

**REGULAR MEETING HELD ON WEDNESDAY, JANUARY 27, 2016**  
**6:00 PM**  
**ORDER OF BUSINESS**

**Item**

**1. CALL TO ORDER BY DIRECTOR at 6:00 PM**

- 2. ROLL CALL** Freeholder Crabb, Freeholder Lazzaro, Freeholder Rose, Freeholder Vohden, Freeholder Director Graham; Steve Gruchacz, County Administrator; John Williams, County Counsel; Catherine Williams, Clerk of the Board

**3. MOMENT OF SILENT PRAYER AND SALUTE TO THE FLAG**

**4. PUBLIC STATEMENT**

"Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975 Adequate Notice as defined by Section 3D of Chapter 231, P.L. 1975, has been made by regular mail, such notice being submitted on January 7, 2016 from the Administrative Center of the County of Sussex, located at One Spring Street, Newton, New Jersey to the following:

New Jersey Herald                      WSUS Radio  
New Jersey Sunday Herald      WNNJ Radio  
Star Ledger

and is also posted on the bulletin board maintained in the Administrative Center for public announcements and has been submitted to the Sussex County Clerk in compliance with said Act."

Freeholder Director Graham asked Mr. Williams to explain the new item on the agenda.

John Williams, County Counsel said according to the County Administrative Code and Robert's Rules of Order, in section 2.8 of the Administrative Rules of Procedure section D, sets the order of business and it has several items that are normally in the agenda but it says that the order of business shall "include" the following and the meaning of include is not a word of limitation, it doesn't say consist of or will be limited to it just says these are things you want to include or you have to include. This new item is being added under the general Robert's Rules of Order which we operate under to set the agenda at the beginning of the meeting with respect to new items being added. Sometimes you will see a new resolution that is not printed on the agenda that comes up and instead of discussing it; it gets added to the agenda so this will allow us to discuss it at that time. So in the beginning of the meeting it will be discussed what is being added and or removed and the agenda will be set at that time by majority vote of the Board. This is something that is used in other municipalities in the county; it helps to organize the meeting better and run more efficiently.

Freeholder Crabb asked would it be at that point if you wanted a resolution considered separately from the consent agenda it would be addressed at that point.

Mr. Williams said when we come to the items that are not the consent agenda, you will see how it will be addressed and I have already addressed that with the Freeholder Director. Generally it will be by consent if you all wish and if not according to Robert's Rules of Order it will only take one negative vote. But you can still do it, it moves things along.

Freeholder Crabb said my second question is if anything comes up in old or new business, are we precluded from taking any action until the next meeting?

Mr. Williams said new business by definition comes up when you reach New Business and sometimes you might raise a motion under New Business based on what is said at public session. Old Business we are going to endeavor to start paying more attention to what might be listed as a line item. There is one tonight that is going to be addressed now to be added. Old Business is old meeting business; it is something that has been tabled. It is not something that has been deferred off to a committee or delegated to staff to handle.

It is things that have been left on the table or need to be addressed. Apparently it works well in other municipalities and you know up front what you are dealing with.

Freeholder Vohden said I would not want this to become a tool to restrict discussion on resolutions. I find it in contradiction to the current Administrative Code. A resolution in writing may be introduced by any member of the board at any meeting in the proper order of business pursuant to the Open Public Meetings Act. This is something that is covered under the Public Meetings' Act to give us the freedom to introduce resolutions at any point in the meeting and on top of that I think this is an amendment to the Administrative Code. An amendment means a change, addition or deletion of something from an official document. The amendment to the Constitution, the amendment to the state regulations; and any amendment to the Administrative Code has to be done by an Ordinance and I believe this is an amendment. I am not going to push it but I believe it is. If we are adding stuff than I want to add something that would go under number 19 under Rules and Procedures in the Administrative Code which is Freeholder Comments. Years ago, before I was a Freeholder, it was moved up to earlier. I would like to add another Freeholder Comment after the second Public Session because so many times, it is for comments only, if you have a question, it should be put in writing and send to the Clerk of the Board, so we can respond to these questions from the public and answer. There are so many times that I hear false information here. I would like to respond to the allegations, accusations, and I would like to add that. There are some other things I would like to add if we are going to be amending the Code. Freeholder Vohden asked if he could make a motion.

Freeholder Rose said you have to first make a motion to approve the agenda than you make a motion to amend the agenda.

Freeholder Rose said I would like to make a motion to approve the agenda.

Freeholder Vohden said we haven't amended the agenda yet. Why do I have to amend the agenda, you didn't amend the agenda you just added number 5, I want to add number 19.

Freeholder Rose said I want to approve the agenda.

Freeholder Vohden said we have not approved the change, nobody has approved number 5.

Mr. Williams said you always want the opportunity to raise new business under New Business so that does not retract from any ability to raise new business, a proposal, a motion whatever issue you which to bring up. All I can do is refer back to the Administrative Code and the word include does not mean limited to or consist of so in that respect we are not changing or amending the Administrative Code. If we did not include the 22 items listed in there and one of those was omitted than you would be changing the Administrative Code because it says it shall at least include these items. Robert's Rules does not limit you from setting agenda items to help run your business more efficiently. My suggestion is to try it and see if it works. You can do two things tonight; you can make a motion as to the order of the agenda items when it is appropriate or you can talk with the Director because the Director can set the order of the items. I think in order for this to work, we have to indicate what is being added and or remove because it is not printed on this agenda.

Freeholder Director Graham we are looking to pull 10 B.

Freeholder Rose said first there has to be a motion to approve then it is seconded, then there is discussion and during the discussion you make a motion to amend.

Freeholder Vohden said I had no idea what this was when I got my agenda. Let's put the approval of the agenda as an item on the agenda. How do we do that?

Freeholder Rose said Robert's Rules solves that problem for us because it allows the presiding officer and in this case Freeholder Director Graham to set the agenda which only becomes the agenda for the meeting once approved by the governing body.

Freeholder Vohden said we are adding to the section Rules and Procedures under the Administrative Code. I don't think we should just be adding something to this list.

Mr. Williams said we are not adding it to the Administrative Code, we are adding it to the agenda and the agenda can be modified pursuant to Robert's Rules of Order and our Administrative Code does not limit our agenda to only those 22 items. It says at a minimum but I don't want to keep restating that.

Freeholder Vohden said but it is not on there.

Mr. Williams said it is not on there but it does not say that is the only thing that can be on there. In respect to the procedure, we will make a motion and then a motion to amend the agenda.

Freeholder Vohden asked will we be able to separate tonight resolutions out of order.

Freeholder Director Graham no not out of order, but we will be able to take things out of the consent agenda and deal with them separately.

Freeholder Vohden said this is a whole new section, I don't think anyone else knows what this is; you are making up rules as you go along.

Mr. Williams said we need to move on.

**5. APPROVAL OF AGENDA**

**MOTION** made by Freeholder Rose to approve the agenda as printed, seconded by Freeholder Lazzaro and passed unanimously.

**MOTION** made by Freeholder Rose to amend the consist agenda to remove 10.b, seconded by Freeholder Lazzaro and passed unanimously.

**MOTION** made by Freeholder Rose to add a discussion under Unfinished Business regarding a memorial for Elaine Morgan, seconded by Freeholder Lazzaro.

On Roll Call the vote was:

Freeholder Crabb	Yes
Freeholder Lazzaro	Yes
Freeholder Rose	Yes
Freeholder Vohden	Yes
Freeholder Director Graham	Yes

**6. PUBLIC HEARINGS**

None for tonight.

**7. PROCLAMATIONS/CERTIFICATES/PRESENTATIONS**

A. Proclamations

1. Proclamation designating February 5, 2016 as "National Wear Red Day".  
**64-2016**

**MOTION** made by Freeholder Crabb to adopt the Proclamation, seconded by Freeholder Lazzaro and passed unanimously.

B. Presentations

1. Acknowledging the retirement of Louise Giardelli, Human Services Specialist 3, who retired after 30 years with the County; Marie N. Meyers, Employee Benefits Specialist for Employee Services, who retired after 27 years with the County; Lisa E. Rights, Senior Library Assistant at the Library, who retired after 26 years with the County; Brian A. Robbins, County Correction Officer with the Jail, who retired after 25 years with the County; Joan M. Skillin, Registered Environmental Health Specialist, PH, who retired after 26 years with the County; Eric K. Snyder, Director of The Division of Planning, who retired after 13 years with the County; and Edward C. Vealey, Building Maintenance Worker for Facilities Management, who retired after 25 years with the County.

Freeholder Vohden, Freeholder Crabb and Freeholder Graham expressed their gratitude for Eric Snyder and wished him well in his retirement.

**8. PUBLIC SESSION FROM THE FLOOR  
(Please note: Everyone is asked to keep their comments to 5 minutes or less)**

**MOTION** made at 6:30 PM by Freeholder Lazzaro, seconded by Freeholder Rose to open the floor to the public and passed unanimously.

**Comment by Mr. Neil Kenny**

Mr. Kenny came forward and said I am somewhat confused, and concerned for the welfare of the Board that we can work together and with a little more plain talk, straight talk. When you sit and banter back and forth that is not productive.

**Comment by Mr. Harry Dunleavy**

Mr. Dunleavy came forward and said like the gentleman just said I am educated too and I was confused with what was going on up there a few minutes ago. My comment is about the solar project and Attorney Boxer and he expressed his concerns about the selection process for the Board of Trustees for the Sussex Community College.

**Comment by Carl Luthman**

Mr. Luthman came forward and said about this time last year; I appeared before this Board to express the opinion that despite the political rhetoric, taxes for county purposes have not gone down. The elimination of the Homestead did not lead to a reduction in taxes. He has set 4 measurable objectives for this Board this year so he can determine which members of the Board should be awarded his vote. Goal #1 a .005 decrease on taxes for county purposes, Goal #2, part 1; give the Open Space Committee more latitude in how the tax for open space can be spent and part 2 is to increase the tax

for open space. Goal #3, the structure of government needs to be changed. The goal would be to study if there can be any efficiencies and cost savings in consolidating functions at the County level and goal #4 is to put the solar issue to rest by June 1<sup>st</sup>. Let the citizens of the County know what caused the solar project problems.

#### **Comment by Paul Johnson**

Mr. Johnson came forward and said he is here as a result of the robo call that he received the other night. I was called as well as others to speak against the investigation that you have promised to look into the background of the solar issue. I was encouraged to do that but I am not going to do that. I am here to tell you we must find out what is going on here. The robo call is illegal for a variety of reasons. For one I am on the do not call list so whoever did it was in violation of the law. They did not identify who they were, where they were calling from and on whose behalf. I certainly hope there is nobody in the room that was behind that. Sadly, regarding the solar issue, it looks like the county is catching up to Washington DC and Trenton. He believes the county has the responsibility to the tax payers and find out what went wrong, who did it and can they be prosecuted. If they can be prosecuted than I would ask the county to go forward and recommend at the state and or the county level a prosecution should be pursued. I ask you to go forward with every available speed, be conscientious of the expense of the investigation and take it right to the end.

#### **Comment by Robert Walker**

Mr. Walker came forward and said he has been a resident of Hardyston for about 48 years and during those years I worked for public schools. Had I been faced with what you are faced with I would have resigned because it is outrageous. I was disappointed when the Homestead was sold and then I heard you were using that money for the solar project. He feels that the county should have been focused on the all the people leaving the county and the foreclosures. He felt that should have been the mission not the solar. He spoke about his concerns and things the Board should have addressed when they were looking into the project. He also said that people will come and talk and support things good stuff.

#### **Comment by Michael Grace**

Mr. Grace came forward and said he wanted to remind the Board what the definition of government is and you are not it, we are it. The people of this county, the state are the government and you are the representatives of us and I am requesting that the resolution awarding A. Matthew Boxer a contract for \$500,000 without competitive bidding be withdrawn from consideration. It is the public's understanding that there are several ongoing investigations already; the need to hire additional services to investigate the project are redundant and an unethical waste of taxpayer money. He feels the circumstances surrounding the negotiations for the contract with A. Matthew Boxer Esq. in his opinion are suspect. A contract of this size should not be negotiated outside the public's sphere since it is the taxpayers who ultimately bear the burden of the cost.

Mr. Grace continued with his concerns about A. Matthew Boxer and Lowenstein Sandler LLP.

#### **Comment by John Snyder**

Mr. Snyder came forward and asked about the robo call. He wanted to know if any Freeholder Board member had any knowledge of that call before it was made.

No one from the Board said yes.

#### **Comment by Larry Price**

Mr. Price came forward and asked if anyone knows the population of our county?

Freeholder Graham said about 145,000.

Mr. Price said the \$500,000 is divided out of our taxpayers and I think it is a small cost to pay to try and bring this to a head. I believe in investigating from the bottom up not from the top down. I talked to a lot of people and about 75% are for investigating this. They think maybe we can do something from the bottom up and the others can do something from the top down and maybe meet in the middle and come up with an insurance settlement.

#### **Comment by Susanne Kimble**

Ms. Kimble came forward and said although I appreciate Mr. Grace's intelligent words and I understand, however, does anybody know if SEC is investigating this? Does anybody know if the Attorney General's office is investigating? Does anyone know if there is any outside investigation going on? How long do we wait for this? I think enough is enough. I think we need to do our own investigation and not just sit on our hands and wait until perhaps someone might come along and do this. We know how the federal government works, we know how slowly they do things and we know how the state government works. I don't think that amount of money is unconscionable if it can save us some money down the road and if it can stop us from having to pay perhaps more that we may get out of paying. That is more than worth it.

### **Comment by Harvey Roseff**

Mr. Roseff came forward and said I think solar is a program that is abused in the public's eye and there is a lot of rock throwing at the word solar but it was a deal and an arrangement that happened to have solar for the purpose of the money. The real issue is not that it was solar it was the contract arrangement; it was from the beginning, how it came to be, to the bailout, to now. I don't think the public has heard the story. Everything has been behind the scenes. If you dig, you will find some paperwork and get a better understanding. You can get an arbitrator's report between Sunlight and Mastec. It didn't even concern the county. We paid for a bailout that still has not been defined to the public as to why? Sussex County did not lose in court. We went to the Supreme Court and won. I think that is implicative of no one really understanding how this business arrangement works, how the cash flows go. I am not saying that there should or should not have been a settlement; it is a story that has not been told to the public. Nobody has told the public why the developer lost in court but Sussex County had to pay. Nobody has told the public why this developer who went around saying they had \$10million in capital and a \$30million solar fund, didn't make their contribution outright before we had to pay. I think this is the story that now has to come forth and I don't think the FBI, the SEC and I don't think any of those entities are focused on Sussex County. For us, we need to step forward and say there is accountability and we should understand how that accountability will be assigned. I really think the people of this county want to hear the full story.

### **Comment by Bill Sparling**

Mr. Sparling came forward and said at the last meeting I asked a question to Mr. Vohden and I asked if Somerset and Morris County had the same financial problems that we had and your answer was no and because of that answer, I looked at the law firm we want to hire for this issue and I am trying to break it down to something that may be manageable. We know that \$500,000 is the cap, but my suggestion would be when you fill out a contract with this law firm, you have a \$100,000 cap to start with at the end of the \$100,000 cap whatever information that law firm can share with the Board and the public as to any process and anything they can discuss openly to do so but if the law firm has not made any headway at that \$100,000; then I suggest you write your contract for the next \$50,000 and after \$150,000 being spent and if the law firm gives you absolutely nothing than I think the public should be made aware of that and you as the Freeholder Board should listen to us and voice our concerns as to how far do we let this go? We have a say in this and I think the law firm that you are hiring should work that deal with us.

### **Comment by Doug Amadayo**

Mr. Amadayo can forward and said he is an attorney by trade and has been doing litigation for a while and I know Lowenstein Sandler LLP very well. They have an excellent reputation. It is a very large firm and it has a national reputation. We need to intimidate; we are going after some very big people, they need to know that we have a champion that will meet them on equal ground. The FBI, SEC investigates on behalf of their client who is the federal government. They use the criminal law, not the civil law and any finds they collect will not go to this county. A right to sue is an asset. As I understand, this investigation is going to be focusing on finding out where we might have a recovery through a civil law suit. We have to decide if Lowenstein Sandler LLP is chosen, we will have to decide how much we want to invest in that. As to Mr. Sparling's point, a lawyer can be sued at any time, if he charges you \$20,000 and you don't like what he is doing, you can sue, you don't need to make an arrangement with a lawyer that we will revisit your retainer after a \$100,000. You are in charge of the lawyer and if you are not getting your answers, or information you can sue that lawyer at any time.

### **Comment by Sam Castimore**

Mr. Castimore came forward and said I think it comes down to common sense. When do you ever shell out a pile of money before anything is billed and then say whatever happens, happens. I would urge you going into the future that common sense has to prevail. I fully agree with the fellow that just got up and said that the federal investigators are out to study criminal activity. Can we prove that in the court of law, I would think probably not and I hope this investigation pursues in a civil matter. Whoever walks into bad people, whoever has the biggest gun always wins. You need tough litigators, you need bright people and my grandfather Tanis always said legal advice is expensive only if you don't listen to it, other than that it is cheap. I hope you pursue this for the benefit of the tax payer and don't get into these boondoggles again. I have big doubts about the solar industry whether it is on the federal or state level and the tax payer always winds up footing the bill. I urge you to keep going and I applaud your efforts.

### **Comment by Christine Quinn**

Ms. Quinn came forward and said while all this is going on and all this is getting sorted out and the implementation of the solar project is moving forward, my question is are there any plans that this Board has to cease and desist with the deployment of further panels or implementing anything further until such time that we get clarity as to what is going on?

Freeholder Director Graham said I can't answer that right now but I can direct you to the County Administrator Steve Gruchacz and he can answer those questions.

Ms. Quinn said I am saying for the project on a whole. For an example in Sparta Township, the project is moving forward, the implementation is moving forward but it seems there are a lot of variables with questions that we have asked, so my question really isn't day to day, my question is, is there a point where you would consider saying, before we move forward with something before we know what the return will

be and what will happen, is that something on the table or is this going to keep marching on regardless of what happens with investigations and what not?

Freeholder Director Graham said I have been trying not to answer but an investigation is one thing and an implementation is another. That is why I feel Freeholder Crabb or Steve Gruchacz can speak about it better.

Freeholder Crabb said there are different phases that the remaining projects are at right now. If there are certain things that Sparta Township government has on going open issues with, we should arrange to make sure that communication gap is closed.

Ms. Quinn said so the action item is a follow-up.

Freeholders Crabb and Graham said yes.

Ms. Quinn said I am not just here to represent Sparta Township that is not my intention; it is for the deployment of the other phases as well; I am not just here for the one township; it is a blanket question.

Freeholder Crabb said that is information that will be provided.

### **Comment by Mara Modes**

Ms. Modes came forward and said she is not in agreement with Resolution P on the agenda that has to do with Greentree and moving the road. Greentree was not required to adhere to any of the variances and they were allowed to build right into the right away. Apparently now the road is going to be widened and the only place it can be widened is at the people who live across the road at their expense without any input from them. They were allowed to start building before any of the appropriate parking was available. Eventually an agreement was made with the Board of Education so that they could put a third story on so basically the tax payers are going to pay to maintain their parking for their building. I am confused as to why people are going to occupy the building and give them a CO before any of the work is fully completed.

The building and the road are located near a Bezene contaminated well and it is in the process of being cleaned up. I want to know if there is going to be an environmental impact study and who is going to pay for it? It was noted that we do not know how many gas tanks but apparently there is one under the road. Bezene migrates and contaminates soil, water and air. We are next to the largest lake in the state. We were told at a recent municipal meeting that municipal property can be used anyway the government deems they want them to use it. Basically if it weren't for the tax payers there would not be a Borough. We would like a little more input as to what is going on and not allow certain people to disregard variances and when homeowners have to jump through hoops to even put a water heater in. We are running out of money and patience. I would like to thank you for the snow removal and this building does not have anywhere to put the snow so it goes in the street and I slid on it.

### **Comment by Glenn Hull**

Mr. Hull came forward and said he is for a private investigation. I personally can relate to an investigation conducted by law enforcement where evidence was destroyed to protect somebody. I firmly believe it needs to have a personal investigation; independent where no politics get involved and mess things up so I am all for getting an investigation going.

**MOTION** made at 7:22 PM by Freeholder Rose to close to the public, seconded by Freeholder Lazzaro and passed unanimously.

## **9. FREEHOLDERS' COMMENTS**

### **Comments from Freeholder Crabb**

Freeholder Crabb said he would agree with the need for an independent investigation and I agree with the gentleman's comment to have it staggered, to have milestones, to have deliverables, to see where we are and this was something that I have always been for. I am going to ask that we handle Resolution Q separately if not at the wish of the Board to postpone it. I believe it was Mr. Kenny who stood up at the podium as one of final meetings last year and made the comment that this Board did not seem like it was from Sussex County. I think he hit the nail right on the head. Tonight we are going to consider Resolution Q reaching into the pockets of taxpayers and handing a \$500,000 pot of gold to a lawyer that only Freeholder Graham had contact with without any direction from the Board. He has somehow on his own selected this firm and this lawyer where it has taken a full month to get their own resolution into some shape that can be presentable tonight. Many in this room have been very vocal regarding concern over single bidder contracts. This was a no bidder contract and arranged by a single Freeholder. No consultation with purchasing, neither with County Counsel nor with his own Board and no RFP for services. This is outrageous and ridiculous. Whatever the stated intentions are, this is not how this Board operates. I am sure there will be accusations of quibbling and what we are afraid of. If that is the best response, than we have really lowered the bar. And what about this firm? Freeholder Vohden last week sent out correspondence to them asking very pointed and binary questions and they have chosen not to respond. What does this say about their intentions and who do they think they will work for, the one who dangled a half million dollars in front of them. Why are they not here today? It has been month. They could have had the opportunity to present their proposal in front of the entire Board and the public as it should have been done and answered questions of concern. Why would they not have asked for this

themselves. The biggest concern I have with this firm is that they seem perfectly willing to sit back and watch it unfold as it has with all the looks of a backroom deal. What does this say about them? If campaign promises are driving these actions then let them take a true course in transparency. In a rush to get to the bottom of broad issues, why would it be done in such a hypocritical process? One of the driving issues was the point that not much progress has been made since the settlement and the cause for an investigation was made at the same time and nothing has transpired since that time either. To spend \$500,000 at this point, 25% of the total 2% budget cap that we always worked so hard to control will be a decision that this collective Board will make but before committing to this we should have had discussions as a Board as to how this would take place. Spending this much of the tax payers' money we should have a clear road map as to where we will go. If we pass this resolution prior to a face to face with at least this firm, it will be outrageous. It will lower the bar of this Board and will take just a little bit the tax payer for granted all in the name for election promises.

### **Comments from Freeholder Vohden**

Freeholder Vohden said a lot of times he is asked what is a Freeholder? What a Freeholder does? He said there are over 3000 counties in the United States and all across the country except for New Jersey, the county government is administered by county administrators. Here in New Jersey and all 21 counties is delegated to the elected county Board of Chosen Freeholders that is us. Freeholder Vohden made available handouts of what is a Freeholder. He went over the handout with the public. He said Sussex County government is organized under these state laws. They set forth the details of the administration and establish the duties and responsibilities and powers of all county officials and appointed representatives. The sheet shows the Freeholder Board's responsibilities and states that the actual day-to-day operation of the Departments is overseen by the County Administrator, who is appointed by, and reports to, the Board of Chosen Freeholders. The second sheet points out what a County Administrator does. It says that the County Administrator shall negotiate contracts for the County subject to Board approval and review by County Counsel. The third page states that the authority, the responsibility and the accountability for all the purchasing activity for the county is assigned to a Certified County Purchasing Official. All purchases should be done by our Certified County Purchasing Official. On our agenda tonight there are a number of resolutions that have been negotiated and processed with the correct procedures. Also on the agenda is a resolution to spend \$500,000. This agreement was negotiated by Freeholder Graham and A. Matthew Boxer without any participation from our County Administrator, County Counsel, Clerk of the Board, Director of Department of Shared Services, or our Certified Purchasing Agent or any other Freeholder. It was already a completely negotiated agreement when it was presented to the Freeholder Board as a resolution ready to be voted on at a Reorganization meeting on January 4<sup>th</sup>. They agreed to the agreement including a negotiated and agreed upon hourly rate and a negotiated rate of not to exceed \$500,000 with a negotiated scope of services. Again, our County Administrator and our purchasing agent had no knowledge of this agreement until it was presented in complete form for consideration. Was this an illegal negotiation, unethical, I am not sure but I would really like to know? However, we can sign an agreement without going out for bid with a non-fair and open contract method bound through the purchasing agent in the purchasing department. Personally, I think we should go through the public bidding process for a \$500,000 contract. How do the tax payers of Sussex County benefit from this and what negative impact will this have on our capital and operating budgets. We didn't vote on this at our Organizational meeting because there were unprofessional problems with the resolution that was written without our professional staff members. The resolution was not ready for the January 13<sup>th</sup> meeting because our staff was still working to correct the details and the problems in the resolution that was prepared by Freeholder Graham. Situations happen like this when professionals are not allowed to do their jobs. We will be considering this same resolution tonight to investigate the professionals who were involved in the solar project because they may have misadvised us and we will be voting on this resolution that was negotiated without the involvement of our professionals, how do you justify that?

### **Comments by Freeholder Rose**

Mr. Rose said as you know the county owes Mastec, the original solar contractor \$3.1 million on May 1, 2016 or we must pay interest to the rate of 1% per month thereafter. A meeting was held between Freeholder Director George Graham, Administrator Steve Gruchacz, Rob Maikis, John Williams an outside attorney Weinstein and I on January 31, 2016. Mr. Weinstein is reaching out to Mastec and Mr. Williams will report back to the budget sub-committee and the entire Board with all the possible options to deal with this.

Today there was a budget meeting between Freeholder Director Graham, Administrator Gruchacz, Rob Maikis, Mary Jones and I to go over the budget. There is a hole mostly caused by the second transfer of money for the solar budget. Much work needs to be done to protect the taxpayers in the county. There will be meetings with various departments on Monday and Tuesday of next week and we will have a better report by the next meeting for the public.

### **Comments by Freeholder Deputy Director Lazzaro**

Freeholder Lazzaro said who got us into this ill-advised program, who committed the people of the county for millions of dollars of bonds without any recourse? Is this illegal? I am not sure, but I would like to know. I am weary of the I hate George meetings, is that clear, we are a team damn it and it is time we started acting like a team. You are blockading everything and anything we want to do. Who, what, why- past history; going forward we can do something. Looking backward not much can be done. If we succeed, we will take a pat on the back. If we fail, than throw the slings and arrows. There was an election 12,000 to 13,000 people said this is what we want. They got it. If they didn't vote, than you didn't get to say something. You will get a chance next time. If you don't like what we are doing than you will throw us out of office, that is how the system works and I am happy with it. It is the American way. The FBI, SEC, do

you think any of them care a wit for Sussex County and if they find \$20 million do you think that they are going to give us half because we like you. Not a chance. It is our job to look out for ourselves and to go after what belongs to us. That is what we were asked to do and that is what we will do. We will go forward with it. I see no reason to not go forward with it. The public had a say and they said it at the elections. Elections have consequences. We were assigned a task and we are going to take the task. We need to stop the silliness and we need to get to the bottom of this. It doesn't matter who did what. It matters if we can recover the money and we did not say that we are giving a firm \$500,000. We capped the bill at \$500,000, we set guidelines and goals and we will review periodically as we go along what is being done and what not and we can stop the process at any given time. Is that clear, then I don't understand why everybody is committing us to \$500,000 that we have not committed to. If it goes up that high and we recover \$20 million, I will be delighted. We have to do something and we are going to do something. We are not going to postpone it and put it off for the next 10 months, we are going to do it tonight.

### **Comments by Freeholder Director Graham**

Freeholder Graham said eleven months ago we sat here and we went through all of the difficulties of getting to a settlement something that would stop the bleeding on the solar project but at the same time push ahead and try and finish the solar project. The numbers that were thrown around in those times that we were going to be looking at were about a \$900,000 per year deficit for the next 10 to 13 years. As it stands right now this coming year, the deficit will be for the major loan against the bond is \$1, 781,404.36 plus \$468,662.50 that is the money to pay back the Homestead loan. That number actually gets bigger as the years goes out. The net county guarantee for 2016 \$1,999,404.42 and that is from the Treasurer. There have been a lot of accusations that have gone around. When I became Director on January 4<sup>th</sup> we had a meeting the next day January 5<sup>th</sup> and I asked the Administrator, County Counsel, and the Treasurer where do we stand? Who is in charge? I did not get a lot of good answers. I found out that a lot of things were said last year but that was handled unilaterally by someone else. It wasn't our team. Our team is in place right now, our Administrator, our Counsel, and our Treasurer.

I did not negotiate with Mr. Boxer. I made two phone calls to Mr. Boxer. His name came up several times in a Morris County Freeholder meeting when they were looking for an investigator. When the two Freeholders next to me won the primary a lot of it had to do with the solar investigation. I didn't say anything to anybody. I said last year in February, ok we have settled this agreement now let's go forward. As we went through June, July, August, September, October, November, December, January and now we go into February no shovels in the ground. Definition of insanity is doing the same thing over and over again and expecting a different result. Unfortunately, I think we may be testing that theory. I made a phone call to Mr. Boxer after elections not before that and asked him if this was something he did and would he be interested in doing it. He said yes. I asked him if he could come back and say he has a clean bill of health that you are not attached to anything, ethically you are not bound. He said he would get back to me. I heard from him. Then we cobbled together a resolution for the first of the year knowing that we had to get it out there. I knew we would not get it through then, but I had to get it out there. Everything from that point on from January 4<sup>th</sup> on has been handled by our County Counsel. Everything that Mr. Vohden said is blatantly not true.

Freeholder Vohden said are you calling me a liar.

Freeholder Graham said I am saying you have made accusations that are not true.

Freeholder Vohden said I am going to prove them when we go through these documents during discussions.

Freeholder Graham said it is not true. It is the only connection that I had with Mr. Boxer. Mr. Williams has handled the phone calls; Mr. Williams has moved it through purchasing. I have not touched it and I have not spoken to Mr. Boxer since mid to early November. We have to go through an investigation because as I sat there on January the 5<sup>th</sup> and I asked the questions, and the answers were not there, and we are just putting the answers together now and that is what we are dealing with what is in front of us now. I said when we filed that document last year it didn't matter what happened in Morris County or Somerset County or Mercer County or Union County we are going to get our own house in order and that is what I pledged. We are going to get our own house in order. Find out what happened and then we will proceed accordingly.

Freeholder Vohden left the room at 7:52 PM

**MOTION** made at 7:53 PM by Freeholder Rose to take a five minutes recess, seconded by Freeholder Lazzaro and passed unanimously.

Freeholder Vohden returned at 7:54 PM

7:56 PM back in session.

### **10. APPROVAL OF CONSENT AGENDA**

A. RESOLUTION RE: PAYMENT OF BILLS  
**65-2016**

B. RESOLUTION RE: TRANSFER OF APPROPRIATION  
**PULLED**

- C. RESOLUTION RE: AUTHORIZING THE RETENTION AND COMPENSATION  
**66-2016** OF LANDMARK I APPRAISAL, LLC IN CONNECTION WITH THE ACQUISITION OF DEVELOPMENT RIGHTS FOR THE MULVANEY FARM IN HARDYSTON TOWNSHIP FOR 2016 COUNTY FUNDING
- D. RESOLUTION RE: AUTHORIZING THE RETENTION AND COMPENSATION OF  
**67-2016** APPRAISAL SERVICES OF NORTH JERSEY IN CONNECTION WITH THE ACQUISITION OF DEVELOPMENT RIGHTS FOR THE MULVANEY FARM IN HARDYSTON TOWNSHIP FOR 2016 COUNTY FUNDING
- E. RESOLUTION RE: AUTHORIZATION FOR THE FREEHOLDER  
**68-2016** DIRECTOR AND CLERK TO EXECUTE THE FISCAL YEAR 2016 SUBREGIONAL TRANSPORTATION PLANNING WORK PROGRAM SUBCONTRACT BETWEEN THE COUNTY OF SUSSEX AND THE NORTH JERSEY TRANSPORTATION PLANNING AUTHORITY
- F. RESOLUTION RE: AWARDED A CONTRACT EXTENSION THROUGH THE  
**69-2016** COMPETITIVE CONTRACTING PROCESS TO THE CENTER FOR EVALUATION AND COUNSELING FOR COMPREHENSIVE COURT REFERRAL PROGRAM
- G. RESOLUTION RE: AWARDED A CONTRACT EXTENSION THROUGH THE  
**70-2016** COMPETITIVE CONTRACTING PROCESS TO THE CENTER FOR PREVENTION AND COUNSELING FOR COMPREHENSIVE JUVENILE SUBSTANCE ABUSE TREATMENT PROGRAM
- H. RESOLUTION RE: AUTHORIZING THE EXECUTION OF A PROFESSIONAL  
**71-2016** SERVICES AGREEMENT BETWEEN THE COUNTY OF SUSSEX AND THE CENTER FOR PREVENTION AND COUNSELING FOR INTOXICATED DRIVER RESOURCE CENTER (IDRC) EDUCATION AND SCREENING SERVICES WITHOUT COMPETITIVE BIDDING AS A PROFESSIONAL SERVICE PURSUANT TO N.J.S.A. 40A:11-5(1)(a)(i)
- I. RESOLUTION RE: AUTHORIZING SUBMISSION OF A GRANT APPLICATION TO  
**72-2016** N.J.D.E.P. FOR THE IMPLEMENTATION OF THE COUNTY ENVIRONMENTAL HEALTH ACT N.J.S.A. 26:3A2-21 ET SEQ. FOR FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016 FOR THE DEPARTMENT OF ENVIRONMENTAL AND PUBLIC HEALTH SERVICES AND FURTHER AUTHORIZING THE ENTRY INTO INTERAGENCY AGREEMENTS BETWEEN THE COUNTY OF SUSSEX AND N.J.D.E.P. COVERING THE PROVISIONS OF ENVIRONMENTAL HEALTH SERVICES
- J. RESOLUTION RE: AUTHORIZATION FOR THE BOARD OF CHOSEN FREEHOLDERS  
**73-2016** TO 73-2016 EXECUTE BUDGET REVISION #1 OF CONTRACT # DFHS16CCC005 WITH THE NJ DEPARTMENT OF HEALTH FOR THE ENHANCED IMPLEMENTATION OF THE NJ OFFICE OF CANCER CONTROL AND PREVENTION ACTIVITIES PROJECT FOR THE CONTRACT PERIOD OF JULY 1, 2015 TO JUNE 30, 2016
- K. RESOLUTION RE: APPLICATION FOR PARTICIPATION IN THE DEPARTMENT  
**74-2016** OF LABOR AND WORKFORCE DEVELOPMENT GRANT PROGRAM, NEW JERSEY LIBRARIES CAREER CONNECTIONS GRANT FOR UNIFORM CAREER GUIDANCE AND JOB SEARCH ASSISTANCE SERVICES, FROM JANUARY 1-DECEMBER 31, 2016 FOR A TOTAL AMOUNT OF \$50,000.00
- L. RESOLUTION RE: AUTHORIZATION FOR THE FREEHOLDER DIRECTOR AND  
**75-2016** CLERK OF THE BOARD TO FILE AND EXECUTE THE LOW INCOME HEATING AND ENERGY ASSISTANCE PROGRAM (LIHEAP) COUNTY WELFARE AGENCY (CWA) ADMINISTRATION GRANT AWARD IN THE AMOUNT OF \$2,781.00 FOR THE PERIOD OF OCTOBER 1, 2015 THROUGH SEPTEMBER 30, 2016

- M. RESOLUTION RE: AUTHORIZATION FOR THE FREEHOLDER DIRECTOR TO EXECUTE LETTER OF AGREEMENT FOR FUNDING IN THE AMOUNT OF \$50,000.00 FROM THE MORRIS/SUSSEX/WARREN EMPLOYMENT AND TRAINING SERVICES NEEDS BASED WORK SUPPORTS PROGRAM FOR THE PROVISION OF TRANSPORTATION SERVICES TO LOW INCOME RESIDENTS FOR THE PERIOD OF JULY 1, 2015 THROUGH JUNE 30, 2016  
**76-2016**
- N. RESOLUTION RE: AUTHORIZATION FOR THE FREEHOLDER DIRECTOR TO EXECUTE A CONTRACT FOR CALENDAR YEAR 2016 ON BEHALF OF THE COUNTY OF SUSSEX WITH THE TOWNSHIP OF HARDYSTON FOR THE PROVISION OF TRANSPORTATION SERVICES TO SENIOR CITIZENS AND PEOPLE WITH DISABILITIES WHO RESIDE IN HARDYSTON TOWNSHIP  
**77-2016**
- O. RESOLUTION RE: AUTHORIZATION FOR THE FREEHOLDER DIRECTOR TO EXECUTE AN AGREEMENT FOR CALENDAR YEARS 2016, 2017 and 2018 ON BEHALF OF THE COUNTY OF SUSSEX WITH THE TOWNSHIP OF VERNON FOR THE PROVISION OF TRANSPORTATION SERVICES TO SENIOR CITIZENS AND PEOPLE WITH DISABILITIES WHO RESIDE IN VERNON TOWNSHIP  
**78-2016**
- P. RESOLUTION RE: AUTHORIZING THE FREEHOLDER DIRECTOR AND THE CLERK OF THE BOARD OF CHOSEN FREEHOLDERS TO EXECUTE AMENDMENT NUMBER 1 TO THE DEVELOPER'S AGREEMENT DATED OCTOBER 28, 2015, MADE BETWEEN THE COUNTY, BOROUGH OF HOPATCONG AND GREENTREE AT HOPATCONG, LLC - THE DEVELOPER OF BLOCK 30707 LOTS 2 & 3, WITH FRONTAGE, ALONG A PORTION OF COUNTY ROUTE 607 (a/k/a RIVER STYX ROAD) IN THE BOROUGH OF HOPATCONG  
**79-2016**
- Q. RESOLUTION RE: AUTHORIZING THE ENTRY INTO A PROFESSIONAL SERVICES AGREEMENT WITH A. MATTHEW BOXER AND LOWENSTEIN SANDLER, LLP FOR THE PROVIDING OF SPECIAL COUNSEL SERVICES IN THE REVIEW OF THE SUSSEX COUNTY RENEWABLE ENERGY PROGRAM, WITHOUT COMPETITIVE BIDDING AS A PROFESSIONAL SERVICE PURSUANT TO N.J.S.A. 40A:11-5(1)(a)(i)  
**80-2016**
- R. RESOLUTION RE: ADOPTION OF A TEMPORARY CAPITAL BUDGET FOR 2016  
**81-2016**

**The Board of Chosen Freeholders of the County of Sussex has reviewed the Consent Agenda consisting of various proposed Resolutions and determined that adoption of the said Resolutions is in and will further the public interest.**

Freeholder Vohden said he would like to handle Q separately.

Freeholder Rose said he would like to handle A separately.

**MOTION** made by Freeholder Rose to adopt Resolutions C-P and R, seconded by Freeholder Lazzaro.

**On Roll Call the vote was:**

Freeholder Crabb	Yes
Freeholder Lazzaro	Yes
Freeholder Rose	Yes
Freeholder Vohden	Yes
Freeholder Director Graham	Yes

**MOTION** made by Freeholder Vohden to adopt Resolution A, seconded by Freeholder Lazzaro.

**On Roll Call the vote was:**

Freeholder Crabb	Yes
Freeholder Lazzaro	Yes
Freeholder Rose	Abstain
Freeholder Vohden	Yes
Freeholder Director Graham	Yes

**MOTION** made by Freeholder Lazzaro to adopt Resolution Q, seconded by Freeholder Rose.

### **Discussion**

Freeholder Vohden said on August 17, 2011 four and half years ago the Freeholders sitting here approved the Sussex County Renewable program. We are here tonight to discuss an investigation of the solar program. He said he really wants to know what happened. He has read the documents.

He said he doesn't know if there was criminal activity and I know there were cost overruns. He said he more than anyone else out there wants to know what happened. He said he has really gotten beat up out there over the last couple of years on the decisions that he made on the solar program. He said he voted to go forward with the program and he voted for the settlement. He said there have been a lot of accusations since we voted on the program. Accusations by everyone that we should have been more diligent, more carefully considered all the facts before we guaranteed all those bonds. Let's not make the same mistake here tonight. We are talking about spending \$500,000 on an investigation that I think is going nowhere and I am going to try and explain why I feel that way.

Freeholder Vohden said you don't have a copy of the resolution but the 1<sup>st</sup> paragraph says Whereas there exist a need for the inquiry into the County's participation in the Sussex County Renewable Energy Program (the "Solar Project"), and more particularly to determine if funds expended by the County constitute damages that can be recouped by the County through civil litigation. He said he would be discussing this later. He said he will be making comments on the Professional Service Agreement and we may not be recouping funds through litigation.

He said paragraph seven of the resolution has to do with the \$500,000 being certified by our treasurer. The certification is required by law and we need a certificate showing the available funds, that we have the funds. We do have the certificate and it is all legal. The resolution should specify the exact line item appropriation which will be charged in the official budget. The funds are coming out of line item, County Counsel, other expenses, special counsel. So the money is there but my question is where are we REALLY going to get the money to make up for the \$500,000 expense? What programs are going to be cut so that we can spend this \$500,000?

He said paragraph 11 says that this Agreement be further awarded without competitive bidding as a professional service in accordance with N.J.S.A. 40A:11-5(1)(a)(1) of the Local Public Contracts Law because the Agreement is for a service performed by a person(s) authorized by law to practice a recognized professional that is regulated by law. He said he doesn't believe this Agreement is being awarded in accordance with the statute cited. I will bring this up later but am citing it here so that it is on the public record.

Freeholder Vohden handed out copies of the Professional Services Agreement between A. Matthew Boxer, Esq. and Lowenstein Sandler, LLP and the County of Sussex. He said a question was answered tonight by whom this decision was made to retain special counsel, Counsel, George answered that he made the decision. People of Sussex County are looking for truth and transparency. That is what we all promise you because we want to get elected and it is the right thing to do. Truth and transparency with all of our actions and deliberations.

Freeholder Vohden said he wanted to start off his review with the Professional Service Agreement and ask if any of the Freeholders or Freeholders Elect other than Freeholder Graham had any contact, any conversations, or any correspondence with any individual from the law firm Lowenstein Sandler, LLP before New Year's Eve? I didn't. He said he is not trying to embarrass anyone but I want this included in a public record. No one answered.

Freeholder Vohden addressed the 2<sup>nd</sup> Whereas and wants to know what makes this firm particularly qualified. I don't doubt their qualifications but "particularly qualified."

Next questions, who selected this firm and why were other law firms not considered? That is a big question to me? I have a list of other firms that are just as qualified. I think our purchasing agent should be looking at some of these other firms and maybe get a better price and better terms of agreement.

Freeholder Vohden discussed his concerns about A. Matthew Boxer possibly having a conflict of interest in this contract Agreement. He has had telephone calls from individuals knowledgeable about this issue advising him that they believe he does. He said a friend from Parsippany thinks he is an attorney, another guy from Sussex County said he thinks he knows more than the other lawyers so I took their advice and I did some investigation. I heard over the weekend that Boxer may have a conflict because he has been involved in the solar project with the Morris County Freeholders. It is an ethical problem. I called stated agencies and different people asking for advice. Freeholder Vohden read from the Uniform Ethics Code for the State of New Jersey and it says no state officer subsequent to the termination of his office shall represent on behalf of any firm in which he has an interest in connection with any proceeding with respect to a state officer shall have rendered any ruling or given any opinion during the course of his office of employment. Boxer can't represent us legally and any person that lawfully violates this is subject to a fine not to exceed \$1,000 or imprisonment of 6 months.

Freeholder Vohden said before we request signing this agreement, we should request an independent legal opinion on this question of conflict.

Freeholder Vohden mentioned again that according to the statues (N.J.S.A. 40:11-9) the authority, responsibility, and accountability for the purchasing activity for the County is assigned to the "certified County purchasing official."

Freeholder Vohden said when we voted on the solar project nobody was in this room that made a comment. You didn't give any advice. Now you all want to be Monday morning quarterbacks. Everybody now says that the government should not be in the solar business. That should be private enterprise. At the same time we were looking at solar, we were looking to privatize the Homestead. We had over 100 public comments saying we should be in the nursing home business and the other half said the government shouldn't be involved, that should be private industry so there are different opinions. When we first went into this agreement, we may have had problems where we were ill-advised and mistakes may have been made going into the solar project, now we are going into a \$500,000 on two phone calls and it could have been voted through. If there weren't some objections at the January 4<sup>th</sup> meeting, we would have a \$500,000 contract with the other problems that I will talk about.

Freeholder Vohden said he is not opposed to this investigation. I am opposed to the way we are doing this and I am opposed from going into a contract where we may not benefit one bit.

Freeholder Vohden addressed the scope of services in the contract. Some of the questions he has with the contract are: Will an investigation of the parties be possible? It doesn't read like that. Will Lowenstein Sandler have subpoena power? I don't think so not unless they charge. Will this settlement agreement prevent interrogations? I think so, but what I do say is before we spend \$500,000 on this investigation we should request an independent legal opinion on these questions.

Freeholder Vohden said there is a question whether or not Sussex County can recover any funds. From a settlement Term Sheet, dated August 16<sup>th</sup>, 2014 it states that "The MCIA will receive any recovery from any third party (whether received by the SunLight Project Company or the MCIA directly) including collateral sources such as insurance recoveries from parties responsible for the losses incurred and to be incurred by the MICA and Sussex County. Sussex County guaranteed the bonds; Sussex County has not spent any funds. The funds were spent by MCIA. If there is any recovery, it would go to MCIA.

Freeholder Vohden continued going over the agreement and what things meant. He went through things that should be addressed by an independent legal opinion.

Freeholder Vohden talked about the rates and he wanted to know how were the hourly rates negotiated and by whom? Who estimated the not to exceed figure of \$500,000.00 and how was the figure arrived at? He said he has been told that this firm has a separate rate for government contracts. He wanted to know if Freeholder Graham discussed this in his negotiations.

He addressed the indemnification paragraph and asked what does that paragraph mean?

Freeholder Vohden addressed the duration and termination of the contract. He said we are giving this attorney 12 months to do this investigation and we made the same request from several government agencies and that was made ten months ago. Why can't we give the government agencies the same? He said we may be interfering with this investigation by these agencies. Mr. Hull and Mr. Grace both pointed out at our last meeting that we cannot and should not interfere with civil investigations and litigation while there are ongoing government investigations.

Freeholder Vohden said if we do go for an independent legal interpretation, we could probably spend a few thousand dollars before we go forward to get answers to these questions. We jump into to this contract and we can quit anytime but how much are we going to spend before we quit. In summary, I think we should table this resolution before we get ourselves into trouble. We definitely should not approve this resolution without the independent legal opinion on all the questions I have raised.

Freeholder Crabb asked about the clause in the Professional Service Agreement that talks about indemnity, it says the contractor shall indemnify and hold harmless the county for any and all claims and damages against and incurred by the county resulting from their performance of the services to be provided under this agreement.

Does that mean that if the Boxer firm does something in their performance of their duties that risks the settlement and brings the settlement crashing down, will they hold the county responsible and indemnify for the millions of dollars that it would leave?

County Counsel said it is impossible to answer questions that are factually specific on what is in a general clause. I can tell you the indemnification clause is in all professional services contracts and it means that the professional if they commit malpractice, it indemnifies the county. It means that the professionals have to provide their professional liability policies.

Freeholder Crabb said I believe that is a valid answer, because my concern is if they were to do something that could bring the settlement crashing down would that be considered malpractice? I don't expect that answer here but these are questions along with binary questions that Freeholder Vohden is asking. I am for this investigation as well and want to get on with this but I don't think we need to be in any rush tonight because these are valid questions and should be easy to answer but they are not answered.

Freeholder Crabb made a motion to table 10.Q, seconded by Freeholder Vohden.

**On Roll Call the vote was:**

Freeholder Crabb	Yes
Freeholder Lazzaro	No
Freeholder Rose	No
Freeholder Vohden	Yes
Freeholder Director Graham	No

Freeholder Crabb said I would have been fine with the resolution if anyone on this Board would have answered these questions.

Freeholder Rose said is that all that it would have taken?

Freeholder Rose had a comment on the statement by whom and when was this decision made? We are making the decision right now and I have to ask about the indemnification clause in the bailout why was that ever added? That cuts off an avenue of potentially getting some recovery from funds and its makes this one of the drivers of the expense of this service agreement. I think this was a terrible mistake looking back. I know hindsight is 20/20 but I would not have agreed to vote for that indemnification clause.

Freeholder Vohden said it was not an indemnification clause. It was a release of claims which is standard in a lot of contracts.

County Counsel asked is there anymore debate?

Freeholder Vohden said yes. He said four years ago five of us Freeholders sat here and were very confident that we were going into a good project with the solar program. I am sitting here now and I am all for an investigation. We need an investigation but there are so many questions here that make me nervous about this. The reason we said we are going in is to recoup funds. If we can't recoup funds than why are we spending \$500,000? Are they going to be able to interrogate what went wrong? Everybody has been released from claims. I think we are making a stupid mistake tonight. We are going to pay a law firm \$425 an hour to read the documents. They are going to come back and tell us well we can't recoup anything, we really can't interview anybody and you shouldn't do this again in the future. That is my comment.

Freeholder Director Graham said this was not about solar. It was never about solar. It is about money. It is the ability to use solar to raise money on two sides. To use county's bonding abilities on one side and on the other side to use a credit rating by a contracting company. I strongly advise you that you read the arbitration of finding fact. It is all on the website. It tells you in there. It also tells you the players in the very beginning that did the evaluation are the players at the very end and making sure that they had covered themselves in their minds totally. I am not accusing any Freeholder past, present or future of doing something that was unethical or wrong. I don't know that. I am not accusing people who work for the county. I don't know that. This will tell us what occurred.

We have important decisions to make today and 18 months from now and three years from now and we can't walk into a room and say who is in charge and have every shrug. I will say it again, it doesn't matter what happened in Morris, what happened in Somerset. We are going to get our house in order and find out where we stand, what we can do, and what we should do. Mr. Boxer is a former federal prosecutor and a former comptroller. I worked very closely with Mr. Williams to make sure this was done correctly.

**On Roll Call the vote was:**

Freeholder Crabb	No
Freeholder Lazzaro	Yes
Freeholder Rose	Yes
Freeholder Vohden	No
Freeholder Director Graham	Yes

**11. APPROVAL OF MINUTES**

Reorganization Meeting - January 4, 2016

**MOTION** made by Freeholder Rose to approve the minutes from the Reorganization Meeting seconded by Freeholder Lazzaro and passed unanimously.

**12. APPOINTMENTS AND/OR RESIGNATIONS**

A. Appointments

1. RESOLUTION RE: APPOINTING FUND COMMISSIONER  
**82-2016**

2. RESOLUTION RE: APPOINTING RISK MANAGEMENT CONSULTANT  
**83-2016**

Freeholder Graham asked Mr. Gruchacz if he had any comments to make.

Mr. Gruchacz said he is fine with the resolutions and he will work with the Risk Manager to make sure the interest of the county is well protected.

Freeholder Graham said all in favor, all said I, no opposed

B. Resignations

- 1. E-mail received from Michelle Mezger informing the Board that Ed Vander Berg resigned from the Uniform Construction Board of Appeals effective January 10, 2016.

Clerk of the Board said we will wait for a recommendation from the Board and then it will go to the Freeholder liaison to approve or not and then it will come as an appointment before the Board.

13. **RESOLUTION**

None for tonight.

14. **AWARDS OF CONTRACTS/CHANGE ORDERS/BIDS**

A. Change Orders

- 1. RESOLUTION RE: AWARD OF CHANGE ORDER NO. 1 - FINAL TO A CONTRACT BETWEEN THE COUNTY OF SUSSEX AND SCHIFANO CONSTRUCTION CORP. FOR THE "2014 SUSSEX COUNTY ROAD RESURFACING PROGRAM"  
**84-2016**

**MOTION** to award the contract made by Freeholder Lazzaro, seconded by Freeholder Rose.

**On Roll Call the vote was:**

Freeholder Crabb Yes  
Freeholder Lazzaro Yes  
Freeholder Rose Yes  
Freeholder Vohden Yes  
Freeholder Director Graham Yes

15. **FINANCIAL**

None for tonight.

16. **PERSONNEL**

A. Personnel Agenda

**MOTION** made by Freeholder Crabb to adopt the Personnel Agenda, seconded by Freeholder Rose and passed unanimously.

17. **ADMINISTRATIVE REPORT**

A. Other

Mr. Gruchacz complimented our DPW staff and mechanics for doing a great job with the last snow storm. We have had six events where we had to deploy vehicles to take care of snow and ice. The cost at this point is \$456,000.

The engineering department does a great job in monitoring the amount of salt we have and they will be going out next week for a third order so thankfully we have had a pretty mild winter. He was in constant contact with them as well as emergency management throughout the storm.

Mr. Gruchacz reported on the owner's rep for the solar project. We said we have that in place and we have made some head way. They have been on board since January 11<sup>th</sup> and they have been looking at items such as interconnect ability which is an agreement between JCP&L and the local units in order to make sure there is appropriate connectivity. Kittatinny and Hardyston are close to being ready to go. In addition, there have been discussions with Sparta regarding the roof and those discussion are ongoing. The owners' rep is onsite and has discussions with us every day. Vanguard will be reviewing an electrical meter that was installed at the Wheatsworth's building. It was installed incorrectly so they will be taking a look at it.

18. **COUNTY COUNSEL**

A. Capital Projects

- B. Litigation
- C. Contract
- D. Other Matters

Mr. Williams had a comment about the questions that came up in regards to services to be rendered under the resolution appointing Matthew Boxer, in the conference call Freeholder Rose was referring to involving Freeholder Director Graham, Steve Gruchacz, myself, Freeholder Rose and our solar special counsel, the attorney who has been there for a few years brought in during the litigation, or shortly after, we received the oral opinion that the non-disparagement clause is not in danger or affected in any way because of the services that Matthew Bower would render under the scope of services in the objectives in the professional services agreement that is going to be executed and we have a written opinion as well.

#### **19. UNFINISHED BUSINESS**

Freeholder Graham said we were very lucky to have somebody who served the Clerk of the Board's office for many, many years and many different Boards, Elaine Morgan. She recently died on December 10, 2015. She was a special woman. There have been many questions on how to recognize her properly. I am asking for Ms. Williams to look into what our possibilities are and if each of the Freeholders can weigh in with her as to what the best thing will be and then we can have a discussion about it at one of our next meetings.

#### **20. NEW BUSINESS**

None for tonight.

#### **21. PUBLIC SESSION FROM THE FLOOR (Please note: Everyone is asked to keep their comments to 5 minutes or less)**

**MOTION** made at 8:59 PM by Freeholder Crabb to open the meeting to the Public, seconded by Freeholder Lazzaro and passed unanimously.

#### **Comment by Richard Walker**

Mr. Walker came forward and said congratulations on getting your resolution passed tonight. I would encourage the Freeholder Director to put the hook out there. He spoke about Freeholder Vohden and said you put out the same information that I read in the Herald that I hear at the last meeting. I would like to hear from other folks. I don't think using the term stupid is a good term after all the research you used.

#### **Comment by Neil Kenny**

Mr. Kenny came forward and said I was the first speaker tonight and I asked for civility to hear people out and understands things. I don't have any animosity toward any of you up there. I think you guys can get along. I want to thank all of you in a lesson in civics of what goes on and what doesn't go on. I noticed as Freeholder Vohden was speaking, people were getting impatience. What I don't know is what the hell is really going on here. He said Mr. Vohden you put together a lot of questions and now it really water under the bridge because the thing has been passed but I think your questions came from a lot of work you put into it and you are taking a pounding from a lot of people. I really think you are doing your job. I think there are a lot of questions that should be answered. I would like to see Matthew Boxer sit up here and tell me who is he. I want to move forward too. We don't always get what we want in this world, but hopefully we will get what we need. I think that we need to find out is what really happened. So now can we finish the project? So now we are going to spend up to \$500,000. I hope that you do not need to spend the half of a million and I hope that we get answers and my prayer is that this issue is buried once and for all and we can get down to real business.

#### **Comment by Kurt Gewecke**

Mr. Gewecke said for the record I am intimately aware of what is going on with this I am a contractor who has actually built about half of what is up in Sussex County. Those three thousand pages of documents I have read. As a side, if you take \$500,000 and divide it by .25 you get 1100 hours. That is 6 months for one guy. If you think that is going to happen, you are smoking. I hope you are prepared to spend more than \$500,000 because the bill is going to be more than \$500,000. My other issue is we are not a democracy; we are republic so we elect you all to represent us and I actually appreciated your talk on what a Freeholder is. I understand that you hire people to do the leg work for you but it doesn't mean that you sit back and do nothing. My concern is that it doesn't happen again. My hope is that you actually read the documents. From what I have heard, I don't think that the majority of you have read the documents so I would encourage you to read the documents so that you have your own opinion. If you read the documents and go through them it is pretty obvious of what happened. You brought up some great points for example, how are you going to get all of this done for \$500,000 especially at \$425 an hour? If you read the documents in the settlement, there are ways for the county to help mitigate the cost going forward but you have to read them. I wrote you a letter about a year ago; there are ways in that to help you mitigate things. I would encourage you to consider those. You are not going to figure them out if you just continue to let the attorneys tell you what to do. Please, we elected you to represent us. This is a mess and it has been a mess. It is costing millions of dollars. Please read the documents and consider other ways to mitigate a long term cost.

### **Comment by Harvey Roseff**

Mr. Roseff asked who the owners' rep is.

Mr. Gruchacz said Jingoli & Sons.

Mr. Roseff said and the owner is representing who?

Mr. Gruchacz said the owner's rep is set up in order to move the project along to make sure the build out occurs and to keep in communication with the local units, the contractor, the permitting agencies and make sure all are in sync to make sure the work gets completed, specifically Sussex.

Mr. Roseff said when you say owners' rep, you have MCIA is considered an owner and Sunlight General is considered an owner. Who is this guy and who does he represent?

Mr. Gruchacz said they were brought on as part of the settlement by Sunlight and we work with them on a regular basis. Mr. Gruchacz said I don't know what the origin is of the term because I wasn't party to the settlement but it is an entity that will come in and assist in moving the project forward.

Mr. Roseff asked if he has the authority to speak to the local units.

Mr. Gruchacz said yes he has the authority to speak and work with the local units. He has met with the local units, he has discussed the projects with the local units, he is helping them troubleshoot issues that they have run into in order to move the project to completion.

Mr. Roseff said we have a lot of people involved in this to basically put a panel on and turn on the light bulb. He said we had a local Sussex County contractor who was doing all the hard work to put the physical assets in place. Mastec could have contracted locally and could have saved us a lot of money. There is a tremendous amount of overhead.

### **Comment by Carl Luthman**

Mr. Luthman came forward and said you might have recalled that I did say that if I was on the Freeholder Board that originally voted for the solar, I probably would have voted yes. I would like to know from whom did the Board of Freeholders get their recommendation from and to not hold somebody responsibility for this. You talk about a purchasing agent; again did the purchasing agent get involved in your payroll problems? Did your purchasing person make a recommendation that the payroll company you hired with that bond and that cost \$1,000,000. Who made that recommendation, the purchasing officer? Is that purchasing officer still here today? He said the other problem was there were too many chiefs and not enough Indians. He said we are losing what the purpose of this project was and that is to hold accountable the people who are responsible for what is going on. I think a right decision was made tonight.

### **Comment by Alice Kenny**

Ms. Kenny came forward and said in the Herald it said that Mr. Boxer would be willing to have a public hearing and she said that would have been a good thing.

Freeholder Graham said I believe County Counsel is handling all the connections with Mr. Boxer.

### **Comment by Glenn Hull**

Mr. Hull said he was here when Freeholder Crabb was the Director of the Freeholder Board and I asked that the Freeholders submit a transparency of what happened to the Homestead and the money borrowed that was put into this project last year. There was never any transparency shown. Nobody seems to know.

Freeholder Crabb said the Homestead money was used to buy our own bonds.

Freeholder Vohden said the Homestead money is in an account. It is an interest bearing account and we backed our bonds.

Mr. Hull asked where the money borrowed is.

Freeholder Vohden said it is there. It is in an interest-bearing account.

Mr. Hull asked wouldn't it have been prudent for you to show us, it was asked of you.

Freeholder Vohden said it is in every report that comes out.

Mr. Hull said you could have made it public. Everybody here is asking.

Freeholder Vohden said we had a capital project meeting yesterday where we discussed many millions of dollars. Carl and I, these guys had a budget committee today. We can't put out all the information.

Freeholder Crabb said it was brought out last year at the settlement.

Mr. Hull said it could have been brought out recently because there have been a lot of questions recently. By not addressing it, people are asking for an investigation. My point was Mr. Vohden you went as an individual asking what went on and that could be misconstrued as influencing an investigation.

Freeholder Vohden said they agreed that I was doing the right thing by asking and then they informed me that I should take it back to the elected officials and have them ask.

Mr. Hull said whenever I have asked the justice department about a specific investigation that I am involved in; I have always been told they cannot say anything.

Mr. Hull said he is very glad the resolution was passed. He said to Mr. Vohden where was your objection to the settlement contract? It is my understanding that we paid a bunch of attorney fees. Did you object to that like you are to this contract?

Freeholder Vohden said I voted for the settlement. I did not object to anything. We had many, many meetings where we discussed all of this. We all had input with this settlement. It was a settlement between three counties, all their attorneys, all their professionals, 17 Freeholders, Sunlight and all their entities. They hammered this out. There were probably 100 people involved in that settlement. We had to approve the settlement along with everybody there had to agree to the settlement.

### **Comment by Bill Sparling**

Mr. Sparling asked if the Board still has executive session meetings.

Freeholder Director Graham answered by reading the list that is on the agenda under Executive Session. They are very specific reasons and we don't create a quorum for anything.

Mr. Sparling said the reason I ask is that you are very thorough with this and how this is affecting me. I really think you need to discuss your matters privately and not in front of the public. It doesn't look good.

### **Comment by Mara Modes**

Ms. Modes said I know everyone's attention spans are getting shorter with all the electronics but everyone has the right to speak. I would not vote to cut anyone's freedom of speech or pass judgement on them. This is what discussions are all about. Some of the remarks and some of the conduct that was portrayed here tonight, it doesn't display conduct that is conducive for an amicable or productive exchange of ideas. For example, for Mr. Lazzaro to say we all have to work together but then turned around and attacked Mr. Vohen, you defeated your own purpose. This gentleman is correct it doesn't look good to the rest of us. Your personal preferences, opinions and snide remarks about anybody do not show professionalism in my opinion. I would like a copy of the bill list.

Freeholder Director Graham said the bill list as well as all documents associated with the agendas is on the website.

**MOTION** made at 9:37 PM by Freeholder Lazzaro to close the meeting to the Public, seconded by Freeholder Rose and passed unanimously.

## **22. EXECUTIVE SESSION – (Closed Session – If Necessary)**

**None for tonight.**

### **RESOLUTION RE: PROVIDING FOR AN EXECUTIVE (CLOSED) SESSION NOT OPEN TO THE PUBLIC IN ACCORDANCE WITH THE PROVISIONS OF N.J.S.A. 10:4-12 ET SEQ.**

**WHEREAS**, the subject matter(s) about to be discussed may be excluded from the public portion of the meeting by Resolution of the Board of Chosen Freeholders as an exception to the "Open Public Meetings Act" pursuant to N.J.S.A. 10:4-12 (b); and

**WHEREAS**, it appears necessary for the Board of Chosen Freeholders to discuss such matter(s) in Executive Session.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Chosen Freeholders of the County of Sussex, in accordance with the provisions of N.J.S.A. 10:4-12(b) and N.J.S.A. 10:4-13 that the Board at this time enter into an Executive Session from which the public shall be excluded; and

**BE IT FURTHER RESOLVED**, that the general nature of the subject(s) to be

discussed relate to the following item(s) authorized by N.J.S.A. 10:4-12(b) as designated below:

- \_\_\_\_\_ (1) **Matters Required by Law to be Confidential:**
- \_\_\_\_\_ (2) **Matters Where the Release of Information Would Impair the Right to Receive Funds:**
- \_\_\_\_\_ (3) **Matters Involving Individual Privacy:**
- \_\_\_\_\_ (4) **Matters Relating to Collective Bargaining Agreements:**
- \_\_\_\_\_ (5) **Matters Relating to the Purchase, Lease of Acquisition of Real Property or the Investment of Public Funds:**
- \_\_\_\_\_ (6) **Matters Relating to Public Safety and Property:**
- \_\_\_\_\_ (7) **Matters Relating to Litigation, Negotiations and the Attorney Client Privilege:**
- \_\_\_\_\_ (8) **Matters Relating to the Employment Relationship:**
- \_\_\_\_\_ (9) **Matters Relating to the Potential Imposition of a Penalty:**

**BE IT FURTHER RESOLVED** that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Sussex County Board of Chosen Freeholders or provided by law that the public interest will no longer be served by such confidentiality; and

**BE IT FURTHER RESOLVED** that upon completion of the business for which the Board has entered into the Executive Session, the Board shall reconvene and resume its meeting open to the public.

**23. REMINDERS**

Wednesday                      February 10, 2016      Regular Meeting – 5 PM

**24. ADJOURNMENT**

**MOTION** made by Freeholder Rose to adjourn the meeting, seconded by Freeholder Crabb and passed unanimously.

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Catherine M. Williams  
Clerk of the Board

**DATED:** January 27, 2016