

THE BOARD OF SUPERVISORS HELD A WORK SESSION ON THE 7th DAY OF OCTOBER IN THE YEAR TWO THOUSAND THREE OF OUR LORD IN THE BOARD ROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 7:00 P.M.

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IN RE: ROLL CALL

Rebecca M. Ringley	Present
James H. Burrell	Present
Dean E. Raynes	Present
W. R. "Ray" Davis, Jr.	Present
Julian T. Lipscomb, Sr.	Present

Chairman Lipscomb opened the meeting.

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IN RE: FARMS OF NEW KENT - CREATION OF A COMMUNITY DEVELOPMENT AUTHORITY

Developer Pete Johns represented that the CDA is an important financial mechanism for the Farms of New Kent and introduced Ken Powell, Senior Vice President of Legg Mason, who reviewed the highlights of a CDA.

Mr. Powell reported that a CDA is a mechanism to allow infrastructure to be built for projects, without having to raise taxes on the existing citizens to pay for the improvements. There have been six CDAs created in Virginia to date, but there have been inquiries from 19 different localities. One advantage of a CDA is that the locality has no liability for repayment - it is paid by the development. In fact, Mr. Powell reported that it is unlawful to use public funds to pay for a CDA. There are strict guidelines to define for what the funds may be used. The bonds proposed to be issued by FONK are non-recourse and tax exempt. The County has the right to reject a project if it is unacceptable or not built to specifications.

Mr. Powell indicated that the members of a CDA Board are normally nominated by the developers and approved by the Board of Supervisors, and he encouraged New Kent to follow that procedure.

Mr. Powell stated that CDAs were used in the 1600s in New York City where sidewalks were built by apartment owners and the costs were assessed to the apartment residents. Thereafter CDAs fell out of use but re-emerged in the 1980s in California when developers needed infrastructure that was not provided by government.

Mr. Powell reviewed the different types of CDA payment sources which included a) special assessment on the property (paid over time or up front); b) a special property tax limited to only projects within the district; and c) fees and charges for services (parking facilities). The typical source, and the one proposed by FONK, is a special assessment on the property.

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Mr. Powell reported that since CDA bonds are not obligations of the local government, they do not negatively affect a locality's security or credit rating, although they may positively affect the County's rating if the locality is increasing its commercial tax bases without taxing its citizens.

Mr. Powell reviewed what a locality should look for in approving a CDA bond financing, which included a) likelihood of success as verified by independent review and analysis; b) a credit worthy developer; c) investment in the project of substantial additional funds that are subordinate to the bonds; d) projects that have low loan-to-value ratio (no more than 33% at issuance and no more than 10% at maturity of the development); e) at project completion, diversity in the tax base and/or strong credit worthy taxpayer; f) bond structure that includes appropriate debt service fund, capitalized interest fund and performance bond (when appropriate); g) thorough due diligence to confirm project and issuance of bonds; and h) placing of un-rated or less than quality credit bonds with accredited investors.

Mr. Powell reviewed the CDAs created for the Broad Street Development in Richmond and Bell Creek in Hanover. He indicated that Legg Mason is rated among the ten best-capitalized investment banking firms in the country and the highest rated among firms headquartered outside of New York.

Mr. Powell reported that the most common question about CDAs is whether they require an extra tax be placed on the property. He reported that a property owner in a CDA can opt for conventional financing (paying off the assessment at closing) or can choose to pay off the assessment over time, which often times resulting in a lower monthly payment (he reported that 95% of buyers choose the CDA option over conventional financing). A CDA assessment is not a tax but a form of finance for the infrastructure. Payments on a CDA bond are pro-rated to each part of the development, depending on the proposed usage by those users of the things that are financed by the CDA (using a methodology formula), and not based on size or price. The CDA assessment is included in the property owners' monthly mortgage payment, and can be paid off early without penalty. Assessments are fixed in amount and will not change.

Mr. Burrell inquired as to what would happen if the amount of the bonds were more than the actual cost of the infrastructure. Mr. Powell reported that the money cannot be used for anything other than that set out in the ordinance. The funds are held by the trustee and are never in the control of the developer or the County. The trustee will make payments only when engineers have certified that certain infrastructure has been complete.

Chuck Rothenberg, attorney for Farms of New Kent, stated that a CDA is not an *ad valorem* tax, and is not based on fair market value, but is a financing concept that permits a lower cost to the developer to construct infrastructure. All improvements included in a CDA must have a public purpose and be owned by a public entity or a tax-exempt entity, and may not be owned for private profit.

County Attorney Phyllis Katz reported that a CDA can be repaid by taxes or assessments.

Mr. Powell explained that Farms of New Kent, in its petition, has identified potential CDA-financed improvements totaling \$126,302,000. However, bonds will be issued in increments as

the phases of the development progress. He anticipates that the first bond issuance for FONK would be around \$40,000,000 for the major infrastructure which includes water and sewer and real estate acquisition. He anticipates the bond rate to be 6 or 7%, but admits that it depends on the market (“these are not easy bonds to sell”). He anticipates that the first bond will be issued for 28 years, or somewhere just under 30.

Mr. Raynes inquired how it would affect a CDA if the developer should go bankrupt. Mr. Powell indicated that the CDA has a lien on the property, and the assessment is recorded in the Courthouse. One important underwriting criteria is that once infrastructure has been completed and before improvements have been paid, the property have a value of three times the amount of the bond, thereby protecting the bond holder. He reported that CDA bonds have a national default rate of less than 1%. He indicated that the property owner is safe as long as he is making his monthly payment.

County Administrator Gary Christie asked about the ordinance language “it is impracticable to include capital cost estimates, project proposals and project services rates, except as preliminarily summarized in the Petition”. FONK attorney Bonnie France indicated that the statute recommends use of that language (but admitted that it was optional) and that the developer cannot lock in final figures and FONK does not want to imply that the projected numbers are final ones.

She indicated that the responsibilities of the Board of Supervisors are to 1) create the CDA and 2) approve the assessment method and authorize the issuance of bonds. The first ordinance will create the CDA, does not provide a bond cap, but merely describes the property to be included in the CDA and the improvements that are intended to be financed. A later ordinance will provide the rate and the method of assessment, as well as a cap on the issuance of bonds.

Ms. France reported that the CDA Board is very similar to an Industrial Development Authority - it is a public body, has some immunity from liability and will be covered by a Virginia Risk policy. There is no personal liability on the part of any member of the CDA Board. The CDA Board has no assets and is responsible only for assessments of the property and making payments on the bonds. No member exercises any control over any of the funds and there is no opportunity for mishandling of funds or fraud.

In response to an inquiry from Mrs. Ringley, Ms. France indicated that a county is not able to make any payments to a CDA unless it was provided for in the ordinance. Ms. Katz confirmed that the statute does allow a county to make payments it is permitted by ordinance. Mr. Christie pointed out that Section 8 under Amendments in the proposed ordinance should be re-worded so as not to allow the provisions of the ordinance to be changed by resolution (as opposed to public hearing and ordinance). Ms. France agreed that that change needed to be made.

Chairman Lipscomb inquired whether it was going to be necessary to review these documents “line by line”. Mr. Christie reported that copies have been delivered to Davenport & Associates and the County Attorney for review and comment.

Ms. Katz reported that the Board will be voting on adoption of CDA Guidelines at their next meeting. Those Guidelines have an analysis requirement. She recommends that the infrastructure improvements in each phase be itemized and that the County obtain an unqualified opinion as to what can be allowed before taking action. She believes that there may be some additional information due from the petitioners.

Mr. Christie inquired about the reference to connection fees in Section 7a of the proposed ordinance. Ms. France reported that FONK need to make sure that they are not prohibited from receiving credits from the County for connection fees, and that language was included in order to reserve that flexibility.

There was additional discussion regarding the mix of uses in other CDAs around the country.

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IN RE: FARMS OF NEW KENT - PROPOSED PROFFERS

Pete Johns introduced Chuck Rothenberg who presented the proposed proffers which include:

1. all housing in land bay V will be age-restricted
2. recreational facilities will be built in each land bay, as itemized in detail in the PUD ordinance
3. payment of \$2 million at the time of issuance of a building permit for the first unit that would generate school-age children, or 18 months after approval of the PUD
4. payment of \$1,500 for each primary non age-restricted unit, to be paid at issuance of building permit (there is a total of 1,400 of these units: 900 in #IV, 300 in #I, 200 in the village area)
5. building of 10 units of affordable housing per year for 20 years, for a total of 200 units; FONK will work with the County to identify the best place for these units and will establish a separate entity to construct them
6. construct a fire and rescue building, comparable to Firestation 1, and dedicate a three-acre site that includes a med evac helicopter site, with \$800,000 for equipment
7. construction of a sheriff's substation as an adjunct to the fire & rescue building
8. construction and dedication of a 10,000 square foot library and land for a 5,000 square foot expansion, at an amount not to exceed \$1 million for the building and \$200,000 cash
9. dedication to a non-profit entity of a 25-acre site for a park, to be accompanied by \$75,000 in cash for construction of ball fields and other recreational facilities in the park
10. re-creation of the Baltimore Store at the intersection of 106 and 249 as a community building
11. construction of a shell building (without slab to provide flexibility) to attract medical providers - during first five years will market; after five years will construct 6,000 square foot building and continue to market; after 10 years, will dedicate the building to the County or its designee
12. construction of a wastewater treatment plant to handle 1,500,000 gallons per day on 50+ acre site south of I-64 on the east side of Route 106, providing capacity over and above what FONK is expected to require; plant will be designed to be expandable to handle an additional 1,500,000 gpd, and land will accommodate a plant to handle up to 6,000,000 gpd.

13. Construction of a ground mounted water tank and an elevated water tank
14. Reduction of number units by 300 (200 in the age restricted, and 50 each in the village and land bay #IV), resulting in total units of 3,500 (units resulting in cash proffers reduced by 100)

Chairman Lipscomb requested that all proffers be put in writing to the Board.

Attorney Chuck Rothenberg asked that Keenan Rice from MuniCap be permitted to address the Board at its meeting on October 14. It was the consensus of the Board to add Mr. Rice to the October 14 agenda, allotting him 15 minutes.

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IN RE: OTHER BUSINESS

County Administrator Gary Christie reported that a mobile Disaster Recovery Center unit will be in New Kent, in the Courthouse area, on October 13 - October 16, for those who want to meet with FEMA staff. The time will be determined and announced.

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IN RE: ADJOURNMENT

There being no further business, Mrs. Ringley moved for adjournment. The members were polled:

Rebecca M. Ringley	Aye
James H. Burrell	Aye
Dean E. Raynes	Aye
W. R. "Ray" Davis, Jr.	Aye
Julian T. Lipscomb, Sr.	Aye

The meeting was adjourned at 9:16 p.m.

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