RESOLUTION NO. 36 OF 2006

On motion of Commissioner Henderson, seconded by Commissioner Shellenberger;

WHEREAS, In November 2003 the Lancaster County Convention Center Authority (the "LCCCA") presented a financing plan to the Board of Commissioners of the County of Lancaster (the "County") whereby the County would partially guarantee a $40 million dollar bond (the "LCCCA Borrowing") to be issued by the LCCCA in connection with the construction of a convention center in downtown Lancaster (the "Proposal"); and

WHEREAS, In reliance upon certain representations of the LCCCA concerning the nature and risks of the LCCCA Borrowing, the County sought approval of a County guarantee through a filing with the Department of Community and Economic Development ("DCED") of the Commonwealth of Pennsylvania as required by the Local Government Unit Debt Act, 53 Pa. C.S.A. Chapter 81, et seq. ("LGUDA"); and

WHEREAS, In reliance upon the LGUDA filing by the County, the DCED approved the issuance of a County guarantee (up to $1.5 million per year for 40 years) guaranteeing the LCCCA's obligations under the LCCCA Reserve Fund Replenishment Note portion of the LCCCA Borrowing; and

WHEREAS, Upon DCED approval under the LGUDA, the County issued its December 15, 2003 Guaranty Agreement (the "County Guaranty") concerning the LCCCA Borrowing; and

WHEREAS, The LCCCA represented to the previous Board of Commissioners and the public when the County Guaranty was approved that the LCCCA would be liable for a $40 million Bond issue; and

WHEREAS, The LCCCA budget approved in February 2006 calls for the guaranteed 2003 LCCCA Bonds to be in excess of $42.5 million, with additional Bonds in excess of $3.5 million, for a total Bond issue of $46 million; and

WHEREAS, The LCCCA's agents, at the 2003 Board of Commissioners meeting at which the County Guaranty was approved, assured the County that the Bond Indenture required that the County Hotel tax proceeds first be applied to debt service on the County-guaranteed debt before any other operating expenses; and

WHEREAS, In February of 2006 the Chairman of the LCCCA revealed that the Bond Indenture does not require Hotel tax to be applied first to principal and interest of the Bonds and that the LCCCA would not agree to correct this error in the Bond Indenture; and

WHEREAS, The LCCCA represented to the previous Board of Commissioners in a public meeting held in December 2003 that an independent feasibility study performed by PricewaterhouseCoopers supported the viability of the Proposal; and

WHEREAS, In March of 2005, in conjunction with a request to the current Board of Commissioners to approve a Tax Increment Financing District for the private Marriott Hotel associated with the Proposal, counsel for the County reviewed the PricewaterhouseCoopers study (the "PwC Study") and identified several major flaws; and

WHEREAS, In November 2005, a professional appraiser evaluated the PwC Study and explained that it is not a true feasibility study, as represented to the County, but rather merely a market study performed in 2000 and updated in 2002; and

WHEREAS, In November 2005, PwC acknowledged through emails to an LCCCA Board member that PwC's prior studies were not reliable for the current Proposal in light of significant changes to the Proposal, the convention center industry and the market, admitted it is "the equivalent of using a study of a 500 room Marriott to evaluate a 300-room Hampton" and demanded that the LCCCA remove from its website all references to PwC's prior studies; and

WHEREAS, Under the December 15, 2003 LCCCA Bond Indenture (the "Bond Indenture") approved in connection with the County Guaranty, only when the convention center was ready for construction and fully financed, was the existing variable rate taxable LCCCA Bond held by Citizens Bank to be remarketed to the public as fixed rate non-taxable Bonds; and

WHEREAS, In a risky attempt to partially plug a hole in the Proposal financing, the LCCCA plans to enter into an agreement (the "Swap Agreement") providing for an interest rate swap which would synthetically fix the rate of interest on the LCCCA's 2003 Hotel Room Rental Tax Revenue Bonds, Series of 2003; and

WHEREAS, The Bond Indenture did not contemplate such a risky synthetic swap; and

WHEREAS, Nearly two and one-half years have elapsed since the LCCCA Borrowing from Citizens Bank and the issuance of the County Guarantee, construction has not begun, and the Proposal has continued to change and increase in estimated cost after 2003; and

WHEREAS, Due to the lack of a feasibility study, the increased bond indebtedness, the failure to require the hotel tax to cover debt service and changes in Proposal program and cost, the County obtained an independent study from Pannell Kerr Forster Consulting ("PKF"), one of the world's foremost convention center experts, which found that the Proposal, as now structured, will have operating losses approximately one million dollars per year greater than estimated by the LCCCA; and

WHEREAS, In the summer of 2006, the LCCCA expects to reissue the escrowed $40 million dollar taxable Citizens Bank Bond and market it to the general public as tax-exempt Bonds supported by the County Guaranty; and

WHEREAS, Clearly, the Proposal is not the same Proposal to which the former Board adhered the County's Guaranty in 2003; and

WHEREAS, The nature, terms and obligation of the County's December 15, 2003 Guaranty Agreement have been unilaterally altered by the LCCCA so substantially as to render the County guaranty obligation a completely new liability; and

WHEREAS, Prudent financial management requires the County to re-examine its new guaranty obligation taking into consideration the latest information available from LCCCA in comparison to the information and data considered by the County in 2003; and

WHEREAS, In light of the significant and substantive changes to the Proposal financing plan considered by the County in 2003, the guaranty obligation is so significantly different that this obligation must be, if approved by the Board of Commissioners, considered a new obligation requiring for its legal effectiveness the approval of the DCED under the LGUDA; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF LANCASTER COUNTY, PENSYLVANIA, that

(A) the County will consider any action by the LCCCA to;

(I) remarket the LCCCA's Hotel Room Rental Tax Revenue Bonds, Series of 2003 (the "2003 Bonds") into a tax-exempt variable or fixed rate Bonds or

(II) (II) enter into a Swap Agreement in which the 2003 Bonds are used as the notional amount, or

(III) (III) otherwise attach the County Guaranty to any borrowing other than the existing Citizens' Bank bond, to result in the issuance of a new County guarantee; and

(B) the County shall draft documents for review and approval by the Board of Commissioners of the County of Lancaster to advertise a special meeting of the Board of Commissioners to consider the following actions in the event the LCCCA takes steps to accomplish the new financing set forth in the previous paragraph: (I) not approve the new County guaranty, or, in the alternative (II) authorize the submission to the Department of Community and Economic Development of appropriate proceedings concerning the new County guaranty under the Local Government Unit Debt Act.

Motion passed.

Commissioner Shellenberger Yes
Commissioner Henderson Yes
Commissioner Shaub No