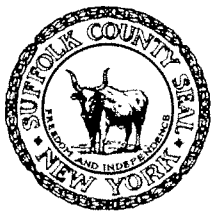
COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy
COUNTY EXECUTIVE

February 17, 2011

Presiding Officer William J. Lindsay and
Members of the Suffolk County Legislature
William H. Rogers Legislative Building
725 Veterans Memorial Highway
Smithtown, New York 11787

RE: RESOLUTION NO. 16 – 2011, DIRECTING THE ISSUANCE OF A REQUEST FOR PROPOSALS TO INCREASE SERVICES AND REVENUE AT THE JOHN J. FOLEY SKILLED NURSING FACILITY.

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein **RESOLUTION NO. 16 – 2011; DIRECTING THE ISSUANCE OF A REQUEST FOR PROPOSALS TO INCREASE SERVICES AND REVENUE AT THE JOHN J. FOLEY SKILLED NURSING FACILITY;** vetoed in its entirety.

The resolution runs contrary to the fact that, via the duly approved 2011 Operating Budget, the skilled nursing facility is de-funded and to be closed by March 31, 2011. The sixth WHEREAS clause of the resolution is fundamentally flawed in that states "*A majority of the Legislature ... has determined that Foley will remain in public ownership.*" The Legislature, by enacting the 2011 Operating Budget, codified the closure by virtue of the fact that it was unable to override my veto of its amendment that would have kept the facility funded and operational.

This fact has been fully affirmed in a State Supreme Court decision by Hon. Paul J. Baisley, Jr. (Perez v. Levy, Index Number 45318/2010) which notes *"...the record reflects that it was generally understood by the legislators that failure to approve the sale of the Facility or to amend the budget would result in closure of the facility."* (page 5)

The Legislature cannot, through this amendment, do what it was not able to accomplish through a failed budget amendment. And the Legislature cannot argue that if 11 Legislators voted for the override, that in and of itself represents that will of the majority – since it failed to obtain the charter-required 12th vote. Such action would render the Suffolk County Charter meaningless.

LOCATION:
H. LEE DENNISON BUILDING, 12th FLOOR
100 VETERANS MEMORIAL HIGHWAY

MAILING ADDRESS:
P.O. BOX 6100
HAUPPAUGE, NY 11788-0099

OFFICE (631) 853-4000
FAX (631) 853-4818

Furthermore, the resolution envisions the facility remaining open throughout the proposed RFP and/or RFEI process – however the resolution provides no funding to do so. Again, as you are aware by the 2011 Operating Budget which the Legislature adopted, de-funds the facility at the end of March. Continued operation of the facility for the rest of the year would create a hole of several million dollars in the budget – as well as a further hole created by the loss of anticipated revenue from the sale of the structure and license. This is money the Legislature left in the 2011 budget for spending.

Resolution 16-2011 is illogical in its scope, in that it seeks to elicit proposals for various services that are currently not provided in nursing home settings – such as in-patient acute psychiatric care -- services that are suitable to either a hospital or a highly specialized care setting.

It is hard to envision a family wishing to place a parent or loved one needing standard skilled nursing care at a facility that also provides acute psychiatric services.

And approval for such services in a traditional nursing home setting, which would be required of the New York State Department of Health Services, is speculative at best; unrealistic at worst.

It is also unrealistic in light of the fact that the NYSDOH approved the county's closure plan for the facility on January 21, 2011 – notwithstanding the fact that the Legislature, through Procedural Motion, voted to join a thus-far unsuccessful lawsuit against the closure the body itself adopted.

The resolution authorizes the issuance and RFP and review of proposals, but fails to set any criteria for relieving the taxpayers of the continued financial burden that public sector operation of the home has placed upon the county budget for decades. There is no guarantee that any proposal received would actually reduce costs, enhance service or maximize revenue for the facility.

In short, this sudden desire for a public-private partnership is too little, too late given the Legislature's own action by adoption of the 2011 Operating Budget. Taxpayers would be best served if the Legislature were to end its conflicted attempts to keep open a facility it closed via the budget process.

For these reasons, I strongly urge the Legislature to sustain my veto of this resolution.

Sincerely,

Steve Levy
County Executive of Suffolk County

cc: All Suffolk County Legislators
Tim Laube, Clerk of the Legislature
Christine Malafi, Esq., Suffolk County Attorney
Lynne A. Bizzarro, Esq., Chief Deputy County Attorney
Christopher Kent, Chief Deputy County Executive
Edward Dumas, Chief Deputy County Executive
Connie Corso, Deputy County Executive for Finance and Management
Ken Crannell, Deputy County Executive
Eric Kopp, Assistant Deputy County Executive
Eric Naughton, Budget Director
Dan Aug, Director of Communications
Mark Smith, Deputy Director of Communications

Intro. Res. No. 2271-2010 Laid on Table 12/21/2010
Introduced by Legislator Browning

RESOLUTION NO. 16 -2011, DIRECTING THE ISSUANCE OF A REQUEST FOR PROPOSALS TO INCREASE SERVICES AND REVENUE AT THE JOHN J. FOLEY SKILLED NURSING FACILITY

WHEREAS, the County of Suffolk owns and operates the John J. Foley Skilled Nursing Facility in Yaphank; and

WHEREAS, the Suffolk County Executive has attempted on multiple occasions to privatize the Foley facility arguing that the County should not continue to support the Foley's operations through transfers from the General Fund; and

WHEREAS, Resolution No. 881-2008 authorized the issuance of a Request for Proposals ("RFP") and/or Request for Expressions of Interest ("RFEI") "to transfer ownership and/or operation and management of Foley to an entity other than Suffolk County"; and

WHEREAS, as a result of issuing a RFP, the County Executive proposed two local laws (Intro. Res. No. 1474-2010 and Intro. Res. No. 2054-2010) approving the sale of Foley to Kenneth Rozenberg; and

WHEREAS, Intro. Res. No. 1474-2010 was never discharged from committee and Intro. Res. No. 2054-2010 was rejected by a vote of the County Legislature on December 7, 2010; and

WHEREAS, a majority of the Suffolk County Legislature has consistently opposed the sale/privatization of the Foley facility and, through its rejection of Intro. Res. No. 2054-2010, has determined that Foley will remain in public ownership; and

WHEREAS, new alternatives should now be explored to maximize the benefits offered by the Foley facility; and

WHEREAS, the County should seek to provide additional services and increase revenues at Foley; and

WHEREAS, the County should determine if these goals can be realized through a public-private partnership; now, therefore be it

1st **RESOLVED**, that the Legislature's Budget Review Office is hereby directed to oversee the drafting and issuance of a RFP and/or RFEI designed to elicit proposals from vendors to provide additional health care services at the Foley facility, including, but not limited to, in-patient acute psychiatric care, traumatic brain injury care, long-term pediatric residential care and outpatient renal dialysis units; and be it further

2nd **RESOLVED**, that the RFP/RFEI shall seek proposals for the construction and occupancy of an appropriately sized assisted living facility on adjoining County-owned property; and be it further

3rd **RESOLVED**, that the Legislature's Budget Review Office is hereby authorized, empowered and directed to take all actions necessary to select a consultant to assist in the preparation of the RFP/RFEI; the hiring of the consultant shall by subject to legislative approval; and be it further

4th **RESOLVED**, that the Department of Public Works is hereby directed to cooperate fully with the Budget Review Office and to assist in the timely issuance of the RFP/RFEI; and be it further

5th **RESOLVED**, that the Department of Health Services is directed to cooperate fully with the Budget Review Office and the selected consultant and shall provide all information and data necessary to develop the RFP/RFEI; and be it further

6th **RESOLVED**, that the RFP/RFEI will require that responses be submitted within 45 days of the issuance of the RFP/RFEI; and be it further

7th **RESOLVED**, that the RFP Committee shall be comprised of the following members:

1.) The County Executive, or designee;
2.) The Commissioner of the Suffolk County Department of Health Services, or designee;
3.) The Director of the Suffolk County Office for the Aging, or designee;
4.) The Presiding Officer of the Suffolk County Legislature, or designee;
5.) The Director of the Legislature's Office of Budget Review, or designee; and
6.) Two additional Suffolk County Legislators to be selected by the Presiding Officer

and be it further

8th **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this resolution constitutes a Type II action pursuant to Section 617.5(c)(20), (21) and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection, and the Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this resolution.

DATED: FEB 1 2011

APPROVED BY:

VETOED

County Executive of Suffolk County

Date: FEB 17 2011

Intro. Res. 2271-10 Res. No. 16 February 1, 2011

Motion:
Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
Romaine, Schneiderman, Browning, Muratore,
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					✓
2	Jay H. SCHNEIDERMAN	✓				
3	Kate M. BROWNING	✓				
4	Thomas MURATORE	✓				
6						
7	Jack EDDINGTON	✓				
9	Ricardo MONTANO	✓				
10	Thomas CILMI	✓				
11	Thomas F. BARRAGA		✓			
12	John M. KENNEDY, JR.	✓				
13	Lynne C. NOWICK	✓				
14	Wayne R. HORSLEY	✓				
15	DuWayne GREGORY	✓				
16	Steven H. STERN		✓			
17	Lou D'AMARO		✓			
18	Jon COOPER	✓				
5	Vivian VILORIA-FISHER, D.P.O.	✓				
8	William J. LINDSAY, P.O.	✓				
	Totals	13	3	—	—	1

MOTION
X Approve
___ Table: ___
___ Send To Committee
___ Table Subject To Call
___ Lay On The Table
___ Discharge
___ Take Out of Order
___ Reconsider
___ Waive Rule ___
___ Override Veto
___ Close
___ Recess
APPROVED X FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED
X ADOPTED
___ NOT ADOPTED

Roll Call ___ Voice Vote X

Tim Laube

Tim Laube, Clerk of the Legislature