Easton, Pennsylvania                        March 6, 2014

A regular meeting of the Northampton County Council was held on the above date with the following present: Margaret L. Ferraro, President; Glenn A. Geissinger, Vice-President; Mathew M. Benol; Kenneth M. Kraft; Lamont G. McClure, Jr.; Scott Parsons; Hayden Phillips; Seth Vaughn; Robert F. Werner; Frank E. Flisser, Clerk to Council, and Philip D. Lauer, Solicitor to Council.

Prayer

Mr. Geissinger 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 February 20, 2014 meeting shall be approved.

Mr. Kraft seconded the motion.

The minutes were approved by voice acclamation.

Mr. Phillips stated at the last meeting, County Council passed a resolution approving the purchase of an easement in Upper Mount Bethel Township, however, at the time, the township had withdrawn their support so he wondered if the resolution was correct.

Mr. Parsons advised to date, the township had not withdrawn its funding, but if it was withdrawn the County would not provide its funding.
Presentation of the County Council Proclamation: Honoring Abigail Marone - Notre Dame Green Pond High School Speech and Debate Team

Mr. Phillips presented a Proclamation to Ms. Abigail Marone, who was the Junior Co-Captain of the Notre Dame Green Pond High School Speech and Debate Team, for earning the Degree of Premier Distinction from the National Forensic League Speech and Debate Honor Society.

Mr. Benol stated he had a Proclamation for Mr. Dante Sean Pavan, who could not be present tonight. He further stated his family had invited members of County Council to his Court of Honor ceremony to be held on March 9, 2014 where he would receive the rank of Eagle Scout.

Courtesy of the Floor

Mr. Scott Kuehner, Deputy Sheriff’s Association - presented a letter from the Deputy Sheriff’s Association announcing it would be holding its annual Easter Egg Hunt on April 12, 2014 and requesting a donation from County Council (see Attachment #1).

When Mrs. Ferraro advised him this money was already put aside from County Council’s Contingency Fund and a resolution would be prepared for the next meeting, Mr. Kuehner thanked County Council for its generosity.

County Executive’s Report

Mr. John A. Brown, County Executive, stated during a Department of Health inspection at Gracedale there was a hot water issue. He further stated they have been working with Xerox to expand the Public Works tracking system to include capital projects and maintenance facility management tools.

Mr. Brown advised at the Retirement Board meeting, it was revealed there was an 18.7% appreciation in the assets for 2013 in the General Retirement Fund and in the Other Postemployment Benefits Fund, there was a 20.4% in the assets overall. He further advised he had requested more detailed information to determine what that meant for the upcoming budget and the next
few years.

Mr. Brown stated at the request of Messrs. Werner and Kraft, he was looking into the Pilot Bridge Program and when he had a more comprehensible view of where the County was, he would let County Council know.

Mr. Brown advised he met with a group from the Braden Airpark, who requested the County’s support in keeping it open.

Mr. Millard D. Freeman, Gracedale-Nursing Home Administrator, stated they had their State inspection last week that included the Department of Health - Division of Long Term Care and Division of Life Safety. He further stated there were five deficiencies that included some minor issues.

Mr. Freeman advised during the inspection, one of the inspectors was taking water temperatures and found some hot water in the range that would scold hands. He further advised all the hot water was immediately shut down in the building until they could get to the bottom of the issue.

Mr. Freeman stated they isolated the mixing valve that was completely rotted out and immediately rebuilt it. He further stated the next day, the hot water temperature shot up again and they found that one of the three boilers that fed the hot water system was too high.

Mr. Freeman advised it was determined it was due to a bad thermostat, which was overnighted and installed before the last day of the inspection. He further advised it was inspected and determined to be fixed, but later that night the temperature jumped up again.

Mr. Freeman stated upon further investigation, they found some steam valves that were not working properly. He further stated those valves were approximately 50 years old and had to be custom made so they should arrive by early next week and then those tanks could be brought back on line.

Mr. Freeman advised along the way, they discovered that over the years some changes had been made to the engineering designs of the systems to save some money which resulted in the wrong size valves being installed. He further advised not only were they the wrong size, they were old so they would have to be replaced, which they were doing this week.
Mr. Freeman stated some circulating pumps were also downsized so they too would have to be replaced. He further stated during the Guaranteed Energy Savings Act (GESA) operation, mixing valves were put on every sink and during their inspection, they found many of them were failing due to poor maintenance.

Mr. Freeman advised they were working on the entire water system to correct everything and bring it back to the original engineered design specification from three years ago when it was installed. He further advised by the end of the next week everything they have identified would be fixed and then they could review the other issues.

Mr. Freeman stated an immediate jeopardy was declared when a problem was identified that was considered so severe that it could put patients’ lives at risk. He further stated the reason an immediate jeopardy was declared on Wednesday night in the middle of the inspection was because not too many years ago in Philadelphia, a similar problem happened in a nursing home and a patient died.

Mr. Freeman advised when an immediate jeopardy was declared, the State inspectors could not leave the building until it was deemed that action was being taken to remedy the situation to make it safe. He further advised within two and a half hours of discovering the problem, temporary solutions were incorporated.

Mr. Brown stated the goal for Gracedale was zero tolerance for these types of issues so they were planning to restructure Public Works and maintenance. He further stated he and Ms. Allison Prantz, Director of Human Services, met with the individuals from Premier Healthcare Resources and requested they look at the finances of Gracedale to see where there could be cutbacks.

Mr. Thomas Harp, Director of Administration, advised the employees at the Bechtel Building, as well as the Veterans Affairs Division, would be relocating to the Human Services Building tomorrow morning. He further advised the Department of Fiscal Affairs - Revenue Division satellite office would also be relocated there so starting next week any functions done at the Revenue Division at the Courthouse could be done there. He noted the employees at the Wolf Building would be relocated to
the new building on March 14, 2014.

In answer to Mr. McClure’s question as to how much money did the County receive from the sale of the Bechtel Building, Mr. Harp stated it was approximately $1.3 million.

In response to Mr. McClure’s question as to the status of the closing on the Wolf Building and what would the County receive, Mr. Harp advised that was scheduled for April 23, 2014 for approximately $1.9.

In answer to Mr. Kraft’s question as to whether the Lehigh and Northampton Transportation Authority bus stop would be in operation, Mr. Harp stated to date, he had not seen a sign, but the bus was scheduled to stop there next week.

In response to Mr. Kraft’s question as to whether there would be a bus shelter at that location, Mr. Harp advised he was informed it had to be manufactured so it should be there within a month or two.

Mr. Werner stated he received a number of telephone calls from residents of the County saying the County Executive’s comment that the County had been mismanaged for the last 8-16 years reflected poorly on a lot of people that did a lot of good for the County and to demean and tear away good will was not a good thing. He further stated he was telling Mr. Brown this on behalf of the individuals who called and cautioned him that in leadership, he should not insult the integrity of those around him.

Update/Progress Report - Department of Human Services

After requesting updates on the County’s projects, Mr. Werner advised he received some forms that indicated what projects were being done and the progress being made.

In answer to Mr. Werner’s question as to whether the generator room flood area project at Gracedale was started, Mr. Steven DeSalva, Director of Public Works, stated it had been. He further stated he was currently reviewing the draft Request for Proposals (RFP) for the solicitation of a design engineer for that work.
In response to Mr. Werner's question as to the status of the elevators, Mr. DeSalva advised that project should be completed by the end of March.

In answer to Mr. Werner's question as to whether the Computer Room project in the Courthouse had been started, Mr. DeSalva stated it was still on schedule.

In response to Mr. McClure's question as to whether during the GESA project there was any indication of the problems with the valves, Mr. DeSalva replied there was none.

In answer to Mr. McClure's question as to whether he had any specific plans for the money that was designated for Gracedale in the bond that was passed last year, Mr. DeSalva advised the bond money was going to be used for the storm water management issue and the emergency generators, as well as for bridges.

In response to Mr. Werner's question as to whether only the Gracedale generators were involved in the RFP, Mr. DeSalva stated it would also cover the generators at the Courthouse. He further stated he wanted to clarify that a RFP went out and proposals were received and he was reviewing those.

Mr. Werner advised his concern was that if something were to happen, Gracedale would be in the same situation it was a year or two ago.

Mr. DeSalva stated Gracedale was a little better off since they had an emergency generator there. He further stated the generators at Gracedale and the Courthouse were tested every Wednesday to be certain they operated properly.

In answer to Mr. Vaughn's question as to how much the County was paying for the rental generator, Mr. Freeman advised he did not know, but he could find out for him.

Update/Progress Report - Department of Community and Economic Development

In response to Mr. Werner's question as to how she intended to incorporate the Garner Report program for Northampton County, Ms. Diane Donaher, Director of Community and Economic
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Development, stated right now they were reviewing the report, but since it was Valley wide, they would have to determine what parts were viable for the County.

In answer to Mr. Werner's question as to how she planned to facilitate asset marketing to the County and if there was a listing available, Ms. Donaher advised there was no listing, but she wanted to work with the Lehigh Valley Economic and Development Corporation (LVEDC) because they had a Valley wide list that had things she was not even aware of. She further advised she was meeting developers and realtors and taking tours to see what was available.

Mr. Werner stated if the County was going to grow it had to grow from the inside as well as the outside so he would like to hear from Ms. Donaher, at a later date, how she planned to retain businesses and maintain them. He further stated he wanted County Council to know that there was a plan and a strategy for the empty buildings to be marketed.

With regard to marketing, Ms. Donaher advised there was a book entitled, "Lehigh Valley Economic Development - Making It In Lehigh Valley" (see Attachment #2). She further advised LVEDC would be sending this out by direct mail and bringing it to conferences and trade shows.

Ms. Donaher stated inside this book, Northampton County had an eight page section from which they made their own booklet (see Attachment #3) that provided why the County was beneficial for companies, which they would be distributing. She further stated it cost $20,000 and was paid through the General Purpose Authority.

Mr. McClure advised he was very glad Mr. Brown hired someone to take on the role of Director for this department and he was very encouraged by it because he, as well as present and former members of County Council, had always felt Northampton County got the short end of the stick by LVEDC.

Mr. Parsons stated he agreed with Mr. McClure and thanked Ms. Donaher for her report.

Mrs. Ferraro advised at the Economic Development Committee meeting held earlier in the evening it was revealed that a business was interested in coming to the County and Ms. Donaher
stepped in so now it was coming so she thanked her for her hard work.

Consideration of the Resolution Pertaining to Sahl Communications, Inc.

Mrs. Ferraro stated at the request of Mr. McClure, a resolution was prepared that called for the repeal of the County's contract with Sahl Communications.

Mr. McClure introduced the following resolution:

WHEREAS, the Northampton County Executive issued Executive Order No. 14-16 which hired the firm of Sahl Communications, Inc., at a cost not to exceed $84,000.00, to provide communications consulting services for Northampton County; and

WHEREAS, it appears the contract entered into with Sahl Communications, Inc. violates the Administrative Code of the County of Northampton. Specifically, the sections of the Code that were not complied with were 13.07 (b), 13.09 (a) and 13.09 (g).

NOW, THEREFORE, BE IT RESOLVED that it is the stated opinion of the Northampton County Council that the award of the contract to Sahl Communications, Inc. should be repealed.

Mr. McClure advised the reason he drafted this resolution was because under the Home Rule Charter, County Council had to ensure the integrity of the Administrative Code and he felt this contract was awarded unlawfully.

Mr. McClure stated this resolution was not an expression by County Council that the Administration did not have the power to do this because it did, but it must follow the process. He further stated it also was not an expression of County Council's view that this was a waste of taxpayers' money.

Mr. Lauer advised County Council it was his understanding their questions related to the two contracts that were under consideration. He further advised one was to hire a firm to provide business consulting services for $24,000 and the other was to hire a firm to provide communication consulting services
for $84,000.

Mr. Lauer stated the Administrative Code, Section 13.07 provided the proper methods of source selection and that included competitive negotiations, which was the RFP procedure, and non-competitive negotiations. He further stated Section 13.09 indicated the RFP method may be utilized when the relative importance of price and other evaluation factors should be weighed and the quality of competing products or suppliers should be compared and trade-offs made between price, quality, service, support and other criteria.

Mr. Lauer advised Section 13.09(a) further provided that all professional services shall be selected using that method, as well as the fact that if the contract exceeded $100,000, including any renewal clauses, County Council approval was required. He further advised this was the method that was to be used if the contract pertained to a professional service, which can be interpreted differently.

Mr. Lauer stated the County Executive did not use this procedure for these two contracts, but used the non-competitive negotiations method that was set forth in Section 13.10. He further stated that section provided a contract may be awarded for a required or designated supply or service to a sole supplier when the County Executive or his designee determined it was not practical or prudent to use the other methods.

Mr. Lauer advised it also provided that prior to the award of a contract, the County Executive shall issue an Executive Order stating the specific reasons for using that method. He further advised the Executive Order that was issued did not state the specific reasons for using that method as opposed to any other. He noted he had heard, but he had not seen, there was an amended Executive Order that did state the reasons.

Mr. Lauer stated under Section 13.07(b) there was a provision that any procurement more than $25,000 had to be by competitive sealed bid, competitive negotiations or cooperative purchasing unless prior to the solicitation, the County Executive shall, with the approval of County Council, determine those methods were not practical. He further stated it was his belief that this section would apply to the smaller contract, but the larger one would have to be by one of those other methods unless the County Executive had County Council's
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approval. He noted he did not feel this section applied because it specifically pertained to the procurement of County property for more than $25,000.

Mr. Lauer advised if it was concluded the service was a professional service, it had to be by the competitive negotiations RFP procedure. He further advised if was not a professional service, the County Executive could award the contract as long as the Executive Order doing so specified why non-competitive negotiations was the correct way to proceed.

Mr. McClure stated Section 13.10 was not the proper section in which to pursue services as those provided by Sahl Communication because they were professional services. He further stated for Section 13.10, the County Executive would have to explain through an Executive Order before the contract was entered into why this particular company had to be the sole source provider for a product.

Mr. McClure advised there was a principal in statutory interruption that when two statutes conflicted, which these did not, the specific was to be given greater weight than the general. He further advised Section 13.07 clearly stated all professional services must be obtained through the competitive negotiations method.

Mr. McClure stated the integrity of the Administrative Code had to be upheld. He further stated the resolution did not call for any legal action because that was the last thing County Council wanted to do, but it was to give the sense to the County Executive that this had to be bid properly.

Mr. Victor Scomillio, Northampton County Solicitor, advised historically the County had used the preferred vendor process for a variety of services. He further advised the term professional services was specifically defined in the Administrative Code as services that involved specialized knowledge, skill and expertise provided by persons with advanced training in a field that required an extended course of specialized instructions and studies.

Mr. Scomillio stated this issue was vetted by Judge Leonard Zito in the ambulance case. He further stated Judge Zito’s opinion rejected the notion that this case presented the danger of establishing a precedent for destabilizing unilateral
executive action. He noted Judge Zito made his determination based upon the State's certification process that was required of the Emergency Medical Technician (EMT) paramedic.

Mr. Scomillio advised many people provided services to this County in a very professional manner, however, that, by its nature, did not make it a professional service as specifically defined in the Administrative Code. He further advised he respectfully disagreed with the opinion the procedure had been improperly used.

Mr. Scomillio stated the reasons were sent forth in the Executive Order and the amended Executive Order, as well as that the process had historically been approved by County Council and the County. He further stated the opinion that was issued by Judge Zito was very specific relating to the certification requirements of the EMT paramedics.

Mr. Scomillio advised this process had been adhered to and followed.

In response to Mr. McClure's question as to whether he was stating the services provided by Sahl Communication were not professional services as defined by the Administrative Code, Mr. Scomillio replied that was correct.

Mr. Werner stated County Council had not received the amended Executive Order. He further stated his perception was the fundamentals of this County government were being pushed aside by an attempt to govern via consultants to protect the County Executive from personal liability and accountability.

In answer to Mr. Phillips' question as to whether the contract for $20,000 for a consultant to review capital projects would be covered under his opinion, Mr. Lauer advised his opinion was in response to the presentation of these two contracts.

Mr. Phillips stated he felt the three contracts were alike so he did not want the two to get rectified and then have to address the other one later.

Mrs. Ferraro advised, and it was confirmed, that contracts under $25,000 did not have to be approved so the debate was for the $84,000 contract.
Mr. Lauer stated there was a provision in the Administrative Code that provided contracts for more than $25,000 had to be by one of three methods of selection, which was not the one used in this case, unless the County Executive, with the approval of County Council, determined those methods did not work in that particular case. He further stated the problem was that section actually applied only to the procurement of County property and none of these provisions related to that.

Mr. Lauer advised the issue was whether the County Executive had to use, for this type of selection, a RFP process because it was a professional service, which depended upon the interpretation of the definition of professional services. He further advised professional services under the Administrative Code were services involving specialized knowledge, skill and expertise provided by persons with advanced training in a field that required an extended course of specialized instruction and study.

With regard to the ambulance case, Mr. Lauer stated the point Mr. Scomillio was making was one of the reasons Judge Zito concluded the service being provided was a professional service was because it required certification and more importantly in order to be certified someone had to undergo a very significant amount of training at a very significant amount of expense.

Mr. Lauer advised Judge Zito’s decision did not indicate the only things that could be considered professional services were those where a certification was required. He further advised it did indicate that in that case because they had to be certified, it was a factor to be considered and it was a dispositive factor.

In response to Mr. Geissinger’s comment that based on his opinion, Section 13.07(b) should be stricken from the resolution, Mr. Lauer agreed.

Mr. Scomillio stated in Judge Zito’s decision, the basic life support services did require a certification, but that certification alone was not enough for him to find these were professional services. He further stated it was the advanced certification and study that compelled his ruling.
Mr. Geissinger advised it was reasonable to conclude a person could have a qualification, requirement or license to do a job, but under the definition as given by Judge Zito, it required an advanced certification of some kind.

With regard to professional services, Mr. McClure stated the opinion cited two cases wherein it was indicated as something more than an act flowing from mere employment or vocation, noting it must be such as it exacts use of the application of special learning or attainments of some kind. He further stated it continued the term professional meant something more than mere proficiency in the performance of the task and implied intellectual skill as contrasted with that used in an occupation for the production of or sale of commodities.

Mr. McClure advised the purported services to be provided in this contract would fall within that definition and if Sahl Communications was going to receive $84,000, the services being provided were going to be professional.

In answer to Mr. Benol’s question as to whether the amended Executive Order would rectify this situation, Mr. McClure stated it would not. He further stated the process had to be started over and competitive negotiations would have to be used.

In response to Mr. Benol’s question as to whether there was anything County Council could do to change the wording to provide a clearer definition of professional services, Mrs. Ferraro advised they could change it at a later date.

Mr. Parsons stated the debate regarding the definition of professional services could go on forever, however, he felt the issue was what services the $84,000 was going to provide and he believed there were individuals already working for the County that could provide those services.

Mr. McClure advised that was not for County Council to decide, but it was up to them to ensure the Administrative Code was followed. He further advised he would be amendable to removing Section 13.07(b) from the resolution.

Mr. Scomillio stated Judge Zito’s opinion also indicated he found the cited case laws equivocal and difficult to apply. He further stated when there was a process that gave a specific definition of professional services, he felt it was incumbent
upon County Council to look at the County's past history of awarding sole source contracts for a variety of services from purchasing of real estate to design systems to professional engineers.

Mr. Scomillio advised the County Executive had followed the course that had been laid before him from previous Administrations and accepted by previous County Councils. He further advised the Executive Order, with or without the amendment, met the requirements of Section 13.10. He noted the RFP process was a long one and the sole source mechanism permitted the County Executive to select a preferred vendor in a short term.

Mr. McClure stated in order to award this contract to Sahl Communications for public relations, which the Administration was arguing was not a professional service, it would also have to be explained why Sahl Communications was the only one to offer this non-professional service as a sole provider and he believed that could not be done.

When Mr. Scomillio commented, in response to Mr. Benol's question, that he believed the amended Executive Order would alleviate this conversation, Mr. Benol asked if this resolution could be tabled until the next meeting so it could be reviewed.

Mr. McClure advised there could be other issues implicated here if this were found not to be a professional service and the contract was improperly entered into. He further advised he believed the integrity of the Administrative Code could be held up without harming the functioning of the County.

Mr. Benol made a motion to table this resolution until the next meeting.

Mr. Geissinger seconded the motion.

As there were no further questions or comments, Mrs. Ferraro called for the vote.

The vote: Benol, "yes"; Geissinger, "yes" Werner, "no"; Ferraro, "yes"; Kraft, "no"; McClure, "no"; Parsons, "no"; Phillips, "yes" and Vaughn, "yes".

The motion was passed by a vote of 5-4.
Introduction of the Wolf Building Storage Lease Ordinance

Mrs. Ferraro stated at the request of the County Executive, an ordinance was prepared to permit the lease of storage space for the County at the Wolf Building, which was anticipated to occur at the time the County sold the Wolf Building. She further stated the public hearing, debate and possible vote would take place at the March 20, 2014 County Council meeting.

Messrs. Kraft and McClure introduced the following ordinance:

AN ORDINANCE OF THE NORTHAMPTON COUNTY COUNCIL AUTHORIZING THE COUNTY EXECUTIVE OF THE COUNTY OF NORTHAMPTON, EASTON, PENNSYLVANIA, TO LEASE A PORTION OF REAL PROPERTY COMMONLY KNOWN AS THE WOLF BUILDING LOCATED AT 45 NORTH 2ND STREET, CITY OF EASTON, NORTHAMPTON COUNTY

WHEREAS, Northampton County Administrative Code Article XIII, Section 13.15 Purchase, Sale and Lease of Real Estate Section c. (1) Purchase/Sale/Lease of Real Estate, provides, "The County Executive, or his designee, may negotiate a contract for the purchase, sale or lease (with the County as lessor or lessee) of real estate. Any such purchase/sale/lease shall be approved by County Council, and no such contract shall bind the County nor shall any conveyance be lawful, until County Council approves of the terms of the purchase/sale/lease."; and

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

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by Northampton County Council that it does hereby authorize the County Executive of the County of Northampton, Easton, Pennsylvania, to lease approximately 5,883 square feet consisting of storage space being the warehouse building located in the rear parking lot of the Governor Wolf Building, 45 North 2nd Street, Easton, Pennsylvania. The terms and conditions of the lease shall be in accordance with the lease agreement and related documentation, copies of which are attached hereto and made a part hereof as Attachment "A".
Effective Date: This ordinance shall become effective thirty days after the date of enactment.

Weona Park

Mr. Werner advised it had been asserted during a radio program the County was building a golf course so he wanted to go on record to say there was going to be some improvements made to the mini golf course at Weona Park in Pen Argyl.

Economic Development Committee Report

Mrs. Ferraro stated the Economic Development Committee met earlier in the evening and a presentation was given by Mr. Don Cunningham, Chief Executive Officer of LVEDC, on the Garner Report.

Solicitor’s Report

Mr. Lauer advised he agreed some changes to the Administrative Code may be appropriate.

Adjournment

Mr. Parsons made a motion to adjourn.

Mr. Benol seconded the motion.

The motion to adjourn passed unanimously by acclamation.

Frank E. Flisser
Clerk to Council