

POQUOSON ECONOMIC DEVELOPMENT AUTHORITY
Board of Directors Regular Meeting
September 10, 2013, 8:00 a.m.
Poquoson City Hall-Council Conference Room

- PRESENT:** Manfred C. Freeman, Jr., Chairman
Donald F. Booth, Jr., Vice Chairman
Henry L. Freeman, Director
Alan E. Meetze, Director
Angela Ward-Costello, Director
Timothy O. Trant, II, Director
- David Callis, Economic Development (ED) Director
Charity Gavaza, Economic Development (ED) Coordinator
Theresa Owens, Finance Director
Mr. George Consolvo, Kaufmann and Canoloes
Mr. Doug Hornsby, CEO of the CNU Real Estate Foundation
Mary J. "Evie" Insley, Secretary
- ABSENT:** P. Craig Moore, Treasurer/Director
D. Wayne Moore, City Attorney

Chairman Freeman called the meeting to order at approximately 8:00 a.m. in the Council Conference Room located at 500 City Hall Avenue.

The Directors agreed to amend the agenda by placing the Public Hearing first on the agenda.

PUBLIC HEARING

1. **RESOLUTION OF THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF POQUOSON, VIRGINIA TO APPROVE THE PLAN OF REFINANCE OF CHRISTOPHER NEWPORT UNIVERSITY EDUCATIONAL FOUNDATION AND CHRISTOPHER NEWPORT UNIVERSITY REAL ESTATE FOUNDATION**

(Director Trant recused himself from the meeting during the bond discussion due to a conflict of interest.)

Chairman Freeman opened the public hearing.

Mr. George Consolvo, bond attorney for Christopher Newport University Education Foundation and Christopher Newport University Real Estate Foundation and Mr. Doug Hornsby, CEO of the CNU Real Estate Foundation encouraged the Authority to adopt the resolution approving the requested bond issuance in an amount not to exceed \$8.2 million. He explained that the University and the Foundation wished to refinance a bond which will mature at the end of this

year for the construction of student housing at Christopher Newport University. He pointed out that the aggregate amount of the required bond is over ten million dollars requiring an additional smaller bond negotiation with Richmond County. He assured the Authority that they will not be obligated for the repayment of this debt. In conclusion, Mr. Consolvo stated that finalization of the proposed bond issuance will also require approval by the Poquoson City Council, the Richmond County EDA, the Richmond County Board of Supervisors and the Treasury Board of Virginia.

There being no other speakers, the public hearing was closed.

Vice Chairman Booth moved, seconded by Director Meetze, to adopt the following resolution approving the requested bond issuance:

RESOLUTION OF
ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF POQUOSON, VIRGINIA

WHEREAS, there has been described to the Economic Development Authority of the City of Poquoson, Virginia (the Authority), the plans of Christopher Newport University Educational Foundation (the Foundation) and Christopher Newport University Real Estate Foundation for the issuance of the Authority's revenue bond (the Bond) in an amount not to exceed \$8,200,000 (i) to refinance the Industrial Development Authority of New Kent County, Virginia, \$10,000,000 Revenue Bond (Christopher Newport University Project), Series 2001, which financed the construction and equipping of a student housing complex (the Project) located at 39 Sweetbriar Drive in the City of Newport News, Virginia, which is or will be leased to Christopher Newport University (the University), and (ii) to pay the cost of issuing the Bond; and

WHEREAS, a public hearing with respect to the Bond has been held by the Authority on the date hereof, as required by Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the Act), and Section 147(f) of the Internal Revenue Code of 1986, as amended (the Code);

WHEREAS, there have been presented to this meeting the forms of the following documents and instruments which the Authority proposes to execute to carry out the transactions described above:

(a) Bond Purchase and Refinancing Agreement (the Bond Purchase Agreement), dated as of September 1, 2013, among the Authority, the Foundation and Bank of America, N.A. (the Lender), together with the \$8,200,000 promissory note (the Note) of the Foundation payable to the Authority and assigned by the Authority to the Lender; and

(b) The Authority's \$8,200,000 Revenue Bond (Christopher Newport University Student Housing Project), Series 2013 (the Bond), in registered form, and payable, maturing and bearing interest as set forth therein.

BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF POQUOSON, VIRGINIA:

1. It is hereby found and determined that the issuance of the Bond for the Project will benefit the inhabitants of the Commonwealth of Virginia and promote their safety, health, welfare, convenience and prosperity.
2. To assist the Foundation in the refinancing of the Project, the Authority hereby agrees to undertake the issuance of the Bond in an amount not to exceed \$8,200,000 upon terms and conditions to be mutually agreed upon between the Authority, the Lender and the Foundation. The Bond shall be issued in form and pursuant to terms to be set by the Authority, and the payment of the Bond shall be secured by an assignment, for the benefit of the holder thereof, of the Authority's rights to payments under the Bond financing documents.
3. As has been represented to the Authority that it is necessary to proceed immediately with the plan of refinance for the Project, the Authority hereby agrees that the Foundation may proceed with plan of refinance for the Project, enter into contracts and take such other steps as it may deem appropriate in connection therewith, provided that nothing herein shall be deemed to authorize the Foundation 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 plan of refinance. The Authority agrees that the Foundation may be reimbursed from the proceeds of the Bond for all costs so incurred by it and approved by bond counsel.
4. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and to deliver the Bond Purchase Agreement to the Lender.
5. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute, the Secretary or Assistant Secretary is authorized and directed to affix and attest the seal of the Authority, and either is authorized and directed to deliver the Bond to the Lender upon the terms provided in the Bond Purchase Agreement. All terms of the Bond are by this reference thereto incorporated herein as a part of this resolution.
6. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute and deliver an assignment of the Note and of the rights of the Authority under the Bond Purchase Agreement (except for certain reserved rights set forth therein).
7. The Bond Purchase Agreement, the Note and the Bond shall be in substantially the forms presented at this meeting which are hereby approved, with such completions, omissions, insertions and changes as may be approved by the officers executing them, their execution to constitute conclusive evidence of their approval of any such omissions, insertions and changes.
8. The Authority hereby agrees to the appointment of Kaufman & Canoles, P.C., Norfolk, Virginia, as bond counsel and hereby appoints such firm to supervise the proceedings and approve the issuance of the Bond.

9. The Authority, including its directors, officers, employees, agents and counsel, shall not be liable and hereby disclaims all liability to any person for any damages, direct or consequential, resulting from the Authority's failure to issue the Bond or for any other reason, and the Foundation shall agree to indemnify and hold harmless the Authority and its directors, officers, employees, agents and counsel from and against all liabilities, claims, penalties, losses, costs and expenses in any way connected with the refinancing of the Project or the issuance of the Bond.

10. The Authority hereby recommends that the City Council of the City of Poquoson, Virginia, approve the issuance of the Bond and hereby directs the Chairman or Vice Chairman to submit to the Council the statement in the form prescribed by Section 15.2-4907 of the Act, to provide to the Council a reasonably detailed summary of the comments expressed at the public hearing required by Section 15.2-4906 of the Act, and to provide a copy of this resolution and, upon its receipt, a copy of a concurring resolution adopted by the City Council of the City of Newport News, Virginia.

11. The officers of the Authority are hereby authorized and directed to execute and deliver all certificates and instruments, including Internal Revenue Service Form 8038, and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bond and the undertaking of the plan of refinance described herein.

12. All costs and expenses in connection with the financing, including the Authority's administrative fees, the fees and expenses of bond counsel, counsel for the Authority and counsel for the Lender, shall be paid from the proceeds of the Bond or from funds of the Foundation. If for any reason the Bond is not issued, it is understood that all such fees and expenses (other than the Authority's administrative fee which is payable only if the Bond is issued) shall be paid by the Foundation and that the Authority shall have no responsibility therefor.

13. The Authority's officers shall perform such other acts and adopt such further resolutions as may be required to implement its undertakings as hereinabove set forth.

14. The Authority hereby designates the Bond a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code for calendar year 2013.

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

Recorded vote on the motion:

YES: Directors Ward-Costello, Booth, H. Freeman, Meetze and Chairman Freeman.

NO: None.

CLOSED SESSION

(Director Trant returned to the EDA meeting at this time.)

Vice Chairman Booth moved, seconded by Director Ward-Costello, to go into closed session pursuant to Section 2.2-3711(A)(3) of the Code of Virginia (1950), as amended, to discuss the disposition of publicly held real property, i.e. Teen Center. Recorded vote on the motion:

YES: Directors Ward-Costello, Trant, Booth, H. Freeman, Meetze and Chairman Freeman.

NO: None.

RECONVENEMENT

Upon reconvening from closed session, Director H. Freeman moved, seconded by Director Trant, to adopt the following resolution certifying that only the disposition of publicly held real property was discussed in the closed session.

RESOLUTION CERTIFICATION OF CLOSED SESSION

WHEREAS, the Economic Development Authority of the City of Poquoson, Virginia convened in a closed session on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 (A) of the Code of Virginia (1950), as amended requires a certification by this Economic Development Authority that such closed session was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Economic Development Authority of the City of Poquoson, Virginia does hereby certify that to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed session to which this certification applies and only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by the Economic Development Authority. Recorded vote on the motion:

YES: Directors Ward-Costello, Trant, Booth, H. Freeman, Meetze and Chairman Freeman.

NO: None.

Chairman Freeman asked ED Director, David Callis and ED Coordinator, Charity Gavaza, to work with the Real Estate Subcommittee, i.e. Director H. Freeman and Director Meetze, to negotiate an agreeable sales price for the Teen Center as outlined in the closed session for presentation at the next EDA meeting.

Director Ward-Costello moved, seconded by Vice Chairman Booth, to authorize the Real Estate Subcommittee's negotiations with regard to the sale of the EDA's Teen Center property located

at 962 Poquoson Avenue in accordance with the stipulations set forth in the closed session.
Recorded vote on the motion:

YES: Directors Ward-Costello, Trant, Booth, H. Freeman, Meetze and Chairman Freeman.

NO: None.

PUBLIC COMMENT

There was no comment.

UNFINISHED BUSINESS

1. HRSD Drainage Issue – North Side of Victory Boulevard

Chairman Freeman advised the Authority he had not yet been able to meet with the City's Construction Inspector, Mark Bosen, regarding repairs to the Authority's property located directly across from City Hall Avenue necessary to restore this area to specifications of the original design by Donald Davis.

2. Wetlands Assessment – Tax Map Parcel #27-1-94A

ED Coordinator, Charity Gavaza, explained that Sandra Brinson of Integrity Environmental, Inc would conduct the assessment of Tax Map Parcel #27-1-94A for a fee of \$421.95. If there continued to be little to no rainfall, Ms. Brinson would also walk the parcel with the Army Corps of Engineers within two weeks at a cost of \$196. Ms. Gavaza reminded the Authority that if the parcel appeared to be too wet once the review began, Ms. Brinson would stop and not charge the EDA.

Vice Chairman Booth moved, seconded by Director Trent, to authorize Ms. Gavaza to retain Integrity Environmental, Inc. at the aforementioned rates. At the Authority's suggestion, Vice Chairman Booth and Director Trent agreed to amend the motion to add that the \$196 would be paid upon completion of Ms. Brinson's walk through with the Army Corps of Engineering. Ms. Gavaza requested a poll of the Directors to continue with the ACOE confirmation if the delineation is not as favorable as anticipated. Recorded vote on the motion:

YES: Directors Ward-Costello, Trant, Booth, H. Freeman, Meetze and Chairman Freeman.

NO: None.

3. Poquoson Commons Pipe Connection

Ms. Gavaza reminded the Authority that the Director of Community Development, Ms. Debbie Vest, had previously stated that this is a problem which must be resolved between JDH Capital and the Fountains of Poquoson, LLC with direction from the City Engineer and the submittal of a final site plan from the Fountains of Poquoson.

REPORT OF THE TREASURER

There were no reports for July and August as the closeout of FY13 had not yet been completed.

REPORT OF THE SECRETARY

There was no report.

STAFF ACTIVITIES

1. Past and Future Ribbon Cutting Ceremonies

The ED Coordinator, Charity Gavaza, reported that the following ribbon cuttings had recently occurred:

- Clothesline for Kids in the Wythe Creek Shopping Center; and
- Momma Mia's Pizza at the corner of Yorktown Road and Hunts Neck Road.

She stated that Port Messick Bait and Tackle will have a Ribbon Cutting on September 21st at Messick Point and that a new salon will open soon in the Wythe Creek Shopping Center.

2. Marketing

Ms. Gavaza reported on the ongoing advertising appearing in the *Chesapeake Bay Magazine* as part of an in-kind agreement with the Poquoson Seafood Festival.

Director Ward-Costello advised the Directors that the AMC will run the "Poquoson Is The Place" ads for an additional month at no extra charge.

David Callis, Economic Development Director reported that the City's booth, which won "Best In Show" last year at the Virginia Chamber of Commerce's Business Safari will expand expanded its footprint at this year's event with the assistance of Director Ward-Costello.

3. Teen Center

This item was discussed in the Closed Meeting.

4. Schedule Next Meeting

After a brief discussion, the next meeting was set for Tuesday, October 1, 2013.

APPROVAL OF THE MINUTES

The minutes of the August 13, 2013 regular meeting were approved as submitted.

UNFINISHED BUSINESS – Continued

1. *Fountains of Poquoson, LLC BMP Agreement*

Chairman Freeman reported that he and Vice Chairman Booth would be meeting with the Director of Community Development, Ms. Vest immediately following the EDA meeting with regards to the BMP agreement with Bob Moses for the Fountains of Poquoson development. He distributed a copy of the proposed agreement to the Directors and upon their review, it was suggested that additional changes were needed to clarify the intent of this Agreement to cover only the parcel identified as 1A. It was agreed that additional members of the Authority should attend the meeting with Ms. Vest and to accommodate additional Directors the regular meeting was continued. Directors Ward-Costello and Meetze excused themselves at approximately 9:38 am. The remaining Directors continued to consider changes to the agreement with regards to capacity of the retention pond, penalties and interest for late or non-payment and easements and contingencies in case of failure to complete. The Directors agreed to postpone the meeting with Ms. Vest in order to first discuss the proposed changes with Wayne Moore, City Attorney.

ADJOURNMENT

The meeting was adjourned at approximately 10:26 a.m.


Chairman


Secretary