

Attendance

Members:

• Josh Gaita, Chair	Chancellor District (McLaughlin)	Present	
• Marc G. Smith, Vice Chair	Battlefield District (Yakabouski)	Present	
• Thomas Welsh	Berkeley District (Marshall)	Present	
• Garrett Garner	Courtland District (Ross)		Absent
• Edwin Pardue	Livingston District (Benton)	Present	
• Hart Rutherford	Lee Hill District (Skinner)	Present	
• Donn Hart	Salem District (Trampe)	Present	

Staff and Guests:

- Becky Stoyer, Bonaventure Realty Group
- Tom Wack, Wack General Contractor
- Michael Medina, Planning Commission Member
- Brendan Hefty, Hefty & Wiley, P.C.
- Michael Graff, McGuireWoods
- Curry Roberts, Fredericksburg Regional Alliance
- Tom Rumora, Director of Economic Development and Tourism
- Debbie Sanders, Deputy Director of Economic Development and Tourism
- Courtney Owens, Project Management Coordinator
- Meggie Roche, Communication Analyst
- Tyler Madera, Economic Development & Tourism Intern

Call to Order

Mr. Gaita called the meeting to order at 8:00 AM and confirmed a quorum.

Mr. Rutherford moved to approve the minutes of the August 30th, 2018 meeting. The motion was seconded by Mr. Pardue, and passed by the following recorded votes:

Ayes: 6 Mr. Gaita, Mr. Rutherford, Mr. Welsh, Mr. Pardue, Mr. Hart, Mr. Smith
Nays: 0
Absent: 1 Mr. Garner,
Abstain: 0

Palmers Creek Public Items

Mr. Hart disclosed that he is the landowner for Palmers Creek and will be the developer of future commercial development for that property. Due to this conflict, Mr. Hart recused himself from this discussion and will not participate in any future discussions or decisions related to this matter.

Ms. Stoyer updated the EDA on the project. She informed them that the BOS has approved the rezoning and that the initial review has been received. Mr. Graff explained that the EDA would be pass through issuer of tax exempt bonds.

Mr. Gaita declared the public hearing opened and when no one indicated an intention to speak, closed the public hearing.

On a motion by Mr. Rutherford, seconded by Mr. Smith, and passed unanimously with Mr. Hart abstaining, the EDA adopted the resolution as follows:

Ayes: 5 Mr. Gaita, Mr. Pardue, Mr. Rutherford, Mr. Welsh, Mr. Smith
Nays: 0
Absent: 1 Mr. Garner
Abstain: 1 Mr. Hart

RESOLUTION OF
THE ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF SPOTSYLVANIA, VIRGINIA
AUTHORIZING THE ISSUANCE OF UP TO \$22,000,000 REVENUE BONDS
FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE APPROXIMATELY 200-UNIT PALMERS
CREEK APARTMENTS MULTIFAMILY HOUSING FACILITY LOCATED IN SPOTSYLVANIA COUNTY,
VIRGINIA

WHEREAS, the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act") empowers industrial development authorities such as the Economic Development Authority of the County of Spotsylvania, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority") created by municipalities whose housing authorities have not been activated pursuant to the Housing Authorities Law, Chapter 1, Title 36 of the Code of Virginia of 1950, as amended (the "Virginia Code") to issue bonds to make loans for the purpose of financing certain facilities used primarily for single and multifamily residences in order to promote safe and affordable housing in the Commonwealth of Virginia (the "Commonwealth") and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth; and

WHEREAS, the Authority has received a request from BWF Palmers Creek, LLC, a Virginia limited liability company (the "Borrower"), requesting that the Authority issue its revenue bonds to assist the Borrower in (a) financing and refinancing certain of the costs of the acquisition, construction and equipping of a multifamily residential rental housing facility (the "Facility") to be known as Palmers Creek Apartments to be owned by the Borrower, consisting of two four-story buildings containing approximately 200 residential units, one community building and one office located on approximately 9.53 acres of land at 8934 Jefferson Davis Highway, Fredericksburg (Spotsylvania County), Virginia 22408 and (b) financing costs of issuance, funding of any required reserves and other financeable expenditures (collectively, the "Project"); and

WHEREAS, such assistance will induce the Borrower to construct and maintain the Project in Virginia and benefit the inhabitants of the County of Spotsylvania, Virginia (the "County") and the Commonwealth through the promotion of their safety, health, welfare, convenience or prosperity; and

WHEREAS, preliminary plans for the Project have been described to the Authority and, on October 25, 2018, a public hearing has been held as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 15.2-4906 of the Act; and

WHEREAS, the Borrower has represented that the estimated cost of the Project, including all expenses of issue, will require an issue of revenue bonds in the aggregate principal amount not to exceed \$22,000,000 (the "Bonds"); and

WHEREAS, (a) no member of the Board of Directors of the Authority (the "Board") is an officer or employee of the County, (b) each member of the Board has, before entering upon his or her duties during his or her present term of office, taken and subscribed to the oath prescribed by Section 49-1 of the Virginia Code, and (c) at the time of their appointments and at all times thereafter, including the date hereof, all of the members of the Board have satisfied the residency requirements of the Act; and

WHEREAS, no member of the Board has any personal interest or business interest in the Borrower, the Bonds or any of the transactions contemplated therein or has otherwise engaged in conduct prohibited under the State and Local Government Conflict of Interests Act, Chapter 31, Title 2.2 of the Virginia Code in connection with this resolution or any other official action of the Authority in connection therewith.

NOW, THEREFORE, BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF SPOTSYLVANIA, VIRGINIA:

1. It is hereby found and determined that the financing of the Project will be in the public interest and will promote the commerce, safety, health, welfare, convenience or prosperity of the Commonwealth, the County and their citizens.
2. To induce the Borrower to construct and maintain the Facility in the Commonwealth, and particularly in the County, the Authority hereby agrees to assist the Borrower in financing the Project, including the financing

3. of reserve funds and costs of issuance of the Bonds as permitted by applicable law, by undertaking the issuance of it's the Bonds in a principal amount not to exceed \$22,000,000 upon terms and conditions mutually agreeable to the Authority and the Borrower. The Bonds will be issued pursuant to documents satisfactory to the Authority. The Bonds may be issued in one or more series at one time or from time to time.

4. It having been represented to the Authority that it is necessary to proceed immediately with the financing of the Project, the Authority agrees that the Borrower may proceed with plans for the Project, enter into contracts for land, construction, materials and equipment for the Project, and take such other steps as it may deem appropriate in connection with the Project, provided, however, that nothing in this resolution shall be deemed to authorize the Borrower to obligate the Authority without its consent in each instance to the payment of any moneys or the performance of any acts in connection with the Project. The Authority agrees that the Borrower may be reimbursed from the proceeds of the Bonds for all expenditures and costs so incurred by it, provided such expenditures and costs are properly reimbursable under the Act and applicable federal laws.

5. At the request of the Borrower, the Authority approves McGuireWoods LLP, Tysons, Virginia as bond counsel ("Bond Counsel") in connection with the issuance of the Bonds.

6. All costs and expenses in connection with the financing of the Project, including the fees and expenses of the Authority, Bond Counsel and counsel to the Authority, shall be paid by the Borrower or, to the extent permitted by applicable law, from the proceeds of the Bonds. If for any reason the Bonds are not issued, it is understood that all such expenses shall be paid by the Borrower and that the Authority shall have no responsibility therefor.

7. In adopting this resolution the Authority intends to take "official action" toward the issuance of the Bonds and to evidence its "official intent" to reimburse from the proceeds of the Bonds any expenditures paid by the Borrower to finance the Project before the issuance of the Bonds, all within the meaning of regulations issued by the Internal Revenue Service pursuant to Sections 103 and 141 through 150 and related sections of the Code.

8. The Authority recommends that the Board of Supervisors of the County approve the issuance of the Bonds.

9. Each of the Chair, the Vice Chair, the Treasurer and the Secretary of the Authority, any of whom may act alone, is hereby authorized to request an allocation or allocations of the State Ceiling (as defined in Section 15.2-5000 of the Virginia Code) in accordance with the applicable provisions of the Virginia Code and any regulations or executive orders issued thereunder. All costs incurred by the Authority, if any, in connection with such proceeding shall be paid for by the Borrower.

10. No Bonds may be issued pursuant to this resolution until such time as (a) the issuance of the Bonds has been approved by the Board of Supervisors of the County, (b) the Bonds have received an allocation or allocations of the State Ceiling in accordance with the applicable provisions of the Virginia Code and any regulations or executive orders issued thereunder and (c) the final terms and details of the Bonds have been approved by subsequent resolution of the Authority.

11. The approval of the issuance of the Bonds does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Project or the Borrower. The issuance of revenue bonds as requested by the Borrower will not constitute a debt or pledge of the faith and credit of the Commonwealth or the County, and neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision of the Commonwealth, including the County, will be pledged to the payment of such Bonds. Neither the County nor the Authority shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from revenues and money pledged therefor.

12. Any obligation of the Authority to exercise its powers to issue the Bonds as requested by the Borrower is contingent upon the satisfaction of all legal requirements, and the Authority (including its officers, directors, employees and agents) shall not be liable and hereby disclaims all liability to the Borrower and all other persons or entities for any damages, direct or consequential, resulting from the issuance of the Bonds or failure of the Authority to issue the Bonds for any reason, including but not limited to, the failure of the Board of Supervisors of the County to approve the issuance of the Bonds. Neither the directors, officers, agents or employees of the Authority, past, present and future shall be personally liable on the Bonds.

13. The Borrower agrees to indemnify and save harmless the Authority and its officers, directors, employees and agents (hereinafter the "Indemnitees") jointly and severally from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including but not limited to the following:

- (a) all amounts paid in settlement of any litigation commenced or threatened against any of the Indemnitees, if such settlement is effected with the written consent of the Borrower;
- (b) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Borrower, the Project of any of the Indemnitees;
- (c) Any judgments, penalties, fines, damages, assessments, indemnities or contributions; and
- (d) The reasonable fees of legal counsel, auditors, and consultants;

provided that the Damages arise out of:

- (i) failure by the Borrower, or its officers or agents, to comply with the terms of the documents related to the Bonds and any agreements, covenants, obligations or prohibitions set forth therein;
- (ii) any action, suit, claim or demand contesting or affecting the title of the Project;
- (iii) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Project;
- (iv) any breach of any representation or warranty set forth in the documents related to the Bonds or any certificate delivered pursuant thereto, and any claim that any representation or warranty of the Borrower contains or contained any untrue or misleading statement or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made; or
- (iv) any suit, action, administrative proceeding, enforcement action or governmental or private action of any kind whatsoever commenced against the Borrower, the Project or any of the Indemnitees which might adversely affect the validity or enforceability of the Bonds, the documents related to the Bonds or the performance by the Borrower or any Indemnitee of any of their respective obligations thereunder.

14. The Borrower has represented to the Authority that the Borrower will pay to the Authority an origination fee equal to equal to the sum of the following (in each case expressed as a percentage of the original maximum stated principal amount of the Bonds (the "Original Principal")) payable on the date of issuance of the Bonds: (i) one percent (1.00%) of the Original Principal up to and including one million dollars (\$1,000,000), (ii) plus three fourths of one percent (0.75%) of the Original Principal in excess of one million dollars (\$1,000,000) up to and including five million dollars (\$5,000,000), (iii) plus one half of one percent (0.50%) of the Original Principal in excess of five million dollars (\$5,000,000).

15. This resolution shall take effect immediately upon its adoption.

Strategic Plan Update

Mr. Pardue and Mr. Rutherford updated the EDA on their meeting regarding the EDA's strategic plan. They informed the EDA that they reviewed a strategic plan document from 2014 and felt that the bulk of the document was still relevant, but may need to be fine-tuned to align with the County's strategic plan. They would like the EDA to review the document and provide input. Mr. Smith suggested that the EDA talk to representatives from the state and the region to ensure that the EDA's plan aligns with state and regional goals. Mr. Rutherford requested that a Google Drive be set up to help distribute EDA documents.

Closed Session

Mr. Pardue moved that the EDA convene in closed session pursuant to section 2.2-3711(A)(5) of the Code of Virginia for discussion of concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the County. And pursuant to section 2.2.-3711(A)(3) of the Code of Virginia for discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, concerning the Back 40 property where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Economic Development Authority. The motion was seconded by Mr. Rutherford and passed by the following recorded votes:

*Ayes: 6 Mr. Gaita, Mr. Pardue, Mr. Rutherford, Mr. Welsh, Mr. Hart. Mr. Smith
Nays: 0
Absent: 1 Mr. Garner
Abstain: 0*

Mr. Pardue moved that the EDA certify by roll call vote that only the matter identified in the motion to convene in closed session and lawfully exempted under the Virginia Freedom of Information Act was heard, discussed, or considered. Mr. Hart seconded the motion, which passed by the following recorded votes:

*Ayes: 4 Mr. Gaita, Mr. Pardue, Mr. Welsh, Mr. Hart
Nays: 0
Absent: 3 Mr. Garner, Mr. Smith, Mr. Rutherford
Abstain: 0*

Mr. Rutherford and Mr. Smith exited the meeting during the closed session.

Adjournment

The next EDA meeting will take place on December 6th at 8:00 AM. On a motion by Mr. Pardue, seconded by Mr. Welsh, and carried unanimously; the meeting was adjourned at 10:00 AM.