

RESOLUTION NO. 37 OF 2006

On motion of Commissioner Henderson, seconded by Commissioner Shellenberger;

WHEREAS, On May 10, 2006 the Board of Commissioners of the County of Lancaster adopted a Resolution concerning the current 2006 financing plan of the Lancaster County Convention Center Authority (the "LCCCA"); and

WHEREAS, Under the previous LCCCA financing plan presented in 2003, the County approved a December 15, 2003 Guaranty Agreement concerning 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; and

WHEREAS, Almost all of the proceeds of the LCCCA Borrowing remain in an escrow account (the "Escrow") with Citizens Bank to protect the County Guaranty; and

WHEREAS, Under the December 15, 2003 LCCCA Bond Indenture approved in connection with the 2003 LCCCA financing plan, only when the convention center and an adjacent "headquarters hotel" were ready for construction and fully financed, was the Escrow to be broken and the LCCCA to market tax exempt construction bonds; and

WHEREAS, The statements in the May 10 Resolution remain true and show that the current Proposal and current LCCCA financing plan are so different from the 2003 Proposal and financing plan so as to be a new Proposal and financing plan; and

WHEREAS, After the May 10 Resolution, a lawyer for the LCCCA stated that the LCCCA cannot legally require that the County Hotel tax proceeds first be applied to debt service on the County-guaranteed debt before any other operating expenses, despite the LCCCA's promise to the contrary at the time the 2003 financing plan was approved; and

WHEREAS, Due to the recent discoveries of the lack of an independent feasibility study for the Proposal, the increased LCCCA Borrowing bond indebtedness, the failure to legally require the hotel tax to first cover debt service and changes in the Proposal program and cost, the County obtained an independent study from Pannell Kerr Foster Consulting ("PKF"), one of the world's foremost convention center experts; and

WHEREAS, PKF, as stated in a May 17, 2006 Memorandum, found that the hotel/convention center facility, as now structured, will likely have a net operating loss of between \$6.63 million and \$9.2 million per year, which after annual hotel taxes and grants, will mean losses of between \$2.24 million and \$4.8 million dollars per year with no source of revenue to cover the shortfall; and

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WHEREAS, The annual loss estimates of PKF are based on the LCCCA’s cost estimates for the hotel/convention center proposal of \$140 million, but the base bids received on May 17, 2006 indicate that the base construction cost contracts will likely exceed estimates by 29%, or a \$24 million overage, with no additional financing or equity available to cover the overage with a potential hotel/convention center cost of \$164 million, before change orders; and

WHEREAS, On May 11, 2006, the LCCCA has refused to adopt a Resolution supported by three of the seven members of the LCCCA Board which would have protected against further cost overruns by limiting change order costs to the amount of the construction contingency reserve; and

WHEREAS, Any attempt to reduce Proposal costs by 29% to meet the \$140 million budget will mean the hotel/convention center proposal will not meet the quality standards which have been promised to the community including the requirement in the Bond Indenture that the hotel be a "headquarters hotel"; and

WHEREAS, Despite the current lack of adequate financing to construct the Proposal, the LCCCA has commenced and is continuing demolition of the historic and other valuable structures; and

WHEREAS, As noted in this Resolution, events since the May 10 Resolution have further reinforced the conclusion that 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 any attachment of a County guaranty obligation to reissued LCCCA Bonds a completely new liability; and

WHEREAS, As prudent financial managers, the Board of Commissioners of the County of Lancaster have re-examined the County’s new guaranty obligation taking into consideration the latest information available in comparison to the information and data provided by LCCCA and considered by the County in 2003.

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

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

(I) remarket the LCCCA Borrowing into tax-exempt variable or fixed rate Bonds or

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(II) enter into a Swap Agreement involving the LCCCA Borrowing or

(III) otherwise attempt to attach any County Guaranty to any LCCCA debt other than the existing Citizens Bank bond or otherwise terminate the Escrow, to result in the attempted creation of a new County guarantee; and

(B) This Board of Commissioners resolves and determines:

(I) not to approve any such new County Guaranty; and

(II) not to allow the attachment of any County Guaranty to any LCCCA obligation other than the Citizens Bank Bond secured by the Escrow; and directs the Chief Clerk to advise the LCCCA, Bond Indenture Trustee, Citizens Bank, and other relevant parties of this determination of this Board of Commissioners.

Motion passed.

Commissioner Shellenberger	Yes
Commissioner Henderson	Yes
Commissioner Shaub	No

ADOPTED this 24th day of May, 2006 by the Board of Commissioners of the County of Lancaster, Pennsylvania in lawful session duly assembled.

Attest:

Andrea McCue, Chief Clerk
County of Lancaster, PA
Date: May 24, 2006

Dick Shellenberger, Chairman

Molly Henderson

Howard “Pete” Shaub

**Board of Commissioners of
Lancaster County, Pennsylvania**