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January 2, 2025

**Via E-Mail**

Chair Sam Goodley, Jr., Vice Chair John Wallace, Supervisor Joe Herlihy,  
Supervisor Tom Faux, and Supervisor David Smoker  
Board of Supervisors  
East Nottingham Township  
158 Election Road  
Oxford, PA 19363

RE: VIOLATION OF SECOND CLASS TOWNSHIP CODE AND SUNSHINE ACT

Dear Chair Goodley, Vice Chair Wallace, and Supervisors Herlihy, Faux, and Smoker,

The proposed development of Herr's Farm has led to increased public scrutiny of East Nottingham Township's governance. Under the leadership of Board Chair Samuel A. Goodley, Jr. (PA Attorney ID: 27066) with the advice and counsel of Solicitor Winifred M. Sebastian (PA Attorney ID: 26109) there is a record of repeated violations of the Second Class Township Code and the Sunshine Act. These violations not only infringe on the basic rights of the residents of East Nottingham, but also expose all township supervisors and township appointees to liability. The January 6, 2025 annual organizational meeting provides you, the Board of Supervisors, an opportunity to address the following issues.

**1. Pennsylvania's Second Class Township Code defines the duties of township board of supervisors.**

The Second Class Township Code is the state law that establishes and defines the duties of local municipal government. The board of supervisors are "charged with the general governance of the township and the execution of legislative, executive, and administrative powers in order to ensure sound fiscal management and to secure the health, safety and welfare of the citizens of the township."<sup>1</sup> The township solicitor serves at the pleasure of the board of supervisors.<sup>2</sup>

The Code defines the solicitor's duties as follows:

The township solicitor, when directed or requested so to do, shall prepare or approve any bonds, obligations, contracts, leases, conveyances, ordinances and assurances to which the township may be a party.

The township solicitor shall commence and prosecute all actions brought by the township for or on account of any of the estates, rights, trusts, privileges, claims or demands, as well as defend the township or any township officer against all actions or suits brought against the township or township officer in which any of the estates, rights, privileges, trusts, ordinances or accounts of the township may be brought in question before any court in this Commonwealth and do every professional act incident to the office which the township solicitor may be authorized or required to do by the board of supervisors or by any resolution.

The township solicitor shall furnish the board of supervisors, upon request, with an opinion in writing upon any question of law.<sup>3</sup>  
Emphasis added.

- a. East Nottingham Township's Board of Supervisors repeatedly violate the Second Class Township Code by failing to operate according to their statutorily defined duties.**

On September 12, 2023 and again on October 8, 2024 Solicitor Sebastian exceeded the scope of her defined duties by reporting board business in the absence of Board Chair Goodley. See Exhibit A. On November 12, 2024, Solicitor Sebastian again exceeded the scope of her defined duties by directing township business, lobbying for ordinance changes, and addressing issues as if a 6<sup>th</sup> township supervisor.<sup>4</sup> According to township residents, these examples are not uncommon occurrences.

Representative government is destroyed when an elected board of supervisors relinquishes their statutorily defined duties to an unelected third party, namely a township solicitor. ***East Nottingham Township's Board of Supervisors must reclaim their proper role in service to their constituents.***

## **2. Pennsylvania’s Sunshine Act prohibits agencies from deliberating or taking official action in secret. Exceptions to the rule are narrow.**

The General Assembly states in the Sunshine Act that “. . . the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.”<sup>5</sup>

The Sunshine Act requires “[o]fficial action and deliberations by a quorum of the members of an agency to take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions).”<sup>6</sup> Official action is defined as: “Recommendations made by an agency pursuant to statute, ordinance or executive order; The establishment of policy by an agency; The decisions on agency business made by an agency; or The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.”<sup>7</sup> Deliberation is “[t]he discussion of agency business held for the purpose of making a decision.”<sup>8</sup> Agency business is “[t]he framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.”<sup>9</sup> Administrative action is “[t]he execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency. The term does not, however, include the deliberation of agency business.”<sup>10</sup>

There are two formal exceptions to the Sunshine Act’s open meetings requirement: Executive Session Exception and the Conference Exception.<sup>11</sup> Also, the Sunshine Act does not preclude private meetings for the purpose of Information Gathering.<sup>12</sup>

### **The Executive Session Exception**

An agency may hold an executive session for one or more of the following reasons: personnel matters; collective bargaining agreement; the purchase or lease of real property; active or pending litigation; protecting a lawful privilege or confidentiality protected by law; certain academic matters; and public safety issues if disclosure of the information would be a threat to public safety.<sup>13</sup>

### **The Conference Exception**

A conference is defined as any training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.<sup>14</sup> Agency business may not be deliberated at a conference.<sup>15</sup>

### **Information Gathering**

The Sunshine Act does not preclude private information gathering by a quorum of agency members. However, private information gathering may not include discussion of agency business. In *Smith v. Township of Richmond, Pennsylvania's* Supreme Court explained: "Thus, a discussion of agency business may be said to have taken place "for the purpose of making a decision" — and therefore, to have comprised "deliberations" — where the discussion consisted of debate or discourse directed toward the exercise of such judgment. This would occur, for example, where agency members weigh the "pros and cons" of the various options involved, or otherwise engage in comparisons of the different choices available to them as an aid in reaching a decision on the topic . . . even if the decision is ultimately reached at a later point."<sup>16</sup> Internal citations removed.

**a. As standard practice the East Nottingham Township’s Board of Supervisors repeatedly violate the Sunshine Act by deliberating and taking official action in secret fact-finding meetings.**

Over the course of years, the Board of Supervisors regular meeting minutes state: “. . . a fact-finding meeting was held on this date to discuss agenda items.” See Exhibit B. These fact-finding meetings are conducted with a quorum of board members, are closed to the public, are not qualified for an exemption from the Sunshine Act and, as indicated in the Board’s own meeting minutes, exceed mere information gathering.

The Board’s meeting minutes state that agenda items and issues affecting the Township are discussed during fact-finding meetings. Agenda items and issues that affect the township are the very definition of agency business and any discussion by a quorum of the board must be done in a public meeting. Further, a reading of the meeting minutes makes clear that the Board deliberates, comes to a consensus during their fact-finding meetings, and announces the result during the regular meeting. Township residents confirm that they are prohibited entry to the Board’s fact-finding meetings and regular board meetings are conducted as a formality, free from discussion and deliberation between township supervisors.

Events surrounding the proposed land development of Herr’s farm is illustrative of the points stated above. The September 13, 2022 Board meeting minutes state that a “. . . request was made to the Board to consider making a text amendment to the Township’s I-1 Zoning Ordinance that would increase the maximum building height requirement of 35 feet.” See Exhibit C. The following seven months of meeting minutes are completely void of any mention of increasing the building height requirement. It isn’t until May 9, 2023 that Solicitor Sebastian tells the public that she and the Board were working on an amendment to increase the maximum building height. See Exhibit C. The only reason the amendment was addressed in the Board’s May 9th meeting was due to the Planning Commission rightly raising concerns during its meeting the month prior. See Exhibit C.

The Board's current practices breaks the public's trust, violating their right to be present and witness the deliberation and decision making of the board they elected. This right is fundamental to the functioning of the democratic process. ***East Nottingham Township's Board of Supervisors must put an end to its years long practice of conducting agency business during secret fact-finding meetings.***

### **3. Pennsylvania's Sunshine Act requires specificity when an agency claims an Executive Session Exemption.**

The specific reason for an Executive Session must be announced in the public meeting either before or directly after the Executive Session.<sup>17</sup> In *Reading Eagle Co. v. Council of City of Reading, Pennsylvania's Commonwealth court* explained:

"Perhaps the best rationale for requiring specificity was given by the Supreme Court of Mississippi in *Hinds County Board of Supervisors v. Common Cause of Mississippi*. In that case, the Supreme Court of Mississippi enjoined a county board from holding executive sessions to discuss litigation unless it identified the litigation "by court, style and number of such action."

In its opinion, the court stated that specificity was necessary because: The reason given, of course, must be meaningful. It must be more than some generalized term which in reality tells the public nothing. To simply say "personnel matters" or "litigation" tells nothing. The reason stated must be of sufficient specificity to inform those present that there is, in reality, a specific, discrete matter or area which the board had determined should be discussed in executive session . . . . When a board chairman tells a citizen he may not hear the board discuss certain business, he is taking liberties with the rights of that citizen, and the reason given for this interference must be genuine and meaningful, and one the citizen can understand. To permit generalized fluff would frustrate the very purpose of the Act.

By requiring that the executive session can only be held when reasons are given, the General Assembly intended that the public be able to determine from the reason given whether they are being properly excluded from the session. We agree with the rationale stated in *Hinds County* that in order to effectuate the purpose of requiring that reasons be given, the reasons stated by the public agency must be

specific, indicating a real, discrete matter that is best addressed in private.”<sup>18</sup> Internal citations removed.

**a. East Nottingham Township’s Board of Supervisors repeatedly violate the Sunshine Act by not complying with the specificity required when claiming the Executive Session Exception.**

Over the course of years, the Board of Supervisors regular meeting minutes are void of specificity, stating Executive Sessions were held to discuss “personnel,” “employment related matters,” “real estate,” and “litigation matters.” See Exhibit C.

These generalize terms tell nothing and fail to state a specific, real, discrete matter that is best addressed in private. The Board’s current practices breaks the public’s trust because a specific reason for infringing on the public’s right to be present and witness the deliberation and decision making of the board they elected has not been stated. *East Nottingham Township’s Board of Supervisors must put an end to claiming the Executive Session Exception without the specificity required by the Sunshine Act.*

**4. Pennsylvania’s Sunshine Act prohibits agencies from taking official action on a matter of agency business if it was not included on the meeting agenda. Exceptions to the rule are limited.**

In order for the public to effectively participate in agency meetings, they must have notice of the agency business which will be considered. On August 29, 2021 Senate Bill 554 amending the Sunshine Act took effect requiring agencies to post an agenda for all public meetings at least 24 hours in advance. The agenda must include “a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting.”<sup>19</sup> Further, “. . . an agency may not take official action on a matter of agency business at a meeting if the matter was not included in the notification . . .”<sup>20</sup> The Sunshine Act does allow for three exemptions to the rule: (1) emergency business involving a clear and present danger to life or property, (2) de minimis business not involving fund expenditure or entering into a contract that arises within the

24 hours preceding the meeting, and (3) de minimis business raised by a resident/taxpayer during the meeting that does not involve fund expenditure or entering into a contract.<sup>21</sup> On November 8, 2023, in *Coleman v. Parkland School District*, Pennsylvania's Commonwealth court made clear that an agenda cannot be changed unless it falls under one of these three specific exceptions.<sup>22</sup>

**a. East Nottingham Township's Board of Supervisors repeatedly violate the Sunshine Act by taking official action on agency business that was not included on the meeting agenda.**

In the time since Senate Bill 554 passed, the Board of Supervisors by majority vote of the supervisors present at a meeting, have added township business to the agenda. The added agenda items included expenditures, contracts, and employment terms, none of which fall under the permitted exceptions. See Exhibit D.

Approving multiple expenditures (each exceeding one hundred thousand dollars), entering into contracts, and changing the conditions of township employment without proper notice to the public is precisely what Senate Bill 554 aimed to prevent. The Board violated the public's right to notice and the ability to meaningfully participate in the democratic process by taking official action on items not included on the meeting agenda. *East Nottingham Township's Board of Supervisors must put an end to modifying the agenda and taking action on items during the meeting that are not included on the published agenda.*

**5. Pennsylvania's Second Class Township Code requires board supervisors provide for the recording of meeting minutes. Pennsylvania's Sunshine Act requires public comment to be reflected in those meeting minutes.**

The Second Class Township Code requires the board of supervisors provide for the recording of meeting minutes.<sup>23</sup> The Sunshine Act requires written meeting minutes include "[t]he names of all citizens who appeared officially and the subject of their testimony."<sup>24</sup> Agencies must provide



the public with the opportunity to comment “. . . on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.”<sup>25</sup> Emphasis added. Public comment may occur at the beginning of the meeting or prior to action on each agenda item.<sup>26</sup> Agencies may adopt by official action rules necessary for the conduct of meetings in an orderly fashion.<sup>27</sup>

**a. East Nottingham Township’s Board of Supervisors violate the Second Class Township Code and Sunshine Act by failing to include public comment in meeting minutes.**

Over the course of a two-year period, there are only two entries documenting public comment in the Board of Supervisors regular meeting minutes. See Exhibit E. According to township residents, these minutes do not accurately reflect the actual public comments that occurred during the meetings. Further, it is the residents understanding that in order for their public comments to be recorded, the resident must request to appear on the agenda one week prior to the meeting. East Nottingham Township’s code does not include this procedure nor does it include any rules regarding public comment.

The ability of the public to comment on agency business is critical to their participation in the democratic process. The inclusion of public comment in the written meeting minutes is fundamental to the public’s ability to review what occurred before their elected representatives and hold them accountable. The Board violated the public’s right to information by excluding public comment from the record. *The Board must include the names of all citizens who make public comment, as well as a summary of their statements.*

**6. Pennsylvania’s Sunshine Act applies to committees appointed by an agency.**

The Sunshine Act defines an agency as “[t]he body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business . . .”<sup>28</sup> Emphasis added. Official action is defined in part as “[r]ecommendations made by an agency pursuant to statute, ordinance or executive order . . .”<sup>29</sup> *East Nottingham Township’s Board of Supervisors*

***must ensure all its committees and commissions (i.e. Historical, Planning, Open Space) comply with the Sunshine Act.***

- a. East Nottingham Township’s Open Space Committee repeatedly violates the Sunshine Act by failing to provide meeting notice, an opportunity for public participation, and a record of meeting minutes.**

On June 14, 2022, the Board accepted the 2022 Land Preservation Plan. See Exhibit G. This Plan tasks the Open Space Committee with administering the Township’s Open Space program.<sup>30</sup> The Open Space Committee is authorized by the Board to take official action or render advice on matters of agency business. The Open Space program is funded by the township’s Open Space Municipal Resident Tax collected by the authority granted in Pennsylvania’s Open Space Lands Act. Therefore, the Open Space Committee is subject to the Sunshine Act.

According to the Land Preservation Plan, the Open Space Committee is to consist of five members appointed by the Board for a term of four years. The Open Space Committee currently consists of nine members. One of those members, Joel Brown, is a non-resident and real estate agent with active listings in the township. ***East Nottingham Township’s Board of Supervisors must reduce the number of committee members to five and ensure no conflicts of interest are presented by the remaining members.***

According to the Land Preservation Plan, regular Open Space Committee meetings are to be held at the Township building on the third Tuesday of odd numbered months with occasional special meetings held as needed. A review of the Township’s website reveals that meeting dates, time, agendas, and resulting meeting minutes are not available for this Committee.

The Board’s regular meeting minutes records “Open Space Reports” by Chair Goodley. These reports demonstrate that the Open Space Committee is in fact holding meetings. However, the most telling report by Chair Goodley occurs on January 3, 2023 during which he states that the

Township has “. . . an informal Open Space Committee which meets as necessary.” See Exhibit G. Emphasis added.

The Board’s treatment of a committee established pursuant to statute (Pennsylvania’s Open Space Act) and ordinance (East Nottingham Township’s Land Preservation Plan) whose work is pivotal in the spending of millions of taxpayer dollars as “informal” is factually inaccurate. ***East Nottingham Township’s Board of Supervisors must bring the Open Space Committee into compliance with the Sunshine Act.***

**7. Pennsylvania’s Sunshine Act allows for the imposition of civil and criminal penalties.**

A court can award attorneys’ fees and fines to both an agency and its members who are found to have willfully or wantonly disregarded the Sunshine Act. Members of an agency can face criminal charges and must pay any fines personally.<sup>31</sup>

- a. East Nottingham Township’s Board of Supervisors have been notified of their multiple violations of the Sunshine Act. Failing to take corrective action could be viewed as the willful or wanton disregard of the Sunshine Act.**

Pennsylvania’s Department of Community and Economic Development offers free, quick, and easy to read resources to assist elected officials in performing their duties.<sup>32</sup> Specifically, the *Township Supervisor’s Handbook*<sup>33</sup> and *Open Meetings: The Sunshine Act Handbook*<sup>34</sup> discuss in greater detail the issues presented here. The *Solicitor’s Handbook* can be quickly skimmed to better understand the role and proper functions of a township solicitor.<sup>35</sup> Taking the time to review this information will place each township supervisor on equal footing with their current Board Chair who has the benefit of a long legal career. ***In the end, East Nottingham Township’s Board of Supervisors must take corrective action to limit the township’s exposure to civil liability and their personal exposure to criminal charges and fines.***

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The purpose of this letter is not only to inform East Nottingham Township's Board of their multiple violations of the Second Class Township Code and Sunshine Act, but to provide an opportunity for the Board to take corrective action. The January 6, 2025 annual organizational meeting can be a turning point in the Township's governance. The Board can make the choice to: Protect the public by avoiding making decisions in secret; Protect the township and themselves by providing notice, accurate agendas, and minutes; Appoint a new chair who will be dedicated to following proper process; and Appoint a new solicitor that will support the Board's efforts. These actions will maintain the integrity of township government, lead to better informed residents, and build trust between you, the elected officials, and your constituents.

Sincerely,



Carmela Z. Ciliberti, Esquire

Enclosures: Exhibits A-G

cc: All East Nottingham Township Committee/Commission members

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<sup>1</sup> 53 Pa. Stat. § 65607. Duties of supervisors

<sup>2</sup> 53 Pa. Stat. § 66101. Township solicitor

<sup>3</sup> 53 Pa. Stat. § 66103. Duties of solicitor

<sup>4</sup> Full meeting can be viewed at [https://youtu.be/nUIr2ScgQ\\_g?si=I\\_AIXBF6-yJSBMQg](https://youtu.be/nUIr2ScgQ_g?si=I_AIXBF6-yJSBMQg)

<sup>5</sup> 65 Pa.C.S. § 702. Legislative findings and declaration.

<sup>6</sup> 65 Pa.C.S. § 704. Open meetings.

<sup>7</sup> 65 Pa.C.S. § 703. Definitions.

<sup>8</sup> 65 Pa.C.S. § 703. Definitions.

<sup>9</sup> 65 Pa.C.S. § 703. Definitions.

<sup>10</sup> 65 Pa.C.S. § 703. Definitions.

<sup>11</sup> 65 Pa.C.S. § 707. Exceptions to open meetings.

<sup>12</sup> Smith v. Twp. of Richmond, 623 Pa. 209, 82 A.3d 407 (2013)

<sup>13</sup> 65 Pa.C.S. § 708. Executive sessions.

<sup>14</sup> 65 Pa.C.S. § 703. Definitions.

<sup>15</sup> 65 Pa.C.S. § 707. Exceptions to open meetings.

<sup>16</sup> Smith v. Twp. of Richmond, 623 Pa. 209, 82 A.3d 407 (2013)

<sup>17</sup> 65 Pa.C.S. § 708. Executive sessions.

<sup>18</sup> Reading Eagle Co. v. Council of Reading, 156 Pa. Commw. 412, 627 A.2d 305 (1993)

<sup>19</sup> 65 Pa.C.S. § 709. Public Notice.

<sup>20</sup> 65 Pa.C.S. § 712.1. Notification of agency business required and exceptions.

<sup>21</sup> 65 Pa.C.S. § 712.1. Notification of agency business required and exceptions.

<sup>22</sup> Coleman v. Parkland Sch. Dist., 305 A.3d 238 (Pa. Cmwlth. 2023)

<sup>23</sup> 53 Pa. Stat. § 65606. Minutes and records.

<sup>24</sup> 65 Pa.C.S. § 706. Minutes of meetings, public records and recording of meetings.

<sup>25</sup> 65 Pa.C.S. § 710.1. Public participation

<sup>26</sup> 65 Pa.C.S. § 710.1. Public participation

<sup>27</sup> 65 Pa.C.S. § 710. Rules and regulations for the conduct of meetings.

<sup>28</sup> 65 Pa.C.S. § 703. Definitions.

<sup>29</sup> 65 Pa.C.S. § 703. Definitions.

<sup>30</sup> East Nottingham Township 2022 Land Preservation Plan can be found on the Township's website:

<https://www.eastnottingham.org/open-space-preservation>

<sup>31</sup> 65 Pa.C.S. § 714. Penalty.

<sup>32</sup> PA Department of Community and Economic Development Handbooks found at [https://dced.pa.gov/library/Local Government>Handbooks and Guides](https://dced.pa.gov/library/Local%20Government%20Handbooks%20and%20Guides)

<sup>33</sup> Township Supervisor's Handbook: <https://dced.pa.gov/download/township-supervisors-handbook-2/?wpdmml=59476&refresh=676ddcbf5d3661735253183%20noopener%20norereferrer>

<sup>34</sup> Open Meetings, The Sunshine Act Handbook: <https://dced.pa.gov/download/open-meetings-the-sunshine-act/?wpdmml=57760&refresh=676ddd3ed7e871735253310%20noopener%20norereferrer>

<sup>35</sup> Solicitor's Handbook: <https://dced.pa.gov/download/solicitors-handbook/?wpdmml=56411&refresh=676ddd042de121735253252%20noopener%20norereferrer>