200.
Ms. Eagle stated she had made numerous telephone calls, sent e-mails and even letters to the editor regarding this matter and was promised time and again that someone would get back to her. She further stated she had spoken to Ms. Leigh Ann Fisher, Clerk of Courts, once in 11 years regarding the first case.

Ms. Eagle advised she sent an e-mail to someone in the County on April 2, 2011, and received a response on the same date that they were going to look into the matter and talk to Ms. Fisher, however, he did not guarantee that she would get her money any faster, but she would have the most up-to-date and accurate information. She further advised this person also indicated that he would do his best to make sure the probation officer he reported to would work harder to get the money for her.

Ms. Eagle stated since then, she had sent three other e-mails, including one on Tuesday, but received no further responses back. She further stated that this was unacceptable to her. She noted she did not understand why these individuals were not being brought back before the Court to address the issue of not paying their restitution. She noted $1400 might not seem like a lot of money, but it was very important to her.

Ms. Eagle advised this was money that was owed to her and she wanted it. She further advised she wanted an explanation given to her as to why she was not getting her money.

Mrs. Thierry stated she definitely felt Ms. Eagle deserved the money, but she was confused on what she wanted County Council to do.

Mr. McClure advised a person who owed restitution and did not pay it could be brought before the Court and jailed, however, what often happened was the Court lost jurisdiction over that person before the restitution was paid so they had no ability to bring them in.

Mr. Cusick asked Ms. Eagle to bring this matter to the attention of the County Executive and his staff to determine the status of her situation.
Mr. Barron stated he received an e-mail on Tuesday and he went to the Sheriff’s Department about this individual, however, criminal collections was not something they were really focused on. He further stated they did follow the leads, but the one individual was no longer at the address that was given to them. Therefore, until that individual was found, there was nothing they could do.

Ms. Eagle advised with regard to the case that was 11 years old, the individual committed the crime when he was a juvenile, but was now an adult. She further advised juvenile probation said they could not do anything because he was an adult and adult probation said they could not do anything because it happened when he was a juvenile so she wanted to know what was the answer.

Mr. Karl Longenbach, County Solicitor, asked Ms. Eagle to provide her information to Mr. Tom Harp, Director of Administration, noting he made not be able to solve all her problems, but would get a response for her.

Mr. Jonathan Siedt, 280 Texas Road, Easton, PA - stated he was an employee of the County for 22 years and was here to talk about medical surveillance as he was exposed indirectly to the asbestos so although he was not currently suffering any symptoms, medical surveillance would keep an eye on it. He asked the members of County Council to look into this matter for all the employees of the County because it was a serious matter.

Mr. Siedt advised they have been very patient, however, patience did wear thin and hopefully, their health would not be affected. He further stated he believed Mr. Harp was a part time risk manager, but a lot of these issues would have been eliminated if the County had a full time risk manager.

Mr. Cusick agreed there should be a full time risk manager and asked if the County’s insurance carrier been alerted to this situation.

Mr. Stoffa stated there were two sides to every story and this was only one.

Ms. Ellen Lott, Nature Conservancy - welcomed the new County Council members and advised she was looking forward to
working with them this year on open space issues. She further advised in mid-December, the Pennsylvania Department of Conservation and Natural Resources (DCNR) announced their grants and they awarded grants to both of their Northampton County projects.

Ms. Lott stated she was happy to see County Council was going to again discuss the issue of appraisals that was voted on last year because the requirement in place now was difficult to match with the current program.

Mr. Ron Angle, Upper Mount Bethel Township, PA - congratulated the new members of County Council on their elections and commented he felt it was inappropriate to have Mario Martinez give the prayer at the beginning of the meeting.

Mr. Angle advised that Messrs. Cusick and Dietrich had made some disparaging remarks in the newspapers regarding the $2 million that Mr. Charles Chrin was giving to farmland preservation. He further advised Mr. Dietrich passed a note that insinuated that it was a bribe and Mr. Cusick indicated it was not a way to do business.

Mr. Angle stated during an Executive Session, he was given authorization to go to Mr. Chrin to see if he could get some money for farmland preservation. He further stated this agreement had nothing to do with the votes for Route 33 as there were already enough votes. He noted he did not expect an apology from them, but felt they owed Mr. Chrin a public apology.

Mr. Angle advised a budget was passed last year that increased spending without increasing revenue so he wanted to know how they proposed to run the County.

With regard to the proposed ordinance, Mr. Angle stated this County participated in buying wetlands and steep slopes for $5,500 an acre in taxpayer money. He further stated at that time, a majority of County Council, in an effort to prevent that from happening again, voted to have an independent appraisal obtained to determine the real value of property. He noted, as a member of the Farmland Preservation Board, they were expecting the cost of farmland preservation, which was land that could be developed, to be approximately $5,000 an acre.
Mr. Angle advised he hoped the new members of County Council would not go along with Mr. McClure, who wanted to repeal this, because he did not see what was wrong with getting an independent appraisal on behalf of the taxpayers of the County that was paid for by the individual receiving the money to make sure the County was not paying more for wetlands and swamp lands than they were worth.

County Executive Report

Mr. Stoffa stated the County Commissioner Association of Pennsylvania (CCAP) provided information that Governor Tom Corbett announced revenue collections had fallen below projections by $500 million so he froze $160 million in budgetary reserves, which would affect the budget of Human Services.

Mr. Stoffa advised for the first time since June 2011, Gracedale now had more than 600 residents.

Mr. Stoffa stated the Guaranteed Energy Savings Agreement (GESA) projects were moving along and asked Mr. Cusick to reserve some time at the next meeting to allow representatives from the McClure Company to come in and provide an updated report.

Mr. Stoffa advised Mr. Gary Pulcini, Valco Capital, and Mr. Robert Fuller, Capital Markets Management, indicated the $25.2 million gamble the County lost with the Swaption would require 3.5 mills per year to pay it off. He further advised they were here to talk about the Swaption and suggested members of County Council not hesitate to ask questions during the presentation because it was a complex issue to understand and a decision could possibly be made by July of this year.

In respond to Mr. Stoffa’s comment regarding the census at Gracedale, Mr. McClure stated it was good news and he hoped it continued. He further stated he had heard from an individual who was denied entrance to Gracedale because she was currently in the middle of a Medicaid issue that involved litigation, however, Cedar Brook accepted her.

Mr. McClure advised he had contacted Mr. David Holland,
Interim Gracedale Administrator, and Mr. Ross Marcus, Director of Human Services, regarding this matter and was told the reason she was not admitted to Gracedale was because she was not Medicaid eligible.

Mr. Stoffa stated he would look into the matter because that was not the right thing to do.

In answer to Mr. Cusick’s question as to whether he was in the process of looking for a Director of Fiscal Affairs and Deputy Director of Administration, Mr. Stoffa advised they were currently rewriting the job description for the Deputy Director of Administration, but they were intent on hiring someone.

In response to Mr. Werner’s question as to the opening of a separate account for Gracedale from the 2001 Bond Issue, Mr. Stoffa replied the 2001 Bond Issue had not been closed as of this time.

Mr. Cusick stated putting together a Gracedale Advisory Board should be one of the main focuses of the County so he urged Messrs. Dietrich and Marcus to work on it.

In answer to Mr. McClure’s question as to when did they anticipate closing out the 2001 Bond Issue, Mr. Stoffa advised they were not paying any more bills as of the end of last year and hoped to close it out shortly.

Discussion and Review of the Swaption Issue

Mr. Cusick called on Mr. Doran Hamann, Budget Administrator and Acting Director of the Department of Fiscal Affairs, to provide some background regarding the Swaption.

Mr. Hamann stated in December 2001, County Council and the Administration authorized a $111 million of General Purpose Authority (GPA) Bonds which were to mature in 2030. He further stated in June 2004, County Council passed a resolution which authorized the County to enter into a Swaption with a counterparty, which was Merrill Lynch, for $67.5 million of the $111 million 2001 Bond Issue. He noted at that time, the County received an up-front payment of approximately $1.9 million from the counterparty for entering into this agreement, which gave the counterparty the right to place the County into a paid
fixed Swaption on October 1, 2012.

Mr. Hamann advised stated since June 2004, the County had tracked the valuation amount, which was a value that was placed upon the Swaption to the counter party, and during these years of declining interest rate, that value had increased significantly. He further advised at the end of 2009, it was $10.2 million and at the end of 2011, it was $25.2 million so the County was in need of some financial decisions on how it was going to approach the counter party’s exercise date of October 1, 2012.

Mr. Cusick then called on Mr. Pulcini and Mr. Fuller to begin their presentation.

Mr. Fuller provided his background and indicated his practice was principally with tax exempt organizations and municipalities on the issuance of bonds, however, he also dealt with commercial and investing banking products, mainly interest rate swaps.

Mr. Pulcini provided his background which involved many facets of financing, noting between the two of them, they were very knowledgeable in municipal finance. He then distributed a handout in which they tried to take a very complex issue and make it understandable (see Attachment #1).

Mr. Fuller stated an interest rate swap was simply an agreement to exchange funds based on cash flows generated by what was known as a notional amount, noting the County’s notional amount was $67.5 million. He further stated against that nominal amount, the County agreed to pay 4.91% and receive a variable index based on the London Interbank Offered Rate (LIBOR) or one month LIBOR rate, in fact, a percentage of that rate.

Mr. Fuller advised the County’s counter party, which was Merrill Lynch, but now Bank of America, would exchange as if the County was paying 4.91% interest to Merrill Lynch/Bank of America and one month LIBOR or 67% of one month LIBOR being paid by Merrill Lynch/Bank of America to the County. He further advised as short rates were often, and if not always, lower than long rates, this had created a cash flow in favor of the counter party. In addition, to migrate the concept of the simple interest rate swap to a Swaption, which was simply an interest
rate swap that included an option that changed the fundamental characteristics of the potential cash flows based on the interest rates to one that was driven more by the ability to change something according to the option that was agreed upon when the transaction was consummated.

Mr. Fuller stated in this case, the County granted Merrill Lynch the option to put the County into this particular transaction on October 1, 2012. He further stated that option itself had a value that was usually, if not always, larger than the cash flows of the swap that it would produce by itself. He further stated it was that option, due to the profound fall and sustained low level of interest rates, that had created the large $25 million market to market problem the County had. He noted market to market was simply what the swap would be replaceable for if Merrill Lynch/Bank of America sold it in today’s market. He noted they did think there was a possibility that the $25 million would shrink a little bit, but not enough to matter over the next several months that County Council should not consider the actions they were recommending tonight.

Mr. Pulcini advised anytime bonds that were more than $10 million were issued in Pennsylvania, they had a ten year par call, which simply meant that after 10 years, the bonds could be paid off with no penalty or the bonds could be refinanced at an economic advantage. However, the County sold that option to Merrill Lynch/Bank of America and entered into a Swaption.

Mr. Pulcini stated the first thing they were going to do was to review the Swaption and if the County decided to go forward with their recommendation, it would require the selection of either a Swap Counsel and/or Bond Counsel.

Mr. Pulcini advised when dealing with a swap, things moved very quickly so if the County were to approve the recommended course of action, they would like one or two members of County Council, the County Executive and maybe the County Solicitor to be empowered to have the authority to take action on any decision that had to be made based on the parameters set up by County Council.

Mr. Pulcini stated if the County agreed to their recommendation, the County would notify Bank of America of their plan to terminate the Swaption and establish a strike price that
would trigger the termination. He further stated during that time, they would be running refunding studies, as well as possible alternatives for not only refunding the 2001 Bonds, but to obtain other monies for the County to use to pay down the Swaption termination costs instead of using its funds.

Mr. Pulcini advised the final steps would be the cancellation of the Swaption, the payment and then the refinancing of the 2001 Bonds. He further advised there was mention of bond procedures still available so if the 2001 Bonds were refinanced, there was a high probability the bond counsel would require the County to take the remaining proceeds and contribute them to the refunding since there were various regulations that require those monies to be spent during certain time periods.

Mr. Pulcini stated page two of the handout provided the valuation that Mr. Hamann referred to, which as of December 30, 2011, was $25.2 million. He further stated the PVO1 was the value of one basis point, or .01%, so every time there was a movement of a basis point, it was $76,419.43 either in the County’s favor or against it, which was why there had to be a committee that could move quickly if the price was reached.

Mr. Pulcini advised on the right side of page three dealt with Floating Rate Notes, noting anytime floating rate bonds were issued, there were a number of other instruments that had to be in place. He further advised one of those was Floating Rate Notes, however, since there was not an established market for Floating Rate Notes or enough history, they would suggest not even consider it.

Mr. Pulcini stated instead they were looking at what would happen if the County did a traditional Swaption per the documents. He further stated on the left hand side of the page, the square marked County should be thought of as the 2001 Bonds that were outstanding. He noted if the County let the Swaption go forward wherein it agreed to pay Merrill Lynch/Bank of America 4.91%, and in return, they got to force the County to have variable rate bonds which paid off the 2001 bonds so they no longer existed and the County had variable rate exposure.

Mr. Pulcini advised the variable rate bonds paid a rate related to the Security Industry Financial Management
Association (SIFMA), so if it was at 25 basis points or 25% and 67% of the LIBOR was 25%, there was no cost to the County other than the 4.91%, which was good in theory, however, things did not work that cleanly.

Mr. Pulcini stated under costs, there was Bond Rate of the Variable Rate Demand Note and then there was Credit Support. He further stated anytime Floating Rate Debt was issued, whether weekly or monthly, the rate changed and the investors of those bonds had the right to keep them or tell the County they did not want them any longer so Merrill Lynch/Bank of America had to go out and find another buyer for those bonds. He noted if they could not find another buyer for those bonds and they wanted their money back, the Letter of Credit got drawn upon and the bond holder got paid and the County was stuck paying the terms and conditions of that Letter of Credit until the bonds were re-marketed later. He further noted he talked to one of the local larger banks in the area and they gave estimates of 3/4 of a percent to 1.5% for a Letter of Credit on $67.5 million, plus 180 days worth of interest which was standard on a Letter of Credit.

Mr. Pulcini advised the County then had a risk of exposure on obtaining a Letter of Credit and maintaining it. He further advised if the bonds were not re-marketed, then the Letter of Credit was drawn upon and for whatever that amount may be, the County would have a loan agreement with an upset rate paying for the bank until the bonds were sold again, which could add to the debt service.

Mr. Pulcini stated when those buyers put the bonds back to the County, the investment banker had to sell those bonds to another investor and they were going to charge for that anywhere between 10 basis points or .10% or as much as 30 days, which was .30%, which was another variable rate the County would have to consider until 2030. He further stated the other variable the County had was the relationship with the 67% of LIBOR and the Floating Rateable Bonds and since 1990 until last year, that was a -7 basis points. In other words, 67% of LIBOR did not cover the cost of the Floating Rate of Municipal Bonds so the 7 basis points would had to be added to the debt service.

Mr. Pulcini advised when the Option Rate Security Market collapsed in 2008, that negative spread was as much as 120 basis
points, noting 100 basis points would add $675,535 that would be added to the County’s debt service in any given year as long as the total amount was outstanding. He further advised the amount would decrease as the principal was paid down, however, the County’s principal would not be paid down until 2019.

Mr. Fuller stated for the benefit of the transaction of theoretically lower interest rates, the County now would have interest rate risks, bank risk for the renewal of the Letter of Credit and tax risk if marginal income tax rates were to fall, which was not likely. He further stated usually bearable short rates remained below fixed rates, but with the add on costs of Letter of Credit, re-marketing fees, etc., it brought it closer to the fixed rate the County would pay.

Mr. Pulcini advised page four of the handout represented if the County had done nothing between 2001 and now, these bonds could have been refunded under advance refunding basis per the tax laws. However, under a Swaption, that was not allowed to be done even if the interest rates were in the County’s favor. He further advised the 2001 Bonds had a call of October 1, 2012, which meant under the tax laws, 90 days prior to that date or later, they could be refunded. He noted based on yesterday’s rates, the County’s 2001 Bonds, if refunded, would produce approximately $16.4 million worth of savings, however, some of the 2001 Bonds were taken out and refunded previously, which hindered them from given all that money up front so the savings the County would see as of July 1, 2012, would be $3.9 million and $519,000 every year thereafter and then in 2019, it would be $4.7 million, then $4.6 million and less after that.

In response to Mr. McClure’s question as to whether this was after Bank of America was paid $25 million, Mr. Pulcini stated this simply indicted if the County had not entered into that agreement, this would be the savings.

Mr. Pulcini advised they could have funded this at these rates in the bond issue if the Swaption had been integrated, but it was not integrated.

Mr. Pulcini stated on page five showed an option payment that Bank of America would give the County of $506,242 if they exercised the option and the County agreed to it, however, he
did not know if that was real money to the County or not. He further stated the Principal column represented the amortization schedule the County got locked into with the Swaption, which came to $67.5 million. He further stated the Coupon column reflected the 4.91% the County agreed to pay Merrill Lynch/Bank of American and then the interest rate as a result of the 4.91%. He noted the other column represented the Letter of Credit at 150 basis points, which the County was required to have, that was $13.5 million so the total debt service was $124.5 million.

In answer to Mr. McClure’s question as to why he was assuming 150 basis points because his understanding was typical industry standards would be approximately 75 basis points, Mr. Pulcini advised he got a spread of 75-150 and on page six, he gave the numbers for 75 basis points, as well as 150.

In response to Mr. McClure’s statement that 75 was not beyond the realm of possibility, Mr. Fuller stated it was possible, but they were being conservative.

In answer to Mr. Dietrich’s question as to whether the Letter of Credit had to be maintained until the maturity of the bonds, Mr. Pulcini advised it did as long as the County had Floating Rate Bonds outstanding.

Mr. Pulcini advised the first column on page six reflected the County’s debt service as the 2001 Bonds existed today. He further advised the second column reflected the cost if the County broke the Swaption and refunded the bonds today, there would be a net loss of $6.8 million today, however, these numbers could change as interest rates changed.

Mr. Pulcini stated the last column was the current Swaption at 4.91% plus 150 basis points. He further stated the difference between the refunding and the debt service of $124.5 million was a negative $22.8 million. Therefore, right now if the Swaption was done and the County paid 4.91% plus 150 basis points on a Letter of Credit, it would cost the County $22.8 million more than just refunding the bonds and breaking it.

Mr. Pulcini advised if the payment that was received up front was added in and the $506,000, which may or may not be a real number, and the net loss was $21 million, but if the
$506,000 was real, that number dropped down to $20.5 million. He further advised if it was dropped to 75 basis points for the Letter of Credit, the loss would be between $14.2 million and $13.7 million.

Mr. Pulcini stated when it was all said and done, the difference was between $6.8 million if the County broke the Swaption and refunded the bonds or if the County went through with the Swaption, it would cost the County anywhere between $13-14 million. He further stated the comparison of these two columns should be used for decision making.

Mr. Pulcini advised when a true swap was entered into, it was not known whether it was going to cost or make money unless it went the whole 30 years. Therefore, unless something positive happened and everything stayed the same, the County was going to lose money.

With regard to the risks, Mr. Pulcini advised a Letter of Credit used to be given away practically for free, but that changed many years ago and they were now 75-150 basis points. He further advised most banks did not want to issue a Letter of Credit past three or five years so that meant every three or five years, another Letter of Credit would have to be found if it was not renewed.

With regard to how a Letter of Credit worked, Mr. Pulcini stated it would be like the bank lent the County $5 million and for that one month until the bonds were re-marketed, the County was paying the bank a loan rate of “x”, which he guaranteed would be more than 4.91%. He further stated if the County could not get another Letter of Credit, all the bonds were called in and the investors were paid so now the County would have a $67.5 million bank loan, with a rate higher than what it was now paying and would not go out to 2030, so the debt service was going to be significantly higher. He further noted that was why one of the big risks was obtaining the Letter of Credit and maintaining it, as well as the additional cost.

In response to Mr. McClure’s question as to why the Letter of Credit was so expensive, Mr. Pulcini advised the banks now had to treat them as if they were a loan and had to put reserves aside whether the Letter of Credit was called upon or not.

In answer to Mr. McClure’s question as to whether there was
an estimate of what a Letter of Credit would cost if it was exercised when the County entered into the Swaption, Mr. Pulcini stated there was not.

In answer to Mr. McClure’s question as to whether that was standard in the industry, Mr. Fuller advised at that time it was. He further advised they should have put in an estimated amount, but it was just various or variable.

Mr. Pulcini stated this was represented as a good deal and the details did not have to be worried about.

In response to Mr. McClure’s comment that he just wanted to be clear that they looked at the transaction and they could not find any estimate of what the Letter of Credit would cost, Messrs. Pulcini and Fuller both responded they could not.

In answer to Mr. McClure’s comment that he believed the industry standard was the breakage fee could be negotiated for as much as 10% up or down, Messrs. Pulcini and Fuller agreed.

In response to Mr. McClure’s comment that he hoped they would not expect for him to vote for anything to be done unless they came down at least 10%, Mr. Fuller replied even though 10% was the industry standard, he doubt that could be achieved because there were too many factors involved, but they did not plan to pay face value.

Mr. Pulcini advised he mentioned the relationship between SIFMA and the 67% of LIBOR and as of yesterday that was a +4 basis points so that would give the County a credit of $6,753 against its debt service if that lasted for the full year. He further advised was a -7 basis points, which it had been historically, it was cost the County $47,000 additional debt service. Therefore, the issue the County had to focus on was the risk of having the Letter of Credit always in place.

Mr. Pulcini stated the County had to compare the total estimated savings/expenses columns. He further stated right now the County had a AA AA rating, which was based on the last bond issue, and that was because of the County’s reserves and its reserve policy. He noted the other plus the County had was when it recognized the swap exposure, it started building up
additional reserves. He further noted he could not guarantee the County would keep its rating, but there was a high probability it would since it had been proactive.

Mr. Pulcini advised if the County elected to break the swap and refinance the bonds, his suggestion would that any savings received be used to replenish the fund balances every year. He further advised he did not think the County could use the unspent 2001 Bond Issue money to help pay the $25 million. However, if that could not be done and it had to be contributed to the refunding, then it would reduce the number of refunding bonds that had to be issued so the gross savings would be better and that could go toward replenishing the County’s fund balance.

Mr. Pulcini stated their recommendation would be to establish a strike price and even if a price was not decided, the Swaption should still be broken by July. He further stated the bonds should be refunded and the County should budget the same debt service and replenish the reserve fund which would maintain the County’s credit rating. He noted that if the County would not be able to maintain its rating, the down grade would be very minimal.

In answer to Mr. McClure’s question as to what other fees would have to be accounted for besides the $25 million, Mr. Fuller replied mostly market volatility.

In response to Mr. McClure’s question as to who got paid for the market volatility, Mr. Fuller indicated it would be the counter party, noting the $25 million was the cost to the counter party to replace that swap in the market today.

In answer to Mr. McClure’s question as to whether the counter party determined value of the volatility, Mr. Fuller advised he had the tools to determine if it was a rational value, but it was ultimately a matter of judgement.

Mr. Fuller stated in fairness to everyone involved in the Swaption when it occurred, part of the sell was that interest rates and volatility levels were so far away from normal so the County would not be harmed by this transaction and in fact, would make money. He further stated the opposite happened because the interest rates on both the long and short end had fallen and volatility had widened.
Mr. Pulcini advised there was a lot of historical analysis that made this sound like a good idea, but unfortunately, it was during a time when the United States was a giant in the world economy.

Mr. Dietrich stated Mr. Vic Mazziotti, the former Director of Fiscal Affairs, had indicated that there would be a savings if the County bought out of the Swaption and then refinanced the bonds. He further stated his percentages were approximately 25-30%, however, they were indicating there was going to be an approximate $18 million savings versus the $25 million cost to buy out of the Swaption so he wondered where those numbers were coming from.

Mr. Pulcini advised under the Federal tax laws, prior to 1986, if bonds were issues on one day and the rates dropped down the next, they could be refunded so there could be multiple bond issues for the same project, but then the government felt it was hurting them financially so they decided to limit refunding on an advanced basis. Therefore, bonds that were more than $10 million were sold with a ten year par call and under $10 million, it was a five year par call.

Mr. Pulcini stated in this case, the bonds could not be paid off for ten years, but if the rates went down, the County was allowed to do an advance funding. He further stated the County would issue new bonds, buy investments and set up an escrow. He noted the investments the County would buy were known as slugs, which were certificates of indebtedness created by the United States Treasury strictly for bond refunding.

Mr. Pulcini advised if the County would have done this two years, they would have had to issue new bonds, purchase investments, establish an escrow that would make these payments every six months until October 1, 2012 and then on October 1, 2012, that escrow would have paid off the rest of the bonds. He further advised if that happened, the bonds would no longer have been on the books just the new bond issue and that was what was called advanced refunding.

Mr. Pulcini stated if the County were to do an advance refunding, he could invest what was known as the bond yield and right now that was 3.14% and if he set up an escrow, he would be
lucky to get .25%, which created a negative drag. He further advised when Mr. Mazziotti was with the County, there was always a $700,000 or more negative drag in the escrow. He noted he based his numbers on October 1, 2012, but if investment rates went up, the County could pull the trigger early, however, if they did not come up and bond rates stayed stable, the trigger would not be pulled until October 1, 2012 because even with that, there would still be a little bit of a negative drag because it was being done 90 days prior to October 1, 2012.

In response to Mr. Dietrich’s question as to whether the County would still have to be given 90 day notice to Merrill Lynch/Bank of America, Mr. Pulcini advised this was actually two transactions. He further advised the first transaction was notifying Merrill Lynch/Bank of America that the County was breaking the Swaption and coming up with the money and the second was them taking care of the financing. He noted if the rates went up, the County may lose some savings on the refunding, but that also meant the cost of breaking the Swaption decreased.

In answer to Mr. Dietrich’s question as to whether the County had to put aside a certain amount of money in escrow in order cover one bond to another, Mr. Pulcini replied it did not because when the new bonds were issued, the old bonds were paid off and the cost of issuing the new bonds was funded in that new bond issue. He further replied the money the County had to come up with was the breakage fee.

Mr. Pulcini stated there were other options available, but what they were showing tonight was the cheapest way for the County to handle this.

Mr. McClure asked if the County did not break the swap and the Letter of Credit was at 75 basis points, what year would the lines cross and the County would get to $25 million.

Mr. Pulcini advised if the County was at 75 basis points, the County was at a $14 million loss so it was pretty far down on the amortization schedule.

In response to Mr. McClure’s question as to whether there was a better use of the $25 million than to break the Swaption, Mr. Pulcini stated at this time, there was no place to invest
the money where the County would earn what it was costing.

In answer to Mr. McClure’s question as to whether there were fees associated with refunding of the bonds if the County were to break the Swaption, Mr. Pulcini advised a variable rate bond issue was exactly the same as a fixed rate bond issue only the fees were higher.

In response to Mr. McClure’s question as to who was being paid these fees and were they negotiable, Mr. Fuller stated mostly the lawyers and they were negotiable, but at the margin.

In answer to Mr. McClure’s question as to whether they saw any estimate on what the costs would be to refund the variable bonds, Messrs. Fuller and Pulcini advised they did not see any.

In response to Mr. McClure’s question as to whether there were any estimates of any costs in any of the documents, Mr. Pulcini stated somewhere he saw, but he could not find it again, where they estimated re-marketing at 30 basis points.

In answer to Mr. McClure’s question as to what role Chambers, Dunhill and Rubin had in this transaction, Mr. Fuller advised they were advisors to the County on the pricing of the Swaption.

In response to Mr. McClure’s question as to whether they were involved in any litigation at this time and whether it had any impact on this process, Mr. Fuller stated numerous officers of the firm were involved in criminal cases and Mr. Pulcini replied it would not have an impact.

In response to Mr. Parson’s question as to where the variable rates went down the line, Mr. Pulcini advised under the Local Unit Debt Act, anytime someone did a variable rate, whether it was a loan or bond issue, there had to be a maximum cap rate. He further advised under the County’s documents, the variable rate bonds would be capped at 12%.

In answer to Mr. Parson’s question as to whether the numbers provided were for variable rates, Mr. Pulcini stated they were refunding the County’s 2001 Bond to new fixed rates.
He further stated if the County did this transaction today and the County paid $25 million to break the swap, based on what the County received up front plus the savings, the net expense would be $6.8 million.

Mr. Pulcini advised if the County took this option, by the time they closed, it would know exactly what its negative was because it was never going to change and all the risks were shifted to the final buyer of the bonds.

In response to Mr. Dietrich’s question as to whether he ever heard of anyone who was able to pay 90% of the value of the transaction, Mr. Fuller stated he gotten 6-8 basis points driven out of the termination cost, but he did not believe he ever achieved 10, especially in these markets.

Mr. Fuller advised there were subtleties in the market now, noting the banks wanted to lighten up on these things because most to them stuffed these derivative transactions, regardless of their credit quality, into bad banks, which had their own administrative and capital costs. He further advised most of the large banks were now trying to drive the asset base in bad banks low enough to pull it back onto the main balance sheet of the bank and, therefore, drop all the costs and they would use that to ever advantage that they could produce for the County.

Mr. Pulcini stated one of the negatives the County faced in the negotiations, was now there were fewer players in the market.

Mr. Gilbert advised he just wanted to clarify that they did not think it was a good idea to have Bank of America finance the $25 million, Mr. Pulcini advised it would cost the County more to do it that way.

In answer to Mr. Werner’s question as to whether there was a legal way to hold Concord Public Finance accountable because in their literature they made a lot of statements about being contractually obligated to alert and provide warnings of events that affect derivative positions, Mr. Longenbach stated they were doing a lot of research on the matter, but they have not come upon anything that would suggest this was a viable option with a high chance of success or recovery.
In response to Mr. McClure’s comment that if the County did not break the Swaption, it could refund into a fixed rate at some point down the line, Mr. Pulcini advised that was correct. Mr. McClure stated theoretically the County could keep the $25 million, watch the regret line and swap into a fix, with the only problem being they were taxable.

Mr. Fuller advised the County would pay the $25 on the strike date and then do a variable rate bond issue that would become hedged by the remaining term of the swap.

Mr. Pulcini stated if the County did not break the swap, it had to start paying 4.91% and the $25 million.

In answer to Mr. Gilbert’s question as to what their thoughts were regarding with regard to a strike figure, Mr. Fuller advised they understood the County’s responsibility to the taxpayers so a comfortable number should be picked. He further advised it was important for the County’s finance professionals and a few members of County Council to get together quickly to determine, with County Council’s prior approval, the number when the swap should be terminated because they wanted to get them out of it as soon as possible, but not before it made sense. He added he wanted County Council to keep in mind that due to the process, it was going to take some time to accomplish that goal.

Appointment of County Council Solicitor

Mr. Cusick stated members of County Council had been given the resume of Mr. Michael Gaul from the KingSpry law firm.

Mr. Cusick made a motion to put Mr. Gaul’s name forward for the position of County Council Solicitor.

Mr. McClure seconded the motion.

In answer to Mr. Dietrich’s comments that this issue should have been dealt with at the organizational meeting, Mr. Cusick responded changes had been made after the organizational meeting.

Mrs. Ferraro advised she felt it would have been better if
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County Council had received more information regarding this issue earlier than it did so an informative decision could be made.

As there were no further questions or comments, Mr. Cusick called for the vote.


The motion failed by a vote of 4-5.

Introduction of the Ordinance Titled, “AN ORDINANCE PROVIDING FOR THE CONVEYANCE OF A 0.123 ACRE RIGHT-OF-WAY OWNED BY NORTHAMPTON COUNTY, LOCATED IN BETHLEHEM TOWNSHIP, TO THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO ENABLE THE DEPARTMENT OF TRANSPORTATION TO ENABLE A BRIDGE REPLACEMENT PROJECT ON S.R. 191”

Mr. Cusick stated the purpose of this ordinance was to grant to PennDOT a right-of-way on County-owned land for a bridge replacement project. He further stated the ordinance would be introduced at this meeting and the public hearing, debate and possible vote was scheduled for the January 19, 2012 meeting.

Mr. Gilbert and Mrs. Thierry introduced the following ordinance:

AN ORDINANCE PROVIDING FOR THE CONVEYANCE OF A 0.123 ACRE RIGHT-OF-WAY OWNED BY NORTHAMPTON COUNTY, LOCATED IN BETHLEHEM TOWNSHIP, TO THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION TO ENABLE THE DEPARTMENT OF TRANSPORTATION TO ENABLE A BRIDGE REPLACEMENT PROJECT ON S.R. 191

WHEREAS, Northampton County Home Rule Charter Article 602 (a)(6) provides that the Northampton County Council shall enact an ordinance for any act which conveys or leases or authorizes the conveyance or lease of any real property of the County; and

WHEREAS, the Commonwealth of Pennsylvania by and through
WHEREAS, PENNDOT has requested that the County of Northampton grant a Deed of Right-of-Way over land owned by Northampton County, identified as Northampton County Tax Parcel Nos. L7 8 8A PKB and L7 8 9 PKB in order to replace a bridge; and

WHEREAS, PENNDOT has created a Plot Plan entitled "Right-of-Way Claim Information", a true and correct copy of which is attached hereto and made a part hereof as Exhibit "A"; and which Plot Plan depicts the areas which PENNDOT must acquire in order to replace said bridge; and

WHEREAS, the County Council of Northampton believes it is in the public's best interest to grant such Deed of Right-of-Way; and

WHEREAS, in accordance with the provisions of the Northampton County Administrative Code, Article XIII Procurement and Disposition of County Property, Section 13.15 Purchase, Sale and Lease of Real Estate a. and b., PENNDOT has agreed to pay the sum of $5,000.00 for said Right-of-Way.

NOW, THEREFORE, BE IT HEREBY ENACTED AND ORDAINED by the Northampton County Council as follows:

1. County Council hereby Grants and Conveys to PENNDOT, in consideration for the sum of $5,000.00, a Deed of Right-of-Way over the lands of Northampton County, identified as Tax Parcel Nos. L7 8 8A PKB and L7 8 9 PKB, as more fully depicted in the Plot Plan attached hereto as Exhibit "A".

2. The Deed of Right-of-Way, referenced above, shall be in a form substantially similar to one attached hereto and made a part hereof as Exhibit "B".

Consideration of the Resolution Waiving the Administrative Code Appraisal Requirement for the Deed of Right-of-Way on County-owned Land
Mr. Cusick advised with regard to the right-of-way ordinance, usually when the County leases, sells or purchases real estate, two appraisals were required. He further advised the County Executive had requested a waiver of the appraisal requirement because of the low monetary amount of the right-of-way transaction as compared to the cost of two appraisals, therefore, a resolution was prepared granting the waiver.

Mr. Cusick introduced the following resolution:

R. 3-2012  WHEREAS, Northampton County Administrative Code Section 13.15 b. provides that, "The County shall not purchase, sell, or lease real estate without first obtaining sealed appraisals from two (2) professional real estate appraisers."; and

WHEREAS, the County Executive is recommending granting to PENNDOT a deed of Right-of-Way on County-owned land for a bridge replacement project in Bethlehem Township; and

WHEREAS, the County Executive has requested that County Council waive the Administrative Code Section 13.15 b. requirement for appraisals; and

WHEREAS, Administrative Code Section 13.15 b. 2. allows for the waiver of the aforementioned appraisal requirement if certain conditions are met.

NOW, THEREFORE, BE IT RESOLVED by the Northampton County Council that it does hereby concur with the County Executive’s request to waive the requirement for appraisals for a deed of Right-of-Way on County-owned land for a bridge replacement project in Bethlehem Township, due to the provisions of Northampton County Administrative Code Section 13.15 b.2., which reads, “The nature of the project requiring a purchase, sale or lease of real estate does not justify the cost of appraisals or is otherwise deemed unnecessary.”

In response to Mrs. Thierry’s question as to what was the average cost of appraisals, Mr. Longenbach stated this was .123 acre piece of land along Route 191 leading to a bridge over the
Monocacy Creek, which PennDOT was seeking to improve. He further advised PennDOT would be paying the County $5,000 for the right-of-way and by their estimate, the cost of the appraisals would exceed or cancel out that amount.

As there were no further questions or comments, Mr. Cusick called for the vote.


The resolution was adopted by a vote of 9-0.


Mr. Cusick stated at the request of Mr. McClure, an ordinance was prepared which repealed Ordinance No. 540-2011, which was an ordinance that provided for obtaining a second appraisal for environmentally sensitive open space projects. He further stated the public hearing, debate and possible vote was scheduled for the January 19, 2012 meeting.

Messrs. Cusick and Kraft introduced the following ordinance:


WHEREAS, Ordinance No. 540-2011, the ordinance titled, “AN ORDINANCE ESTABLISHING THE POLICY OF THE NORTHAMPTON COUNTY COUNCIL FOR THE APPROVAL OF NORTHAMPTON COUNTY 21ST CENTURY OPEN SPACE INITIATIVE NATURAL AREAS PROJECTS”, was enacted on November 29, 2011, and reads as follows:

“AN ORDINANCE ESTABLISHING THE POLICY OF THE
NORTHAMPTON COUNTY COUNCIL FOR THE APPROVAL OF NORTHAMPTON COUNTY 21st CENTURY OPEN SPACE INITIATIVE NATURAL AREAS PROJECTS

WHEREAS, the Northampton County Council duly adopted Ordinance No. 423-2004, the ordinance titled, "AN ORDINANCE ESTABLISHING THE NORTHAMPTON COUNTY OPEN SPACE INITIATIVE, ACCEPTING THE REPORT OF THE NORTHAMPTON COUNTY COUNCIL OPEN SPACE COMMITTEE PREPARED WITH THE ASSISTANCE OF THE LEHIGH VALLEY PLANNING COMMISSION, CREATING THE NORTHAMPTON COUNTY OPEN SPACE ADVISORY BOARD AND ESTABLISHING ITS DUTIES, AND PROVIDING FOR THE ADMINISTRATION OF THE OPEN SPACE INITIATIVE."; and

WHEREAS, the Northampton County Council duly adopted Ordinance No. 468-2007, the ordinance titled, "AN ORDINANCE PROVIDING FOR AMENDMENTS TO THE NORTHAMPTON COUNTY 21st CENTURY OPEN SPACE INITIATIVE GUIDELINES."; and

WHEREAS, the Northampton County Council duly adopted Ordinance No. 533-2011, the ordinance titled, "AN ORDINANCE PROVIDING FOR AMENDMENTS TO THE NORTHAMPTON COUNTY 21st CENTURY OPEN SPACE INITIATIVE GUIDELINES."; and

WHEREAS, an independently prepared, complete self-contained appraisal report can ensure the amount of public funds allocated toward the acquisition of a natural areas property was justified.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED By the Northampton County Council that notwithstanding any existing requirements or conditions set forth in the Northampton County 21st Century Open Space Guidelines, it shall be the stated policy of the County of Northampton:

(1) To require an independent appraisal for any Northampton County 21st Century Open Space Initiative Natural Areas projects.

(2) The appraisal, shall be undertaken by the Northampton County Executive or his
designee, and shall include the information and analysis set forth in the document titled, “APPRAISAL REVIEW CHECKLIST - Northampton County Open Space and Natural Areas Program” (a copy of which is attached hereto and labeled as Attachment “A”).

(3) The Northampton County Council shall not consider or vote on a Northampton County Open Space and Natural Areas project without first receiving the independent appraisal set forth in paragraph (2).

(4) It shall be understood that the cost of the County’s independent appraisal shall be paid out of the proceeds of the grant.”

WHEREAS, the Northampton County Open Space Advisory Board has recommended an amendment to the Northampton County 21st Century Open Space Initiative Guidelines (Guidelines) which provides for a second appraisal that would be implemented in accordance with the Guidelines.

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by the Northampton County Council that Ordinance No. 540-2011, the ordinance titled, "AN ORDINANCE ESTABLISHING THE POLICY OF THE NORTHAMPTON COUNTY COUNCIL FOR THE APPROVAL OF NORTHAMPTON COUNTY 21ST CENTURY OPEN SPACE INITIATIVE NATURAL AREAS PROJECTS," is hereby repealed, on the effective date of this ordinance.

Committee Structure

Mr. Cusick provided the County Council members with a Committee Structure. He asked them to review it and if any changes were to be made, to let him know.

In answer to Mr. Parsons’ question as to why these meetings were not held after 4:00 p.m., Mr. Cusick advised because County employees worked until 4:30 p.m. and this time was decided upon to accommodate them. He further advised as far as public attendance, all of the meetings were available on the County’s website.
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County Clerk’s Report

Mr. Flisser stated Monday, January 9, 2012, at 7:00 p.m., the Lehigh Valley Health Commission would be meeting at the Lehigh County Government Center.

Adjournment

Mr. Gilbert made a motion to adjourn.

Mrs. Thierry seconded the motion.

The motion passed by acclamation.

Frank E. Flisser
Clerk to Council