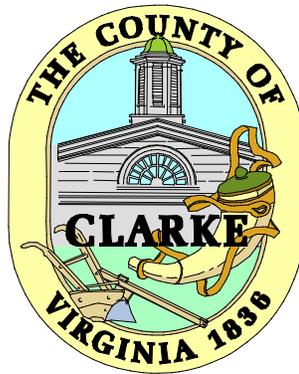


# Industrial Development Authority of the Clarke County Virginia Board of Directors



## Quarterly Meeting Packet

April 25, 2019



## Industrial Development Authority of the County of Clarke Virginia

### Agenda

Thursday, April 25, 2019, 1:00 pm

Meeting Room AB, Berryville Clarke County Government Center  
101 Chalmers Court 2nd Floor, Berryville, Virginia

1. Call to Order
2. Adoption of Agenda
3. Approval of January 24, 2019, Minutes
4. Hotel Feasibility Study Status Update by Nathan Stalvey
5. Secretary / Treasurer Items:
  - a) Potential Refinance of 2010 Grafton Bond Review
  - b) Clarke County Industrial Development Authority (IDA) Investment Guiding Principles Review
  - c) FY2020 Budget Review
  - d) FY2019 YTD Check Log. Action: Treasurer recommends acceptance.
  - e) YTD Budget, Investments YTD Summary. Action: Information only.
6. Economic Development Director Update
  - a) Economic Development Strategic Plan Review - 2019 Priorities Review and Recommendation
7. Adjourn

#### Distributed in Packet

- Building Department 2019 Year-to-Date New Single Family Dwellings
- IDA Follow-up Items
- EDAC March 20, 2019, Draft Minutes

# Call to Order

# Adoption of Agenda

*Proposed motion: Move to adopt agenda as [presented] or [as amended - title of agenda item[s] not listed on the published agenda provided to the public.]*

# Approval of Minutes

## ➤ January 24, 2019, Quarterly Meeting

*Proposed Motion for full Board of Directors: I move to approve the minutes of January 24, 2019, as [presented] or [as amended citing specific amendment].*

Industrial Development Authority of the Clarke County Virginia  
Board of Directors  
January 24, 2019, Minutes

A meeting of the Industrial Development Authority of the Clarke County Virginia held in the Berryville/Clarke County Government Center, Berryville, Virginia, on Thursday, January 24, 2019, at 1:00 PM.

Directors Present: Mark Cochran, Brian Ferrell, English Koontz, William Waite

Directors Absent: Paul Jones, David Juday [*resigned*], Rodney Pierce

Board of Supervisors Liaison Present: David Weiss

County Staff Present: Len Capelli, Cathy Kuehner, Brianna Taylor, Lora Walburn

Others Present: Janice Kuhn, Jay Arnold, Keith Dalton, Jay Hillerson, Turner Kobayashi, Nathan Stalvey

1. Call to Order

At 1:00 pm, Lora Walburn called the meeting to order.

2. Organizational Items

Elect Chair

Lora Walburn, IDA Clerk, called for nominations for 2019 Chair.

**English Koontz, seconded by Bill Waite, moved to nominate and elect Mark Cochran to serve as 2019 Chair.**

Lora Walburn, Clerk, called for vote on the motion to nominate and elect.

**The motion carried by the following vote:**

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| David Juday    | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

Following vote, the meeting was turned over to Chairman Cochran.

David Weiss, Board of Supervisors Chair and liaison to the Industrial Development Authority, informed the Directors that David Juday tendered his resignation on the Authority effective January 2019.

Elect Vice Chair

Chairman Cochran called for nominations for 2019 Vice Chair.

**Mark Cochran, seconded by Bill Waite, moved to nomination and elect Brian Ferrell to serve as 2019 Vice Chair. The motion carried by the following vote:**

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

Elect Secretary/Treasurer

Chairman Cochran called for nominations for 2019 Secretary / Treasurer

**Mark Cochran, seconded by Brian Ferrell, moved to nominate and elect William "Bill" Waite to serve as 2019 Secretary / Treasurer. The motion carried by the following vote:**

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

Set Meeting Date, Time and Location

By affirmation, the Board adopted the schedule as presented.

2019 Meeting Schedule

January 24 – Organizational

April 25

July 25

October 24

January 23, 2020 – 2020 Organizational

1:00 pm, 4th Thursday Quarterly. Meeting Room AB

Adopt Bylaws and Rules and Procedures of the Industrial Development Authority of the Clarke County, Virginia

Following review, **Bill Waite**, seconded **Mark Cochran**, moved to adopt the **Bylaws and Rules of Procedure** as presented. The motion carried by the following vote:

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

3. Adoption of Agenda

On a motion by **Bill Waite**, seconded by **Brian Ferrell**, adopted the agenda as presented. The motion carried by the following vote:

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

4. Approval of Minutes

Director Koontz requested the following corrections:

- Page 9: Change from marked to marketed
- Page 10: Change from laissez-a-faire to laissez faire

**Bill Waite, seconded by English Koontz, moved to approve the October 25, 2018, minutes as corrected. The motion carried as follows:**

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

5. Director Economic Development and Tourism Update

Highlights of Len Capelli's review include:

- Amazon move to Virginia frequently asked questions:
  - o Anticipate creation of 25,000 new jobs.
  - o Anticipate average salary for Amazon employees to be \$150,000.
  - o Clarke could benefit from the potential 33,000 additional jobs created in service and support businesses.
- Attended regional GoVirginia Meeting that morning. Discussed recently awarded grant for the study of training and retention. Anticipate completion of plan by end of year 2019.
- Virginia Economic Development Partnership:
  - o Meeting February 11. Discussion will include lowering the minimum size of site requirements and the shell building program.
  - o Tour February 21. Business team specializing in agriculturally-related food processing and bottling will tour Clarke. Directors are invited to join VEDP and Len Capelli at The Berryville Grill at 9 am that day.
- Farm2Fork event March 5.
- Top of Virginia Regional Chamber:
  - o Meeting February 5 at the Bank of Clarke County.
  - o Agreed to allow Clarke to join as a not-for profit community organization at a reasonable rate.
- Tourism:
  - o 2016- 2017 tourism revenues in Clarke increased by over a million dollars, approximately 5.6%, the second highest percentage increase of any county in the state, taking Clarke from 106<sup>th</sup> position to 95<sup>th</sup>.
  - o Increase attributable to multiple things including: more local shopping, Lucketts' spring sale, event promotion, Christmas tree farm package, Berryville Cruise-in, Wayside Fun Farm – up approximately 25% over last year.

- o More revenue could be generated with increased over-night accommodations.

## 6. Treasurer's Report

William Waite presented the quarterly report. He stated that he continued to maintain transparency by identifying each of the checks and income over the fiscal year. He informed the Directors that just prior to the meeting the last bond revenue check for \$3,900 was received bringing revenues fiscal-year-to-date to almost \$11,000, which is just below budget but still on target for the year. Director Waite opined that everything appeared to be working as planned with bond revenue collections.

### Fiscal-Year-to-Date Checking Account Log:

| FY   | Status | Check No. | Date       | Description    | Category            | Credit     | Debit      | Balance     | Additional Information           |
|------|--------|-----------|------------|----------------|---------------------|------------|------------|-------------|----------------------------------|
| 2019 | C      | 562       | 7/5/2018   | VACorp         | Insurance           | \$-        | \$1,338.00 | \$52,212.37 | 07/01/2018 thru 06/30/ 2019      |
| 2019 | C      | 563       | 8/1/2018   | Mark Cochran   | Director Fees       | \$-        | \$50.00    | \$52,162.37 | Meeting 07/26/2018               |
| 2019 | C      | 564       | 8/1/2018   | English Koontz | Director Fees       | \$-        | \$50.00    | \$52,112.37 | Meeting 07/26/2018               |
| 2019 |        | 565       | 8/1/2018   | Brian Ferrell  | Director Fees       | \$-        | \$50.00    | \$52,062.37 | Meeting 07/26/2018               |
| 2019 | Void   | 566       | 6/11/2018  | VACorp         | Insurance           | \$1,338.00 | \$1,338.00 | \$52,062.37 | Voided, Reissued 07/05/2018 #562 |
| 2019 | C      | 567       | 8/1/2018   | Bill Waite     | Director Fees       | \$-        | \$50.00    | \$52,012.37 | Meeting 07/26/2018               |
| 2019 | C      | 568       | 10/25/2018 | Bill Waite     | Director Fees       | \$-        | \$50.00    | \$51,962.37 | Meeting 10/25/2018               |
| 2019 | C      | 569       | 10/25/2018 | David Juday    | Director Fees       | \$-        | \$50.00    | \$51,912.37 | Meeting 10/25/2018               |
| 2019 | C      | 570       | 10/25/2018 | Mark Cochran   | Director Fees       | \$-        | \$50.00    | \$51,862.37 | Meeting 10/25/2018               |
| 2019 | Void   | 571       | 10/25/2018 | Void           | Void                | \$-        | \$-        | \$51,862.37 |                                  |
| 2019 | C      | 572       | 10/25/2018 | English Koontz | Director Fees       | \$-        | \$50.00    | \$51,812.37 | Meeting 10/25/2019               |
| 2019 | C      | 573       | 10/25/2018 | Rodney Pierce  | Director Fees       | \$-        | \$50.00    | \$51,762.37 | Meeting 10/25/2021               |
| 2019 | C      | 574       | 11/19/2018 | FFSBDC         | Civic Contributions | \$-        | \$6,000.00 | \$45,762.37 | LFSBDC Annual Contribution       |
| 2019 | C      | Dep       | 12/26/2018 | Grafton School | Bond Fees           | \$1,072.50 | \$-        | \$46,834.87 | 2018 Bond Fee                    |
| 2019 | C      | Dep       | 12/31/2018 | LFCC           | Bond Fees           | \$3,228.18 | \$-        | \$50,063.05 | 2018 Bond Fee                    |

### Fiscal-Year-to-Date Bond Database:

| Borrower                                   | Bond Type   | Date Issued / Resolution        | Purchaser / Trustee                    | Original Amount \$MM | 2018 Fees \$K |
|--|---|---------------------------------|--|----------------------|---------------|
| BCCGC County of Clarke                     | Lease Revenue Bond  | 5/16/2007                       | RDA                                    | \$4,822,000          | N/A           |
| BCCGC Town of Berryville                   | Lease Revenue Bond  | 5/16/2007                       | RDA                                    | \$2,327,000          | N/A           |
| Grafton School, Inc.                       | Tax-exempt Educational Facilities Revenue Refunding Bonds Series 2010 | Loan 5/1/2010; Issued 5/28/2010 | Wells Fargo Bank, National Association | \$9,225,000          | \$1,073       |
| Lord Fairfax Community College Educational | Educational Facilities Revenue Bond Series                            | 11/14/2012; 12/28/2012          | United Bank                            | \$8,400,000          | \$3,228.18    |

Draft for Approval 04/25/2019

|                               |                          |                          |  |  |  |      |             |  |         |
|-------------------------------|--------------------------|--------------------------|--|--|--|------|-------------|--|---------|
| Foundation, Inc.              | 2012A                    | [Tax-exempt]             |  |  |  |      |             |  |         |
|                               | \$8,400,000              |                          |  |  |  |      |             |  |         |
| Shenandoah University Project | Educational Revenue 2011 | Facilities Bonds, Series | 12/08/2011;<br>12/15/2011;<br>12/27/2011; Issue Date 5/31/2012 |  |  | BB&T | \$7,815,000 |  |         |
|                               |                          |                          |  |  |  |      |             |  | \$4,301 |

Fiscal-Year-to-date Budget:

| Expenditures Category      | Amount           | Jul-18         | Aug-18       | Sep-18     | Oct-18       | Nov-18         | Dec-18     | Expended YTD   | Remaining Balance |
|----------------------------|------------------|----------------|--------------|------------|--------------|----------------|------------|----------------|-------------------|
| Advertising                | \$ 400           | \$-            | \$-          | \$-        | \$-          | \$-            | \$-        | \$-            | \$400             |
| Audit                      | \$ 1,675         | \$-            | \$-          | \$-        | \$-          | \$-            | \$-        | \$-            | \$1,675           |
| Civic Contributions        | \$ 6,000         | \$-            | \$-          | \$-        | \$-          | \$6,000        | \$-        | \$6,000        | \$-               |
| Director Fees              | \$ 1,400         | \$-            | \$200        | \$-        | \$250        | \$-            | \$-        | \$ 450         | \$950             |
| Insurance                  | \$ 1,300         | \$1,338        | \$-          | \$-        | \$-          | \$-            | \$-        | \$1,338.00     | \$(38)            |
| Postage                    | \$ 25            | \$-            | \$-          | \$-        | \$-          | \$-            | \$-        | \$-            | \$25              |
| Professional Services      | \$ 1,250         | \$-            | \$-          | \$-        | \$-          | \$-            | \$-        | \$-            | \$1,250           |
| <b>Total Expenditures:</b> | <b>\$ 12,050</b> | <b>\$1,338</b> | <b>\$200</b> | <b>\$-</b> | <b>\$250</b> | <b>\$6,000</b> | <b>\$-</b> | <b>\$7,788</b> | <b>\$4,262</b>    |

| Estimated Revenues         | Estimated Amount | Actual Revenue  | +/- Estimate   |
|----------------------------|------------------|-----------------|----------------|
| <b>Bonds:</b>              |                  |                 |                |
| Grafton School, Inc. Bond  | \$ 1,100         | \$1,073         | \$(28)         |
| LFCC Bond                  | \$ 3,400         | \$3,228         | \$(172)        |
| Shenandoah University Bond | \$ 3,800         | \$3,908         | \$108          |
|                            | \$ 8,300         | \$8,208         | \$(199)        |
| Interest Income:           | \$ 3,000         | \$2,595         | \$(405)        |
| <b>Total Revenue:</b>      | <b>\$ 11,300</b> | <b>\$10,803</b> | <b>\$(497)</b> |

Following review, English Koontz, seconded by Mark Cochran, moved to accept the Treasurer's Report as presented. The motion carried as follows:

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

7. New Business

Investment Options Review with Janice Kuhn

Fiscal-Year-to-Date Investment Summary

| Asset Summary                       | Jul '18      | Aug '18      | Sep '18      | Oct '18       | Nov '18      | Dec '18       | FY2019 YTD    |
|-------------------------------------|--------------|--------------|--------------|---------------|--------------|---------------|---------------|
| Beginning Balance                   | \$101,143.09 | \$103,037.93 | \$103,607.30 | \$ 103,851.44 | \$100,807.14 | \$101,919.53  |               |
| Dividends, Interest, & Other Income | \$ 256.31    | \$ 240.89    | \$ 241.16    | \$ 274.62     | \$ 237.28    | \$ 1,344.45   | \$ 2,594.71   |
| Net Change in Portfolio             | \$ 1,638.53  | \$ 328.48    | \$ 2.98      | \$ (3,318.92) | \$ 875.11    | \$ (4,782.35) | \$ (5,256.17) |
| Ending Balance                      | 103,037.93   | 103,607.30   | 103,851.44   | 100,807.14    | 101,919.53   | 98,481.63     |               |

– Highlights of review:

- The IDA has followed its investment plan to ensure liquidity to keep risk low and still get a return; and, while the market has turned, the investments have outperformed the market enough to be positive.
- Distributed and reviewed year-end statement.
- Approximately fifteen trading days in January during which the market has rebounded to about half following a major sell off in the market on Christmas Eve.
- Account \$100,000 in May 2018; year-end \$98,481; close of business last evening, January 23, 2019, \$101,132.
- IDA invests in funds that are considered conservative to moderate nothing aggressive in the portfolio for all four funds and all pay dividends.
- Dividends and capital gains are reinvested in buying more shares. Dividends generated \$2,243 from May to December; paid out a capital gains distribution of \$919.
- Proposed recommendation: Move from Franklin US Government Securities Fund to Franklin Floating Rate Fund.
  - Securities Fund is the lowest dividend paying fund. Is the most conservative, triple-A rated government bonds at 2.5% to 3% yield.
  - Floating Rate Fund yield is 4.7%. Still considered a conservative investment.
  - Portfolio contains Franklin US Government Securities Fund A and C.
  - Projected income based on current 2019 allocation, if do nothing, will be \$3,053 or slightly over 3%. If 25% of funds are exchanged, it will result in a higher return.
  - Funds can be tweaked or exchanged without charge, penalty, or one-year holding period.

**Director Waite, seconded by Director Koontz, moved to exchange the Franklin US Government Security Funds, both Class A and C, for the Franklin Floating Rate Funds. The motion carried by the following vote:**

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

Chairman Cochran expressed the Board's appreciation for the update and her handling of accounts.

Director Waite reiterated his desire to continue annual review of investments at the Board's organizational meeting.

Janice Kuhn assured that she is available to answer questions throughout the year.

## 8. Old Business

### Economic Development Strategic Plan Review - 2019 Priorities

– Highlights of review:

- David Weiss, Board of Supervisors liaison, provided the following:
  - The Supervisors are interested in the IDA's, as well as the Economic Development Advisory Committee [EDAC], comments on the plan overall to help it direct its efforts.
  - Len Capelli will draft a new plan from direction received from the IDA and EDAC comments.
  - That plan will be forwarded to the Planning Commission for its review.
  - The Planning Commission will forward its approved version to the Board of Supervisors for final review and approval.
  - If a business meets the State's definition of agriculture, it is then a by-right use; and, while the County may have concerns about placement and usage, the state controls water use.
- Len Capelli and Brandon Stidham, Director Planning and Zoning and Planning Commission Clerk, are working to establish a baseline.
- Federal government defines a small business with 250 employees or less and up to \$21 million.
- At its January 23, 2019, meeting, the Economic Development Advisory Committee gave its preliminary approval to the priorities distributed to the IDA after ensuring that a hotel study, if deemed necessary, and seeking investors and seeking ways to assist was listed as its top priority under Goal C for increased accommodation capacity.
- Quarterly update will be a feature of the new strategic plan with distribution to the BoS, EDAC, IDA, and Planning Commission.

Funding for Berryville Main Street Hotel Market Study

Mark Cochran recapped the Authority's action at its October 25, 2018, quarterly meeting to unanimously approve Berryville Main Street's [BMS] request to fund a hotel feasibility study. He stated that Director Koontz expressed reservation after the vote and asked if she wished to address her concerns.

Director Koontz reminded that the motion carried with a caveat that the IDA could potentially amend the RFP that had already been sent.

Motion from October 25, 2018, meeting:

Director Waite moved to endorse the request for funds with two contingencies for funding 1) circulation of the RFP to the Board of Directors; and 2) should the project go forward, requesting a refund of the initial IDA investment.

Director Pierce seconded the motion.

Director Juday called for amendment of the original motion by Director Waite, seconded by Director Pierce, adding under contingency 1) circulation of the RFP to the Board of Directors with seven days to review and provide input to Berryville Main Street; 2) should the project go forward, request for refund of initial IDA investment be included in the documents.

The motion carried by the following vote:

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Absent |
| Paul Jones     | - | Absent |
| David Juday    | - | Aye    |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Aye    |
| William Waite  | - | Aye    |

Director Koontz distributed and reviewed the following memorandum:

*MEMO*

*Date: January 24, 2019*

*To: Members of the Industrial Development Authority of Clarke County, Virginia*

*From: English Koontz*

Re: Old Business Item- Hotel Feasibility Study 1

Fellow Members of the Clarke County IDA,

*I request that the previous conditional approval for funding of the hotel feasibility study be blocked pending clarification. Several matters are concerning about the process. The following is a list of questions and concerns that should be addressed regarding the proposed funding of a hotel feasibility study for Berryville Main Street.*

- 1. The IDA conditionally approved the request for funding at our October 25, 2018, meeting. One of the conditions at that time was the ability of IDA members to review and comment so that the RFP could be amended. There was not full disclosure at the October 25 meeting. We were told that the RFP had been sent, but not having seen it, we were not informed that the closing date for submissions was October 23, 2018. It is not possible to "amend" an RFP which has already been sent and closed.*
- 2. At the October 25 meeting, we addressed the fact that the request should have been made PRIOR to sending the RFP. Furthermore, the IDA was not presented with copies of the bids received by the October 23, 2018, deadline. This information would have been helpful in understanding the scope of work and assessing the cost.*

Director Waite clarified that the received bids were available at the October 25 meeting.

Director Koontz responded that she would accept that although she was not aware that the bids were available; however, the RFP was not presented at the meeting.

Director Waite affirmed that the RFP was not presented.

- 3. The IDA agreed at the October 25 meeting to review and send comments regarding the RFP that we received October 26, 2018. At this time, have any of the comments been sent to Berryville Main Street? And, if so, to whom were the comments directed?*
- 4. Given the lack of Berryville Main Street letterhead and the fact that the RFP submissions were sent to a private individual instead of a Berryville Main Street officer, we need full assurance and understanding that (1) none of the "private investors" are board members of the IDA or Berryville Main Street and (2) none of the respondents to the October 23, 2018 RFP are entities with any direct or indirect interest or participation by any IDA or Berryville Main Street board member.*
- 5. We were repeatedly assured (10/25/18) that Berryville Main Street would "own" this study. We need some understanding of how Berryville Main Street intends to use this study and who is charged with using the study? What is the plan for this "tool"?*

6. *How did Berryville Main Street decide who would appear at the IDA meeting to request funding on its behalf?*

Director Waite stated that he could address some of the comments. He noted that members of Berryville Town Council and Berryville Main Street were present at the meeting. Highlights of Director Waite's comments include:

- Funding for a hotel study has been discussed for almost a year.
- Most everyone has seen, heard, or been supportive of moving forward with a feasibility study once all were informed that the old [2013] feasibility study wasn't going to satisfy the new program.
- Responding to a statement indicating that there are private investors, he stated that he was not aware of any private investors; and, to his knowledge, no one had any money in this.
- Assured the Board that Allen Kitselman, Turner Kobayashi, and he did not try to scam the Board nor present a bogus RFP in this case as was identified in an earlier email. The fourth person not mentioned in this email was John Milleson, who was in the team that helped put this together. Stated for the record that he thought it was important to understand from a credibility and personal perspective that this has been communicated in numerous ways and fashions and under no circumstances did anyone on this committee ever believe that they were doing anything underhand.
- BMS issued a Request for Information [RFI] and presented a new procurement proposal within the BMS, which was endorsed.
- BMS received three bids from the RFI, which allowed them to know what dollar figure to request from the IDA to fund the feasibility study.
- BMS is now issuing a Request for Quotes [RFQ] to get a final bid.
- Bids will be opened at the same time by BMS's executive committee consisting of Nathan Stalvey – President; Julie Ashby - Vice President; Liz Couture – Secretary; Kim Ragland – Treasurer.
- Funding will not be released from the IDA until a contract is in place and a payment is due.
- All items suggested in the last review will be added into the RFQ.
- One item that is not in the feasibility study is the pay back of the IDA's \$10,000. The marketing group would be tasked with securing pay back.
- The feasibility study is intended to gain the knowledge necessary to market a piece of property.
- The IDA received letters of support from Berryville Town Council and Berryville Main Street asserting that a hotel is a good idea and a necessary component of economic development.
- Material will be open to help market a hotel by persons that could use it to help grow this economic opportunity.
- One of BMS's charges is to grow the economic development community and to see where the values are for downtown. A hotel is a top priority.

Chairman Cochran commented that one of his specific questions before the IDA's October vote was that this would be a tool that could be used by different groups as well as Berryville Main Street.

Director Waite confirmed that it was not a private study and would be made available. He continued that Berryville Town Council voted unanimously in support with Mayor Dickinson asking how soon the Town could get a hotel.

Director Waite assured that BMS had not progressed the matter further but continued to develop the RFQ, which will be on BMS letterhead. He offered to transfer responsibility for writing the RFQ from BMS to the IDA although he felt that BMS was better positioned to write the RFQ.

Director Koontz agreed with Director Waite that the IDA did not have to write the RFQ; however, minimally, if the IDA was being asked to fund the study, it should see the study before it was sent.

Director Koontz posed the following questions:

- Is the 2013 feasibility study tool enough to solicit potential interest from investors?
- Told, but has not seen, Mr. Parrot, fairly recently, did a feasibility study that he is willing to share.
  - o Director Waite clarified that directly asked Mr. Parrot for the study; however, Mr. Parrot has not released yet over the last six months.

David Weiss raised a point of order noting that a vote had been taken and a motion passed. He then asked Director Koontz if she were asking for a motion for reconsideration noting that since she had voted for the motion she was within her right to call for reconsideration.

Director Koontz responded in the affirmative stating she wished to move to request that the IDA block the previous conditional approval for funding of the hotel feasibility study pending clarification. She stated that one of the conditions could not be accomplished; therefore, while there had been clarification, she believed that, minimally, it should be represented as a request.

Chairman Cochran asked for confirmation from Director Koontz that she was making a motion to vote on the blocking of the previous conditional approval vote taken at the October 25, 2018, quarterly meeting.

Director Koontz confirmed opining that since the RFP had already been set and closed there was no potential to comment or amend; therefore, if the item is to come for approval, it should come without those conditions and the approval be amended.

Director Waite commented that the minutes reflect that amendments could be made. He noted that the final RFQ had not gone out and would be approved by BMS's executive committee; therefore, any amendments that needed to be made could be made before the RFQ, Request for Quotes, went out. He further clarified that an RFI, Request for Information, had been sent

and responses received; and, from the responses, the amount needed for the study was derived.

Len Capelli asked if a Request for Proposal [RFP] had gone out.

Director Waite clarified that multiple headings/terms, RFP, RFI, RFQ were used in error and all knew they would have to rebid.

Chairman Cochran opined that making a mistake in terminology on an exercise that BMS may never have done before is completely different than a facetious sham.

Director Koontz referenced the following email exchange.

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**From:** "Mark Cochran" <mark@cochranslumber.com>  
**To:** "Lora Walburn" <lwalburn@clarkecounty.gov>  
**Cc:** "David Weiss" <dweiss@clarkecounty.gov>  
**Sent:** Wednesday, October 31, 2018 9:34:58 PM  
**Subject:** Fwd: Hotel Feasibility Study RFP from Berryville Main Street 10-2018

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Koontz, English" <>  
**Date:** October 31, 2018 at 9:04:30 PM EDT  
**To:** Mark Cochran <>  
**Subject:** Re: Hotel Feasibility Study RFP from Berryville Main Street 10-2018

Mark:

*I did not characterize your proposal as an "official meeting". I wrote that it would constitute an "illegal meeting" in violation of the Virginia Code. And it would.*

*English Koontz  
Small Business Specialist*

---

**From:** "Mark Cochran" <>  
**Date:** Wednesday, October 31, 2018 at 5:24:27 PM  
**To:** "Koontz, English" <>  
**Subject:** Re: Hotel Feasibility Study RFP from Berryville Main Street 10-2018

*English,  
Bill Waite, you and myself would not constitute an official meeting in that we would not have a quorum and that was intentional on my part. At any rate i need to give some thought to how to proceed.  
I'll get back with you in a couple of days or so.*

Thanks,  
Mark

Sent from my iPhone

> On Oct 31, 2018, at 4:24 PM, Koontz, English < > wrote:

>

> Mark,

>

> I appreciate your legwork in seeking and providing clarity on this matter. What you propose, however, would constitute an illegal public meeting in violation of Virginia Code §2.2-3707 (definition of meetings is set forth in Virginia Code §2.2-3701). Surely no one wishes to engage in such illegal activity.

>

> Moreover, I do not believe that I alone seek clarity. And since my last communication, other facts have presented themselves which call into question the propriety of the funding, even assuming arguendo that Berryville Main Street is the real party in interest making the request. For these reasons, I believe that any "clarification" should be presented at a properly called public meeting of the entire Industrial Development Authority ("IDA"). And I certainly do believe that the whole matter needs to be revisited and the entire IDA given the opportunity to consider all relevant information before any expenditure of public monies.

>

> Thank you,

>

> English Koontz

>

> -----Original Message-----

> From: Mark Cochran

> Sent: Wednesday, October 31, 2018 3:12 PM

> To: Koontz, English

> Cc: [wwaite@clarkecounty.gov](mailto:wwaite@clarkecounty.gov); [dweiss@clarkecounty.gov](mailto:dweiss@clarkecounty.gov); [lwalburn@clarkecounty.gov](mailto:lwalburn@clarkecounty.gov)

> Subject: Re: Hotel Feasibility Study RFP from Berryville Main Street 10-2018

>

> English,

> Nathan Stalvey in behalf of BMS has agreed to meet and address your concerns if you would be willing I propose that Bill Waite, David Weiss, and myself meet with Nathan as soon as we can schedule a meeting. This is not an official IDA meeting, but intended to gain some clarity.

> Thanks

> Mark

>

> Sent from my iPhone

>

>> On Oct 30, 2018, at 4:19 PM, Koontz, English < > wrote:

>>

>> I am requesting at this time that the Industrial Development ("IDA") reject the request for funding submitted on behalf of Berryville Main Street ("BMS"). The current RFP is a sham, and not a BMS request.

>>

>> At our July meeting, a group of private citizens (Bill Waite on behalf of Allen Kitselman) approached the IDA requesting funds for a feasibility study. There was no quorum at the meeting, so the request was discussed but not put to vote. Concern was voiced during the discussion about

using County funds for a private request.

>>

>> At the October meeting, Allen Kitselman, supposedly on behalf of BMS, came to request funds to pay for the feasibility study. Funding should have been approved prior to the issue of this RFP.

>>

>> The IDA voted to approve the request with a few conditions, one of which was the ability to review and amend the RFP. On Friday, October 26, the RFP was sent to IDA members for review.

>>

>> Dave Juday has done a fantastic job of noting many omissions, calling into question the BMS RFP. This response will only address other and additional items.

>>

>> The contact person for the BMS RFP is Turner Kobayashi, who is not a BMS officer. It is important to note that Mr. Kobayashi was one of the original group of individuals interested in pursuing the feasibility study. The BMS concept "Where Town Meets Country" is misstated in the RFP. Presumably, if BMS drafted this RFP, such an error would be unlikely. The RFP is not on BMS letterhead, and not signed by anyone and does not name any individual other than Turner Kobayashi, to whom questions and submissions be directed. In my discussions with members of the BMS executive committee, no one could confirm that BMS authorized such action. Indeed, they were surprised that BMS was being used in such a fashion. According to BMS executive committee members, there has been some mention of a hotel and a feasibility study, but the executive committee of BMS has not voted to move forward with issuing an RFP or requesting funding for the study.

>>

>> Based upon these facts, and those addressed by Dave, it seems clear, or at least more likely than not, this is not a BMS RFP. It is clear that the same individuals used BMS, a non-profit organization with which a few of them are affiliated (or at least pay dues) to issue a bogus RFP.

>>

>> The IDA has been misled. BMS has not issued an RFP. Accordingly, the purported "BMS" request for funding must be rejected. It is the same request heard in July by the IDA, but with different window dressing. Our group should NOT be in the business of providing funding to private investors.

>>

>> Respectfully,

>>

>> English Koontz

>>

>>

>> -----Original Message-----

>> From: Lora Walburn [<mailto:lwalburn@clarkecounty.gov>]

>> Sent: Friday, October 26, 2018 8:58 AM

>> To: Cochran, Mark; Ferrell, Brian; Jones, Paul; Juday, David; Koontz, English; Pierce, Rodney; Waite, Bill; Weiss, David; Len Capelli

>> Subject: Hotel Feasibility Study RFP from Berryville Main Street 10-2018

>>

>> [\* This email contains attachments or links from an unverified sender. DO NOT open attachments or click links without verifying the sender. \*]

>>

>> Good Morning All: As requested at the Thursday, October 25, 2018, IDA meeting, attached is Berryville Main Street's Request for Proposals to Conduct a Hotel Feasibility Study for a Site Located in Berryville, Virginia. Please review and provide input to me by Friday, November 2.

Comments will be compiled and forwarded to Bill Waite, Secretary / Treasurer, who will present to

*Berryville Main Street as part of the IDA's approval commitment.*

>>

>> *Thanking you in advance . . .*

>>

>> *Lora B. Walburn*

>> *Deputy Clerk to the Board Supervisors*

>> *Executive Assistant - County Administration County of Clarke*

>> *101 Chalmers Court, Suite B*

>> *Berryville, Virginia 22611*

>> *[540] 955-5175*

>> *lwalburn@clarkecounty.gov*

Director Koontz stated her email was in no way an accusation. She continued that once the IDA received the RFP, understand that at the July meeting, there was a group of private investors with three named at the meeting and the fourth was not, a request for funding was made. There was not a quorum at that meeting; and, at the following meeting, one of the people named as a private investor, or at least a part of this group that is looking at this potential, came on behalf of a different organization for funding. She opined that at minimum, accidental or not, there is an appearance of impropriety; and, it is up to the IDA to make this right. She reiterated that she did not mean that the conduct was villainous in any way.

Director Waite commented that unfortunately it is perception; but, at the end of the day, there are no investors. Further, no one from BMS was available to present to the IDA; so, Allen Kitselman was asked to present for Nathan Stalvey, BMS President. Director Waite explained that there was a group working to organize the hotel study that consisted of Turner Kobayashi, Allen Kitselman, John Milleson, and he; but, none of them are investing in this project and no private investors have been named.

Chairman Cochran called for motion.

**Director Koontz moved that the original funding request be blocked in preparation for a renewed funding request today given the new circumstances.**

**The motion died for lack of a second.**

## 9. Citizen Comment

Jay Hillerson, former member and chair of the IDA, commented that he was on the IDA during the period when it sold the Business Park lots and issued various bonds that created the investment funds reviewed earlier in the meeting. He expressed concern about repayment of IDA investment opining that the whole point of raising the money, the mission statement, is to promote activity that bears economic rewards without provision for repayment. He opined that for money just to sit in the bank doing nothing, while liquidity is great, it is time to invest the money and promote Berryville and what it needs; and, with pending contracts on various properties in Berryville, this is an excellent time to write bonds. He suggested that the IDA could provide funds at a reasonable rate for buyers to develop what they have already

purchased. He concluded by stating that he appreciated the Director's allowing him time to present his opinion.

David Weiss responded that the IDA was ready to listen to offers and invited Mr. Hillerson to provide contact information to Len Capelli, Director of Economic Development and Tourism.

#### Next Meeting

The next meeting is scheduled for Thursday, April 25, 2019, 1:00 pm.

#### 10. Adjournment

At 2:06 pm, **Director Koontz, seconded by Director Waite, moved to adjourn the meeting. The motion carried by the following vote:**

|                |   |        |
|----------------|---|--------|
| Mark Cochran   | - | Aye    |
| Brian Ferrell  | - | Aye    |
| Paul Jones     | - | Absent |
| English Koontz | - | Aye    |
| Rodney Pierce  | - | Absent |
| William Waite  | - | Aye    |

---

Minutes recorded and transcribed by: Lora B. Walburn, Executive Assistant - County Administration

Hotel Feasibility Study  
Status Update  
by Nathan Stalvey

## Secretary / Treasurer Items By Bill Waite

- a) Potential Refinance of 2010 Grafton Bond Review
- b) Clarke County Industrial Development Authority (IDA)  
Investment Guiding Principles Review
- c) FY2020 Budget Review
- d) FY2019 YTD Check Log. Action: Treasurer  
recommends acceptance.
- e) YTD Budget, Investments YTD Summary. Action:  
Information only.

**RESOLUTION OF BOARD OF DIRECTORS OF  
GRAFTON SCHOOL, INCORPORATED**

A meeting of the Board of Directors (the "Board") of Grafton School, Incorporated, a nonstock corporation duly organized and validly existing under the laws of the Commonwealth of Virginia (the "Company") was held on April 14, 2010, at 4:00 a.m. ~~(p.m.)~~, in which a quorum of the Board was present.

WHEREAS, the Industrial Development Authority of Clarke County, Virginia (the "Issuer"), has previously issued its Tax-Exempt Adjustable Mode Education Facilities Revenue Bonds (Grafton School, Incorporated Project), Series 2000 pursuant to an Indenture of Trust, dated as of December 1, 2000, between the Issuer and The Bank of New York ("Trustee") in the aggregate principal amount of \$13,425,000 (the "2000 Bonds") to finance or refinance the acquisition, construction, renovation, installation and equipping of certain education facilities (the "Project"); and

WHEREAS, the 2000 Bonds are scheduled to mature, subject to prior redemption, on December 1, 2020; and

WHEREAS, the 2000 Bonds are secured by an irrevocable, direct-pay letter of credit issued by Wachovia Bank, N.A.; and

WHEREAS, the Board previously adopted resolutions on March 22, 2000 and December 13, 2000 (the "Resolutions") which authorized and ratified the financing of the Project, including the approval and execution of Bond Documents (as defined in the Resolutions); and

WHEREAS, the Company intends to cause the Bond Documents related to the 2000 Bonds to be amended to provide for, among other things, an indexed rate mode and the direct placement of the 2000 Bonds; and

WHEREAS, the Board now desires to enter into interest rate swaps, caps, collars, floors, or any similar transaction (the "2010 Transaction") with respect to refinancing the interest rate on the 2000 Bonds (including any option with respect to any of these transactions) with Wells Fargo Bank, N.A., as successor to Wachovia Bank, National Association (the "Bank") pursuant to that certain Master Agreement and Schedule previously executed by the Company and the Bank to hedge or otherwise manage interest rate exposure in relation to assets or liabilities of the Company; and

WHEREAS, the amendments to the 2000 Bond Documents will not alter the maturity schedule on the 2000 Bonds, and the financial obligations of the Company with respect to the 2000 Bonds will remain consistent with the financial obligations of the Company prior to such amendment; and

WHEREAS, the Board has considered and discussed the structure of the financing and the documents and instruments to be executed and delivered in connection with the amendment of the 2000 Bond Documents and the 2010 Transaction; and

WHEREAS, the Board of Directors of the Company desire to authorize certain officers of the Company to take all actions necessary to execute and deliver agreements evidencing the

Company's obligations with respect to the 2010 Transaction.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Grafton School, Incorporated as follows:

RESOLVED, the officers of the Company are hereby authorized and directed to negotiate on behalf of the Company with representatives of the Issuer and the Bank with respect to the 2010 Transaction; and

RESOLVED, FURTHER that the transactions contemplated for purposes of authorizing the 2010 Transaction are hereby confirmed, adopted, ratified and approved in all respects; and

RESOLVED, FURTHER that the Chief Executive Officer of the Company (an "Authorized Officer"), acting singly, is hereby authorized to execute and deliver on behalf of this Company agreements evidencing the Company's obligations in relation to the 2010 Transaction, including without limitation, amendments to the existing ISDA Master Agreement and Schedule thereto, the related confirmations and any other agreement or certificate or document governing derivatives transactions or options with respect thereto, any amendments or supplements thereto, and assignments and terminations thereof, all between the Bank and the Company (the "Agreements"), and all in such form and upon such terms as such Authorized Officer shall approve, such approval to be conclusively evidenced by the execution and delivery of said Agreements by the Authorized Officer, and such Agreements shall be, and hereby are, in all respects approved; and

RESOLVED, FURTHER, that the Authorized Officer be, and he or she hereby is, authorized, as security for any obligation of the Company to the Bank arising in connection with the Agreements, to grant, transfer, pledge, or otherwise hypothecate to the Bank a security interest in, or lien on, any property belonging to or under the control of the Company and to execute and deliver to the Bank any and all security agreements (including, without limitation, credit support annexes), and such other agreements and documents as the Bank may require; and

RESOLVED, FURTHER, that the Authorized Officer be, and he or she hereby is, authorized to take such other and further action in the name and on behalf of the Company as they may determine in their discretion to be necessary or desirable to carry out the transactions authorized by the foregoing resolutions and the transactions authorized thereby; and

RESOLVED, FURTHER, that all actions taken by the Authorized Officer of the Company in connection with the 2010 Transaction and the Agreements are hereby confirmed, adopted, ratified and approved in all respects.

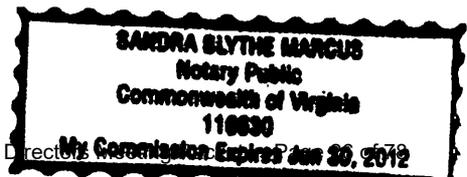
Dated: April 14, 2010

By: Calvin H. Allen, Jr.  
Name: Calvin H. Allen, Jr.  
Title: Chair, Board

Notary Sandra Blythe Marcus  
Sandra Blythe Marcus

Date 14 April 2010

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# Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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## Industrial Development Authority Of The Clarke County, Virginia **Rules and Procedures**

### Article I

#### Purpose and Scope

##### Section 1.1 Purpose.

These Rules shall govern the submission of Applications to the Authority, application and administrative fees, consideration of matters to be brought to the attention of the Authority relating to the authorization, issuance and sale of its Bonds, the adoption of Financing Documents, reports to be submitted to the Authority, and such other matters as are contained herein.

##### Section 1.2 Scope.

These Rules are supplementary to the Authority's Bylaws and the Act. In the event of any conflict between the Authority's Bylaws, the Act and these Rules, the provisions of the Bylaws and the Act shall prevail.

### Article II

#### Definitions

##### Section 2.1 Definitions.

As used in these rules and procedures, the following terms shall have the meaning as set forth herein, unless the context clearly requires otherwise:

"Act" shall mean the Industrial Development and Revenue Bond Act, [Chapter 49, Title 15.2](#), Code of Virginia of 1950, as amended.

"Applicant" shall mean any individual, person, firm, corporation, partnership or other entity applying for industrial development revenue bond financing, or for whose benefit the Authority has issued its Bonds, or who requests the Authority to take any action.

"Application" shall mean the Authority's application for industrial development revenue bond financing as in effect from time to time.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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"Authority" shall mean the Industrial Development Authority of the Clarke County, Virginia, a political subdivision of the Commonwealth of Virginia.

"Bonds" shall mean any notes, bonds and other obligations authorized to be issued by the Authority pursuant to the Act.

"Code" shall mean the Code of Virginia of 1950, as amended.

"Financing Documents" shall mean any resolutions, instruments, documents, papers, elections, certificates or financing statements required to be adopted or authorized, executed and delivered by the Authority in connection with the authorization, issuance and sale of its Bonds.

"IRC" shall mean the Internal Revenue Code of 1986, as amended.

"Project" shall mean any land, improvements, machinery, equipment or property financed by the issuance and sale of the Authority's Bonds.

"Rules" shall mean these Rules and Procedures of the Authority, as may be in effect from time to time.

### Article III

#### General

##### Section 3.1 Copies to be Provided Applicants.

A copy of these rules and procedures shall be furnished by the Authority's Secretary to each prospective Applicant.

##### Section 3.2 Compliance with Rules and Procedures.

Each Applicant shall comply with these rules and procedures in the submission of its Application or any Financing Documents to the Authority and in requesting that the Authority take any action, including the adoption of Financing Documents.

Failure to comply with these rules and procedures shall constitute sufficient reason for the Authority to refuse to consider any Application, Financing Documents or any other matter to be brought before the Authority by or on behalf of any Applicant.

##### Section 3.3 Amendments.

These rules and procedures may be changed from time to time by the Authority by the  
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## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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vote of a majority of its Directors present at any meeting of the Authority, provided notice of such change shall have been given to each Director before such meeting.

These rules and procedures may, notwithstanding the foregoing, be amended without prior notice upon the affirmative vote of all Directors of the Authority.

### Section 3.4 Preparation and Distribution of Agenda and Minutes.

- (a) A preliminary agenda for the Authority's meetings shall be prepared and distributed by the Authority's Secretary [no later than three (3) days] before the Authority's scheduled meeting date. The agenda may state that it is a preliminary agenda subject to change at or before the Authority's meeting.

*Failure to distribute the preliminary agenda as set forth above shall in no way affect the validity of any actions taken by the Authority at the meeting.*

- (b) Preliminary drafts of the minutes of the Authority's meeting shall, as soon as practicable following the meeting, be mailed or delivered to each officer and director of the Authority and the Authority's counsel. Each preliminary copy of the minutes so distributed shall be marked to indicate that it is a preliminary draft subject to additions or corrections at the Authority's next meeting.

## Article IV

### Applications Procedures, Fees and Requirements

#### Section 4.1 Applications.

At least twenty-one days before the Authority's meeting at which the Application is to be considered, each Applicant shall submit a fully and accurately completed Application to:

- each Director of the Authority,
- the Authority's Secretary and Counsel and
- the Economic Development Director of the County of Clarke,

Each Application shall include all requested exhibits. In the event all requested exhibits are not available or not to be made part of the public record, a statement of explanation will be attached to the Application.

The Authority recommends that each Applicant seek the advice of the Economic Development Director of the County of Clarke or the Authority's Counsel respecting completion of the Application before submitting it to the Authority.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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### Section 4.2 Administrative Fees.

Each application submitted pursuant to Section 4.1 shall be accompanied with an application fee of \$5,000; provided, however, that if the amount of the application is \$1,000,000 or less, such fee shall be \$1,000.

The Authority also charges an annual administrative fee equal to:

- 1/10th of one percent for transactions of \$1,000,000 or less;
- 1/15th of one percent for transactions between \$1,000,001 and \$5,000,000; and
- 1/20th of one percent for transactions of more than \$5,000,000.

Such annual administrative fees shall be payable on the anniversary date of the closing of the transaction, **and shall be computed by multiplying the applicable percentage by the outstanding principal balance of the bonds on such date.**

The Authority reserves the right to modify the fees described in this section on a case-by-case basis, in the sole discretion of the Authority.

Fees, upon acceptance by the Authority, are non-refundable.

### Section 4.3 Costs and Expenses.

The Authority requires reimbursement of its costs and expenses incurred in connection with the issuance and sale of its Bonds and by virtue of its Bonds being outstanding. (See Section 5.2)

### Section 4.4 Modification Fee; Transaction Fee.

- (a) The Authority may, in its discretion, require payment of a \$1,000 modification fee by any Applicant requesting the Authority to approve any modification or amendment to its Bonds or the applicable Financing Documents.

The modification fee shall be due and payable on or before the date of execution and delivery of the modification or amendment.

- (b) The Authority may, **in its discretion,** charge a transaction fee in the amount of \$1,000 to any Applicant requesting the Authority to take any action, regardless of whether the Authority has Bonds outstanding for the benefit of the Applicant.

The transaction fee will be in addition to any other fees required hereunder.

### Section 4.5 Transcripts of Proceedings.

Each Applicant receiving Bond financing through the Authority shall furnish to the  
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## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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Authority upon the sale and delivery of the Bonds, two complete transcripts of the Financing Documents relating to such Bonds. Bond transcripts shall be hardback bound in library standard quality binders at the cost and expense of the Applicant.

### Section 4.6 Bond Validation Proceedings.

The Authority may require that before issuance, its Bonds be validated by the Circuit Court of the County of Clarke, Virginia, pursuant to the requirements of [Article 6, Chapter 26, Title 15.2 of the Code](#). The costs, expenses and fees incurred in connection with any bond validation proceedings required by the Authority, including attorneys' fees, shall be paid by the Applicant.

### Section 4.7 Additional Information Required of Applicants

- (a) The Authority may adopt an inducement resolution conditioned upon the subsequent furnishing of certain information satisfactory to the Authority. All required information shall be promptly furnished to the Authority and failure of any Applicant to furnish such information shall constitute a ground for rescission of any inducement resolution adopted pursuant to such conditions.
- (b) The Authority may, at its option, require the furnishing of appraisals, evaluations or reports respecting the Project or any portion thereof. The Authority may retain advisors and consultants to advise it regarding any Project or other action that it is requested to undertake by any Applicant. All costs, fees and expenses of such appraisals, reports, consultants and advisors incurred by the Authority after prior notification to the Applicant shall be paid by the Applicant.
- (c) Since the Authority usually acts based upon information furnished to it solely by the Applicant, the Authority reserves the right to require at any time the furnishing of additional information concerning the Applicant, its financial statements, and any other information deemed relevant by the Authority. In instances where the Applicant has undergone changes in form or management or where the security to be given for payment of the Bonds has changed, the Applicant shall report such changes promptly to the Authority.

### Section 4.8 Notice of Public Hearing

The Applicant shall publish a notice of public hearing with respect to each Application for which a public hearing is required by the Code once a week for two successive weeks, to be published in a newspaper having general circulation in the County of Clarke, Virginia and in such other newspapers as may be required.

The notice shall be in a form approved by the Authority's Counsel and Bond Counsel.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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The second publication shall be not less than six nor more than twenty-one days before the Authority's meeting at which the Application is to be considered.

Persons who are interested in speaking at any public hearing held by the Authority are encouraged to submit their comments in writing.

The Authority shall publish such additional notice or notices and hold such additional public hearings with respect to each Application as may be required by law or recommended by Counsel to the Authority.

### Section 4.9 Projects Outside of the County of Clarke, Virginia

Any Applicant to finance a Project located outside the County of Clarke, Virginia shall be accompanied by evidence satisfactory to the Authority that the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority.

Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority evidence satisfactory to the Authority that the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority.

Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority.

The Authority may also require additional evidence concerning the impact or effect of the Project on the area where it will be located, whether the Project has received appropriate local approvals or permits, and whether the Project is acceptable to the inhabitants where it will be located

## Article V

### PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS AND FINANCING DOCUMENTS

#### Section 5.1 Inducement Resolutions.

Each inducement resolution adopted by the Authority shall provide that it shall continue in full force and effect for a period of two years unless specifically extended by the Authority.

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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### Section 5.2 Payment of Authority Expenses.

The Financing Documents adopted by the Authority for the benefit of any Applicant shall provide that the Applicant agrees to pay all costs, fees and expenses incurred by the Authority (including attorney's fees) in connection with: where it will be located.

- (a) the authorization, issuance and sale of the Authority's Bonds;
- (b) the ownership, occupation, operation or use of the Project being financed, whether owned by the Authority or the Applicant;
- (c) prepayment or redemption of the Authority's Bonds;
- (d) administrative costs and expenses of the Authority, including the fees of attorneys, accountants, engineers, appraisers or consultants, paid or incurred by the Authority by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and
- (e) Such other fees and expenses of the Authority, not directly related to the Project being financed for the Applicant, but attributable to the Authority's financing of industrial or commercial Projects, including without limitation, a share of costs of the Authority's annual audit as required by Code Section 15.2-4904, determined as follows:
  - (1) All costs and fees relating to the annual audit and directly attributable to a particular Applicant or Project, shall be charged to such Applicant; and
  - (2) Any costs and fees of such audit not directly attributable to any Applicant or Project shall be allocated among all Applicants having Bonds outstanding, pro rata, as the amount of Bonds originally issued for such Applicant bears to the total face amount of Bonds issued by the Authority of which any portion of any issue remains outstanding and unpaid.

### Section 5.3 Indemnification of the Authority.

Each Applicant shall agree to indemnify and save harmless the Authority, the County, the Board of Supervisors and their officers, directors, employees and agents (hereinafter the "Indemnitees") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including without limitation:

- (a) all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees, if such settlement is effected with the written consent of the Applicant;

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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- (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 Applicant, the Project or the Indemnitees;
- (c) any judgments, penalties, fines, damages, assessments, indemnities or contributions; and
- (c) the reasonable fees of attorneys, auditors, and consultants; provided that the damages arise out of:
  - (i) failure by the Applicant, or its officers, employees or agents, to comply with the terms of the Financing Documents 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 breach of any representation or warranty set forth in the Financing Documents or any certificate delivered pursuant thereto, and any claim that any representation or warranty of the Applicant contains or contained any untrue or misleading statement of fact 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;
  - (iv) 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; or
  - (v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Applicant, the Project or the Indemnitees which might adversely affect the validity or enforceability of the Bonds, the Financing Documents, or the performance by the Applicant or any Indemnitee of any of their respective obligations thereunder.

### Section 5.4 Bond Counsel Opinion Required.

Before issuing and delivering any of its Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel licensed to practice law in Virginia and approved by the Authority stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, that the interest thereon is exempt from Federal income taxation under IRC §103 (or other applicable provision of law) and

## Rules and Procedures Of The Industrial Development Authority Of The Clarke County, Virginia

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taxation by the Commonwealth of Virginia, and that the Bonds are exempt from registration requirements under applicable state and Federal securities laws.

### Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds.

All Financing Documents presented for approval by the Authority shall contain appropriate covenants of the Applicant designed to insure compliance with the requirements of IRC §103 to preserve the tax exempt status of interest on the Bonds, including without limitation, "arbitrage" requirements, capital expenditure limitations and reporting requirements.

### Section 5.6 Payments in Lieu of Taxes.

In event title to the Project is held by any person or entity not subject to real or personal property taxes, the Applicant and any user of the Project, unless specifically exempted by the Authority, shall enter into an agreement to pay all taxes, levies, assessments, charges or other impositions which may be levied by any taxing authority on the Project as if such Applicant or user held title to the Project or any portion thereof.

### Section 5.7 Restriction on Advertising.

The Applicant and any purchaser or underwriter of the Authority's Bonds shall not publish any advertisement, tombstone or other information with respect to the Authority's Bonds unless:

- (a) such advertisement has been approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and
- (b) (such advertisement contains the statement set forth below with respect to the limited nature of the obligations.

Any bond purchase agreement entered into in connection with the Authority's Bonds shall contain a covenant in substantially the following form which shall be binding on the Applicant, any purchaser and any underwriter of such bonds: The undersigned agree that no advertisement, tombstone or other information with respect to the Bonds shall be published in any newspaper or other publication unless such advertisement:

- (a) is approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and
- (b) clearly states that the Bonds are limited obligations of the Authority payable solely from revenues and that neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the County of Clarke, Virginia, shall be obligated to pay the principal of or the interest or premium, if any, on the Bonds

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and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County of Clarke, is pledged to payment of the Bonds.

### Article VI

#### Reports

##### Section 6.1 Interim Reports by Applicants.

Each Applicant shall file with the Authority a written report describing the status of its proposed financing no later than ten (10) days after receipt of written request therefore. Such written report shall include the proposed purchaser of the Bonds, the proposed terms of the Bonds, the status of Financing Documents, and the current status of the Project. Each Applicant shall promptly notify the Authority of any significant or material changes to any information previously furnished by the Applicant to the Authority, including specific descriptions of new or changed plans for the placement of the bonds and the security to be offered.

##### Section 6.2 Annual Reports of Applicants.

Each Applicant, after the issuance and sale of the Authority's Bonds for the benefit of such Applicant, shall annually report to the Authority no later than June 30 the status of the Project, which shall include the outstanding and unpaid balance of Bonds issued for the Project, whether any event of default has occurred under the Financing Documents, and other information relating to the financing of the Project and benefits to the County of Clarke, Virginia.

##### Section 6.3 Reports by Authority Chairman Directors etc.

At each meeting of the Authority, the Chairman, each Director, the Secretary, the Treasurer and the Authority's Counsel shall report any action taken on behalf of the Authority since the last meeting, including receipt of reports required under Sections 4.7, 6.1 and 6.2.

### Article VII

#### Enforcement

##### Section 7.1 Enforcement of Provisions.

The Authority may refuse to consider or adopt any inducement resolutions, Financing  
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Documents or any other matters presented for its consideration if the Applicant has failed to comply with the requirements of these Rules.

### Section 7.2 Repeal of Actions Previously Taken.

The Authority may rescind or repeal any inducement resolution previously adopted by it or any other action taken by the Authority because of failure of the Applicant to comply with the provisions of these Rules or because of substantial changes in the management, ownership, Project plan or financial circumstances of the Applicant; provided, however, no inducement resolution or action taken by the Authority shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three weeks before the date upon which such action is proposed to be taken. Notwithstanding the foregoing, no such action shall be taken by the Authority which will impair or adversely affect the interests of the holders of the Authority's Bonds.

## Article VIII

### Statements of Policy

#### Section 8.1 Construction, Operation and Effect of Rules.

These Rules are intended as guidelines to promote and insure the orderly and consistent consideration of Applications, Financing Documents and other matters brought before the Authority. For good cause, application of these Rules may be modified and waived upon a case by case basis upon the consent of the Authority. Any action taken by the Authority not in conformity with these Rules shall, nevertheless, be fully effective as if taken in compliance with these Rules. It is, however, the policy of the Authority that each Applicant comply fully and completely with these Rules, and failure to comply with these Rules may constitute grounds for refusal by the Authority to take any action requested.

#### Section 8.2 Approval of Inducement Resolution not to Constitute an Endorsement of Applicant.

The purpose of the Authority, as set forth in the Act, is to promote industry and develop trade by inducing manufacturing, industrial, governmental, commercial and non-profit enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, the Authority's powers shall be exercised for the benefit of the inhabitants of Virginia through the promotion of their safety, health, welfare, convenience or prosperity. Accordingly, the Authority's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits the Authority from operating any enterprise or Project. Since the Authority is a conduit for providing tax exempt financing to promote the commerce and industry of the Commonwealth of Virginia and the County of Clarke, Virginia, and given the express prohibition against

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operating enterprises or Projects, the Authority believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to the foregoing factors. The Authority may, however, examine the business decisions and other aspects of management of the Applicant should it deem such matters relevant to the authorization, issuance and sale of its Bonds.

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by the Authority is not to be used by any Applicant in any manner whatsoever as an endorsement or approval of the Applicant, its policies or its management.

### Section 8.3 Security for Payment of Bonds.

The Authority will require a showing that any issue of its Bonds is fully and adequately secured.

### Section 8.4 Compliance with Rules.

These Rules were adopted by the Authority to assist in the orderly and expeditious conduct of its business. As stated in 3.2 of these Rules, the Authority has reserved the right to require that any Applicant strictly conform to the requirements of the Rules. Among other things, the Rules require that each Applicant inform the Authority of any new developments or material changes in information which has been submitted to the Authority, either orally or in writing. Matters concerning the structure of the financing, the prospective purchasers of the Bonds and the security for payment of the Bonds are items of particular interest to the Authority; however, the Authority expects to be kept informed of all material changes to information submitted to it.

By submitting an Application to the Authority, the Applicant agrees to abide by these Rules. Thus, the burden is placed upon the Applicant to review and to comply with these Rules. The principal sanction which may be applied by the Authority against any Applicant for failure to comply with the Rules would be a refusal to take any action requested by the applicant. Such a refusal might result in embarrassment to or considerable financial expenses on the part of the Applicant. To avoid such embarrassment or expense, the Authority urges each Applicant to keep the Authority fully informed of any new developments or material changes to information previously submitted to the Authority, including in particular, changes in the contemplated financing structure or the proposed security for the Bonds. As noted above, the burden is upon the Applicant to convey this information to the Authority in a timely manner. What constitutes "timely" depends upon the circumstances of each case; however, each Applicant is urged to provide all such information before considerable time and expense is incurred upon matters which may prove unacceptable to the Authority. Any such communications should be made directly to the Authority's officers, directors and counsel.

## Chapter 49. Industrial Development and Revenue Bond Act.

### § 15.2-4900. Short title.

This chapter shall be known and may be cited as the "Industrial Development and Revenue Bond Act."

1966, c. 651, § 15.1-1373; 1997, c. 587.

### § 15.2-4901. Purpose of chapter.

It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the localities in the Commonwealth so that such authorities may acquire, own, lease, and dispose of properties and make loans to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in the Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity. Such authority shall not itself be authorized to operate any such manufacturing, industrial, nonprofit or commercial enterprise or any facility of an institution of higher education.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, noise and general environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to medical facilities and facilities for the residence or care of the aged to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement and improvement of medical facilities and facilities for the residence or care of the aged in order to provide modern and efficient medical services to the inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their special needs and also by assisting in the refinancing of medical facilities and facilities for the residence or care of the aged owned and operated by organizations which are exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code of 1954, as amended, in order to reduce the costs to residents of the Commonwealth of utilizing such facilities and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is not

intended hereby that any such authority shall itself be authorized to operate any such medical facility or facility for the residence or care of the aged.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for use by organizations (other than institutions organized and operated exclusively for religious purposes) which are described in § 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are exempt from federal income taxation pursuant to § 501(a) of the Internal Revenue Code of 1954, as amended, to the end that such authorities may protect or promote the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, improvement, financing, and refinancing of such facilities of the aforesaid entities and organizations in order to provide operations, recreational, activity centers, and other facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for accredited nonprofit private institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, and improvement of facilities of aforesaid institutions in order to provide improved educational facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such educational facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant industrial development authorities the powers contained herein with respect to facilities for a locality, the Commonwealth and its agencies, and governmental and nonprofit organizations and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity.

It is further the intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for museums and historical education, demonstration and interpretation, together with any and all buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations in order to promote tourism and economic development in the Commonwealth, to promote the knowledge of and appreciation by the citizens of the Commonwealth of the historical and cultural development and heritage of the Commonwealth and the United States and to promote thereby their health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such

facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities devoted to the staging of equine events and activities (other than racing) for use by governmental or nonprofit, nonreligious organizations and operated by such governmental or nonprofit, nonreligious organizations in order to promote the equine industry and equine-related activities (other than racing) which are integral to the Commonwealth's economy and heritage and to promote thereby the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to acquiring, developing, owning and operating an industrial park and any utilities that are intended primarily to serve the park and to issue bonds for such purposes. The bonds may be secured by revenues generated by the industrial park or the utilities being financed or by any other funds of the authority.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities created by one or more municipalities whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1, in addition to the powers previously or hereafter granted in this chapter, the powers contained herein with respect to facilities used primarily for single or multi-family residences in order to promote safe and affordable housing in the Commonwealth and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth. It is not intended hereby that any such authority shall itself be authorized to operate any such facility or exercise any powers of eminent domain set forth in § 36-27.

In any instance in this chapter where an industrial development authority may issue bonds through its authority to finance, the authority may also refinance such bonds.

This chapter shall be liberally construed in conformity with these intentions.

1966, c. 651, § 15.1-1375; 1972, c. 783; 1975, c. 489; 1977, c. 619; 1978, cc. 276, 526; 1984, c. 700; 1985, c. 317, § 15.1-1392; 1986, c. 473; 1988, c. 211; 1990, c. 312; 1991, c. 6; 1997, cc. 587, 758, 763; 2002, cc. 680, 725; 2005, c. 928; 2012, c. 498.

### **§ 15.2-4902. Definitions.**

Wherever used in this chapter, unless a different meaning clearly appears in the context:

"Authority" means any political subdivision, a body politic and corporate, created, organized and operated pursuant to the provisions of this chapter, or if the authority is abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter are given by law.

"Authority facilities" or "facilities" means any or all (i) medical (including, but not limited to, office and treatment facilities), pollution control or industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education in the Commonwealth whose primary purpose is to provide collegiate, elementary, secondary, or graduate education and not to provide religious training or

theological education, such facilities being for use as academic or administration buildings or any other structure or application usual and customary to a college, elementary or secondary school campus other than chapels and their like; (v) parking facilities, including parking structures; (vi) facilities for use as office space by nonprofit, nonreligious organizations; (vii) facilities for museums and historical education, demonstration and interpretation, together with buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations; (viii) facilities for use by an organization (other than an organization organized and operated exclusively for religious purposes) which is described in § 501(c) (3) of the Internal Revenue Code of 1986, as amended, and which is exempt from federal income taxation pursuant to § 501 (a) of such Internal Revenue Code; (ix) facilities for use by a locality, the Commonwealth and its agencies, or other governmental organizations, provided that any such facilities owned by a locality, the Commonwealth or its agencies or other public bodies subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not be exempt from competitive procurement requirements, under the exception granted in subsection B of § 2.2-4344;(x) facilities devoted to the staging of equine events and activities (other than racing events); however, such facilities must be owned by a governmental or nonprofit, nonreligious organization and operated by any such governmental or nonprofit, nonreligious organization; (xi) facilities for commercial enterprises that are not enterprise zone facilities (as defined in § 1394 (b) of the Internal Revenue Code of 1986, as amended) now existing or hereafter acquired, constructed or installed by or for the authority pursuant to the terms of this chapter; however, facilities for commercial enterprise that are not enterprise zone facilities but which are taxable authority facilities shall constitute authority facilities only if the interest on any bonds issued to finance such facilities is not exempt from federal income taxation; (xii) enterprise zone facilities; and (xiii) facilities used primarily for single or multi-family residences. Clause (xiii) applies only to industrial development authorities created by one or more localities whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1. Any facility may be located within or outside or partly within or outside the locality creating the authority. Any facility may consist of or include any or all buildings, improvements, additions, extensions, replacements, machinery or equipment, and may also include appurtenances, lands, rights in land, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, acquired, constructed, or installed by or on behalf of the authority. A pollution control facility shall include any facility acquired, constructed or installed or any expenditure made, including the reconstruction, modernization or modification of any existing building, improvement, addition, extension, replacement, machinery or equipment, and which is designed to further the control or abatement of land, sewer, water, air, noise or general environmental pollution derived from the operation of any industrial or medical facility. Any facility may be constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property rights or interests whether owned by the authority or others.

"Bonds" or "revenue bonds" embraces notes, bonds and other obligations authorized to be issued by the authority pursuant to the provisions of this chapter.

"Cost" means, as applied to authority facilities, the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all labor, materials, machinery and equipment; financing charges

and interest on all bonds prior to and during construction and, if deemed advisable by the authority, for a period not exceeding one year after completion of such construction; cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the authority facilities; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements; and such other expenses as may be necessary or incident to the construction of the authority facilities, the financing of such construction and the placing of the authority facilities in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the authority facilities may be regarded as a part of the cost of the authority facilities and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued for such authority facilities as hereinafter authorized.

"Enterprise" means any industry for manufacturing, processing, assembling, storing, warehousing, distributing, or selling any products of agriculture, mining, or industry and for research and development or scientific laboratories, including, but not limited to, the practice of medicine and all other activities related thereto or for such other businesses or activities as will be in the furtherance of the public purposes of this chapter.

"Loans" means any loans made by the authority in furtherance of the purposes of this chapter from the proceeds of the issuance and sale of the authority's bonds and from any of its revenues or other moneys available to it as provided herein.

"Revenues" means any or all fees, rates, rentals and receipts collected by, payable to or otherwise derived by the authority from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the authority in connection with the ownership, leasing or sale of the authority facilities or in connection with any loans made by the authority under this chapter.

"Taxable authority facilities" means any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility, suntan facility, race track, or facility the primary purpose of which is one of the following: (i) retail food and beverage services (excluding grocery stores), (ii) automobile sales and service, (iii) recreation or entertainment, or (iv) banks, savings and loan institutions or mortgage loan companies. The foregoing sentence notwithstanding, no facility financed as an enterprise zone facility using tax-exempt "enterprise zone facility bonds" (as such term is used in § 1394 of the Internal Revenue Code ) shall constitute a taxable authority facility.

"Trust indenture" means any trust agreement or mortgage under which bonds authorized pursuant to this chapter may be secured.

1966, c. 651, § 15.1-1374; 1968, c. 687; 1970, c. 725; 1972, c. 783; 1973, c. 528; 1977, cc. 238, 619, 673; 1978, c. 526; 1980, c. 372; 1983, c. 514; 1984, c. 700; 1986, c. 473; 1988, c. 211; 1990, cc. 312, 469; 1991, c. 6; 1994, c. 737; 1997, cc. 587, 758, 763; 1999, c. 379; 2005, c. 928; 2006, c. 324.

### **§ 15.2-4903. Creation of industrial development authorities.**

A. The governing body of any locality in the Commonwealth is hereby authorized to create by ordinance a political subdivision of the Commonwealth, with such public and corporate powers

as are set forth in this chapter. Any such ordinance may limit the type and number of facilities that the authority may otherwise finance under this chapter, which ordinance of limitation may, from time to time, be amended. Louisa County may, by ordinance, authorize an authority created or established under this chapter to acquire, own, operate, and regulate the use of airports, landing fields, and facilities, and other property incident thereto, including such facilities and property necessary for the servicing of aircraft. In the absence of any such limitation, an authority shall have all powers granted under this chapter.

B. The name of the authority shall be the Industrial Development Authority of (the blank spaces to be filled in with the name of the locality which created the authority, including the proper designation thereof as a county, city or town).

C. Notwithstanding subsection B, for any authority authorized by this section, the name of the authority may be the Economic Development Authority of (the blank space to be filled in with the name of the locality that created the authority), if the governing body of such locality so chooses.

D. The authority jointly created by the Town of South Boston and Halifax County pursuant to § 15.2-4916 may be named the Economic Development Authority of Halifax, Virginia, or such other name as the governing bodies of the Town of South Boston and Halifax County shall choose in the concurrent resolutions creating such authority.

1966, c. 651, § 15.1-1376; 1975, c. 254; 1997, c. 587; 1999, c. 157; 2000, c. 398; 2001, cc. 5, 6, 730; 2002, cc. 169, 680, 725; 2003, cc. 159, 343, 345, 350, 357; 2004, cc. 292, 782, 933; 2016, cc. 164, 312; 2017, c. 560.

**§ 15.2-4904. Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records; certification and distribution of report concerning bond issuance.**

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the locality. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

Notwithstanding the provisions of this subsection, the board of supervisors of Wise County may appoint eight members to serve on the board of the authority, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Henrico County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Roanoke County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Mathews County may appoint from five to seven members to serve on the board of the authority, the town council of the Town of Saint Paul may appoint 10 members to serve on the board of the authority, with terms staggered as agreed upon by the town council, however,

the town council may at its option return to a seven member board by removing the last three members appointed, the board of supervisors of Russell County may appoint nine members, two of whom shall come from a town that has used its borrowing capacity to borrow \$2 million or more for industrial development, with terms staggered as agreed upon by the board of supervisors and the town council of the Town of South Boston shall appoint two at-large members, Page County may appoint nine members, with one member from each incorporated town, one member from each magisterial district, and one at-large, with terms staggered as agreed upon by the board of supervisors, Halifax County shall appoint five at-large members to serve on the board of the authority jointly created by the Town of South Boston and Halifax County pursuant to § 15.2-4916, with terms staggered as agreed upon by the governing bodies of the Town of South Boston and Halifax County in the concurrent resolutions creating such authority, the board of supervisors of Goochland County may appoint five members to serve on the board of the authority, the town council of the Town of Coeburn may appoint five members to serve on the board of the authority, with terms staggered as agreed upon by the town council, the city council of Suffolk may appoint eight members to serve on the board of the authority, with one member from each of the boroughs, and one at-large member, with terms staggered as agreed upon by the city council, the City of Chesapeake may appoint nine members, with terms staggered as agreed upon by the city council; however, in the City of Chesapeake, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Economic Development Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Chesapeake Economic Development Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Economic Development Authority member shall work for the Authority within one year after serving as a member. The city council of the City of Norfolk may appoint 11 members, with terms staggered as agreed upon by the city council, and the board of supervisors of Louisa County may appoint directors to serve on the board of the authority for terms coincident with members of the board of supervisors.

A member of the board of directors of the authority may be removed from office by the local governing body without limitation in the event that the board member is absent from any three consecutive meetings of the authority or is absent from any four meetings of the authority within any 12-month period or upon unanimous vote of the board of supervisors. In any such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § 49-1.

C. No director shall be an officer or employee of the locality except (i) in a town with a population of less than 3,500 where members of the town governing body may serve as directors provided they do not constitute a majority of the board, (ii) in Buchanan County where a constitutional officer who has previously served on the board of directors may serve as a director provided the governing body of such county approves, and (iii) in Frederick County where the board of supervisors may appoint one of its members to the Economic Development Authority of the County of Frederick, Virginia. Every director shall, at the time of his appointment and thereafter, reside in a locality within which the authority operates or in an adjoining locality. When a director ceases to be a resident of such locality, the director's office shall be vacant and a new director may be appointed for the remainder of the term.

D. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall continue to hold such office until their respective successors are elected. The directors shall receive no salary but may be compensated such amount per regular, special, or committee meeting or per each official representation as may be approved by the appointing authority, not to exceed \$200 per meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

E. Except as provided herein, four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board. In the case of the Economic Development Authority of Goochland County, three members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors.

F. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § 30-140, it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Small Business and Supplier Diversity.

1966, c. 651, § 15.1-1377; 1979, c. 35; 1980, c. 304; 1982, c. 463; 1983, c. 514; 1984, c. 750; 1987, c. 368; 1990, c. 87; 1993, c. 896; 1996, cc. 589, 599; 1997, c. 587; 1999, cc. 337, 408, 414; 2000, c. 963; 2001, c. 121; 2003, cc. 347, 357; 2006, c. 687; 2007, cc. 283, 338; 2008, c. 619; 2009, cc. 199, 200, 460, 597; 2012, cc. 337, 352; 2013, c. 482; 2014, cc. 381, 382; 2016, c. 414; 2017, cc. 541, 557, 560; 2018, c. 310.

#### **§ 15.2-4905. Powers of authority.**

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
2. To adopt and use a corporate seal and to alter the same at pleasure;
3. To enter into contracts; however, any written contract of the authority shall contain provisions addressing the issue of whether attorney's fees shall be recoverable by the prevailing party in the event the contract is subject to litigation;
4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties

which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;

5. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;

6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but without intending to limit any power conferred by this section or this chapter, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem any prior long-term financing of such facility other than financings pursuant to this chapter or any similar law;

8. As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;

9. To employ and pay compensation to such employees and agents, including attorneys, and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;

10. To exercise all powers expressly given the authority by the governing body of the locality which established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

11. To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated such amount per regular, special, or committee meeting as may be approved by the appointing authority, not to exceed \$50 per meeting day, and may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms

and conditions as may be imposed; and

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12.

The authority shall not have power to operate any facility as a business other than as lessor and shall not have the power to operate any single or multi-family housing facilities. However, the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§ 62.1-159 et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

If a locality has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such locality, shall finance facilities, except pollution control facilities, within the boundaries of such locality, unless the governing body of such locality in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.

1966, c. 651, § 15.1-1378; 1970, c. 598; 1972, c. 783; 1973, c. 528; 1981, c. 3; 1991, c. 6; 1993, c. 896; 1994, c. 317; 1997, cc. 587, 758, 763; 1998, c. 728; 2005, c. 575.

#### **§ 15.2-4906. Public hearing and approval.**

A. Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds, unless otherwise specified by federal law or regulation, the public hearing shall be conducted by the authority and the procedure for the public hearing and public approval shall be in accordance with this section.

B. For a public hearing by the authority, notice of the hearing shall be published once a week for two successive weeks in a newspaper having general circulation in the locality in which the facility to be financed is to be located of intention to provide financing for a named individual or business entity. The applicant shall pay the cost of publication. The notice shall specify the time and place of hearing at which persons may appear and present their views. The hearing shall be held not less than six days nor more than twenty-one days after the second notice shall appear in such newspaper.

The notice shall contain: (i) the name and address of the authority; (ii) the name and address (principal place of business, if any) of the party seeking financing; (iii) the maximum dollar amount of financing sought; and (iv) the type of business and purpose and specific location, if known, of the facility to be financed.

If after the hearing has been held the authority approves the financing, a reasonably detailed

summary of the comments expressed at the hearing shall be conveyed promptly to the locality's governing body together with the recommendation of the authority.

C. For public approval, the governing body of the locality on behalf of which the bonds of the authority are issued shall within sixty calendar days from the public hearing held by the authority either approve or disapprove financing of any facility recommended by the authority.

Action of the governing body shall be by a majority of a quorum set out in a resolution. Such vote shall be recorded and disclose how each member voted.

In case of a joint authority the approval required by the governing body of the locality shall be that governing body of the area where the facility will be located, if permitted by federal law or regulation.

The provisions of this section shall not apply to bonds, notes or other obligations issued pursuant to hearings held and governmental approvals obtained prior to the effective date of this act in compliance with federal law or regulation.

1983, c. 514, § 15.1-1378.1; 1997, c. 587.

**§ 15.2-4907. Fiscal impact statement.**

Every request for industrial development (facility) financing when submitted to the governing body of the locality for approval shall be accompanied by a statement in the following form:

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Name of Applicant)

\_\_\_\_\_  
(Facility)

- a                                    1. Maximum amount of financing sought                                    \$ \_\_\_\_\_
  
- b                                    2. Estimated taxable value of the facility's real property to be constructed in the locality                                    \$ \_\_\_\_\_
  
- c                                    3. Estimated real property tax per year using present tax rates                                    \$ \_\_\_\_\_
  
- d                                    4. Estimated personal property tax per year using present tax rates                                    \$ \_\_\_\_\_
  
- e                                    5. Estimated merchants' capital tax per year using present tax rates                                    \$ \_\_\_\_\_

- f 6. a. Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality \$ \_\_\_\_\_
- g b. Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality \$ \_\_\_\_\_
- h c. Estimated dollar value per year of services that will be purchased from Virginia companies within the locality \$ \_\_\_\_\_
- i d. Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality \$ \_\_\_\_\_
- j 7. Estimated number of regular employees on year round basis \$ \_\_\_\_\_
- k 8. Average annual salary per employee \$ \_\_\_\_\_

Signature

\_\_\_\_\_  
Authority Chairman

\_\_\_\_\_  
Name of Authority

If one or more of the above questions do not apply to the facility indicate by writing N/A (not applicable) on the appropriate line.

The provisions of this section shall not apply to bonds, notes or other obligations issued pursuant to hearings held and governmental approvals obtained prior to the effective date of this act in compliance with federal law or regulation.

1983, c. 514, § 15.1-1378.2; 1997, c. 587; 1998, c. 728.

**§ 15.2-4908. Issuance of bonds, notes and other obligations of authority.**

A. Subject to the limitations of Chapter 50 (§ 15.2-5000 et seq.) of this title, the authority may issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of authority facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by the authority shall be payable solely from the revenues and receipts derived from the leasing or sale by the authority of its facilities or any part

thereof or from payments received by the authority in connection with its loans, and the authority may issue such types of bonds as it may determine, including, without limiting the generality of the foregoing, bonds payable, both as to principal and interest: (i) from its revenues and receipts generally; (ii) exclusively from the revenues and receipts of a particular facility or loan; or (iii) exclusively from the revenues and receipts of certain designated facilities or loans whether or not they are financed in whole or in part from the proceeds of such bonds. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the bonds, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility or loan. Bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding 40 years from the date thereof, may be payable at such place or places whether within or outside the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be determined by the board of directors. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof, at such price or prices and after such notice or notices and on such terms and conditions as may be determined by the board of directors and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all costs, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether the bonds proposed to be refunded are payable on the same date or on different dates or are due serially or otherwise. The determination of the form, denominations, maturities, redemption provisions, places of payment, interest rate or rates, payment installations, dates and all other terms and provisions of bonds as authorized in this section may be made by the board of directors in such manner as the board may provide, including the determination by reference to indices and formulas or by agents designated by the board of directors under guidelines established by it.

B. All bonds shall be signed by the chairman or vice-chairman of the authority or shall bear his

facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of the chairman. In case any officer whose signature or a facsimile signature appears on any bonds or coupons ceases to be an officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds shall be authenticated by a corporate trustee or other authenticating agent approved by the authority.

C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, are less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

D. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which are mutilated, destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter; however, nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

E. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ 8.1A-101 et seq.), subject only to provisions respecting registration of the bonds.

F. In addition to all other powers granted to the authority by this chapter, the authority may issue, from time to time, notes or other obligations of the authority for any of its authorized purposes. The provisions of this chapter which relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

1966, c. 651, § 15.1-1379; 1968, c. 687; 1983, c. 514; 1991, c. 6; 1997, c. 587; 2003, cc. 353, 683.

#### **§ 15.2-4909. Liability of Commonwealth, political subdivisions, directors and officers.**

A. Bonds issued pursuant to this chapter shall not be deemed to constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof, including the locality which created the authority issuing such bonds, but such bonds shall be payable solely

from the funds provided therefor as herein authorized. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth, nor any political subdivision thereof, nor the authority shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds or the interest thereon or other costs incident thereto.

B. Neither the directors of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

C. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the funds of the authority and no liability or obligation shall be incurred by the authority hereunder beyond the extent to which moneys shall be available to the authority.

D. Bonds issued pursuant to the provisions of this chapter shall not constitute an indebtedness within the meaning of any debt limitation or restriction.

1966, c. 651, § 15.1-1380; 1997, c. 587.

**§ 15.2-4910. Security for payment of bonds; default.**

The principal of and interest on any bonds issued by the authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable not in conflict with the provisions hereof. Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on such bonds have been fully paid. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, such payment or agreements may be enforced by writ of mandamus, or by a suit, action or proceeding at law or in equity to compel the authority and the directors, officers, agents or employees thereof to perform the terms, provisions, and covenants contained in any trust indenture of the authority, by the appointment of a receiver in equity or by foreclosure of any such trust indenture or any one or more of said remedies.

1966, c. 651, § 15.1-1381; 1997, c. 587.

**§ 15.2-4911. Rents, fees and other charges.**

The authority shall fix and revise from time to time the rents, fees and other charges to be paid to it in connection with the lease or sale of various authority facilities and for any other services furnished or provided by the authority. Such rents, fees and charges shall provide at least sufficient funds to pay the cost of maintaining, repairing and operating such projects and the principal and interest of any bonds issued by the authority or other debts contracted as the bonds become due and payable. The authority and the political subdivision in which all or any part of a

particular authority facility is located may agree on payment by the authority on account of governmental services to be rendered by the political subdivision in such amounts as the authority may find to be consistent with the purposes of this chapter. A reserve may be accumulated and maintained out of the revenues and receipts of the authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing the authority's bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations hereunder, the authority shall have exclusive control of the revenues and receipts derived from the lease or sale of any authority facility and the right to use the revenues and receipts in the exercise of its powers and duties set forth in this chapter.

1966, c. 651, § 15.1-1382; 1968, c. 687; 1973, c. 528; 1997, c. 587.

**§ 15.2-4912. Exemption from taxation.**

The authority is hereby declared to be performing a public function in behalf of the locality with respect to which the authority is created and to be a public instrumentality of such locality. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the authority, shall at all times be exempt from all taxation by the Commonwealth or any political subdivision thereof.

1966, c. 651, § 15.1-1383; 1997, c. 587.

**§ 15.2-4913. Authority to be nonprofit; excess earnings.**

The authority shall be nonprofit and no part of its net earnings remaining after payment of its expenses shall enure to the benefit of any individual, firm or corporation, except that if the board of directors of the authority determines that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the authority then any net earnings of the authority thereafter accruing shall be paid to the locality with respect to which the authority was created. However, nothing herein contained shall prevent the board of directors from transferring all or any part of its facilities or properties in accordance with the terms of any contract entered into by the authority.

1966, c. 651, § 15.1-1384; 1973, c. 528; 1997, c. 587.

**§ 15.2-4914. Dissolution of authority; disposition of property.**

Whenever the board of directors of the authority by resolution determines that the purposes for which the authority was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the authority have been fully paid, the then members of the board of directors of the authority shall thereupon execute and file for record with the governing body of the locality which created the authority, a resolution declaring such facts. If the governing body of the locality which created the authority is of the opinion that the facts stated in the authority's resolution are true and that the authority should be dissolved, it shall so resolve and the authority shall stand dissolved. Upon such dissolution, the title to all funds and properties owned by the authority at the time of such dissolution shall vest in the locality creating the authority and possession of such funds and properties shall forthwith be delivered to such locality.

1966, c. 651, § 15.1-1385; 1997, c. 587.

**§ 15.2-4915. Bonds as legal investments and lawful security.**

The bonds issued pursuant to this chapter shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the Commonwealth or other political corporations or subdivisions of the Commonwealth. Such bonds shall be eligible to secure the deposit of public funds of the Commonwealth, localities, school districts or other political corporations or subdivisions of the Commonwealth, and shall be security for such deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

1966, c. 651, § 15.1-1386; 1997, c. 587.

**§ 15.2-4916. Authorities acting jointly.**

The powers herein conferred upon authorities created under this chapter may be exercised by two or more authorities acting jointly. Two or more localities may jointly create an authority, in which case each of the directors of such authority shall be appointed by the governing body of the respective locality which the director represents.

1966, c. 651, § 15.1-1387; 1982, c. 463; 1997, c. 587.

**§ 15.2-4917. Facility sites.**

Any locality may acquire, pursuant to § 15.2-1800, but not by condemnation, a facility site and may likewise transfer any facility site to an authority. Such transfer may be authorized by a resolution of the governing body of the locality without submission of the question to the voters and without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law. Such facility sites may be located within or outside or partially within or outside the locality creating the authority. If a real estate broker licensed under § 54.1-2100 represents a party in a transaction through which a facility site is acquired, the locality may pay a reasonable brokerage fee to such real estate broker.

1966, c. 651, § 15.1-1388; 1997, c. 587; 1998, c. 728.

**§ 15.2-4918. Provisions of chapter cumulative; construction.**

This chapter neither limits nor restricts any powers which the authority might otherwise have under any laws of this Commonwealth. No proceedings, notice or approval shall be required for the organization of the authority or the issuance of any bonds or any instrument as security therefor, except as herein provided. However, nothing herein shall be construed to deprive the Commonwealth and its political subdivisions of their respective police powers over properties of the authority or to impair any power thereover of any official or agency of the Commonwealth and its political subdivisions which may be otherwise provided by law. Nothing contained in this chapter shall be deemed to authorize the authority to occupy or use any land, streets, buildings, structures or other property of any kind, owned or used by any political subdivision within its jurisdiction, or any public improvement or facility maintained by such political subdivision for the use of its inhabitants, without first obtaining the consent of the governing body thereof.

1966, c. 651, § 15.1-1389; 1997, c. 587.

**§ 15.2-4919. Provisions of chapter controlling over other statutes and charters.**

Any provision of this chapter which is found to be in conflict with any other statute or charter shall be controlling and shall supersede such other statute or charter to the extent of such

conflict.

1966, c. 651, § 15.1-1390; 1997, c. 587; 2015, c. 709.

**§ 15.2-4920. Validation of creation of authorities, appointment of directors and proceedings; curative resolutions.**

All proceedings heretofore taken with respect to the creation of authorities by any locality pursuant to this chapter are hereby validated and confirmed and all such authorities are declared to be legally created. All incumbent directors of authorities are declared to be and are lawfully appointed directors of authorities, notwithstanding any failure to conform to the requirements of this chapter, and all such appointments are hereby ratified, validated and confirmed. However, all terms of incumbent directors shall conform to § 15.2-4904. The governing body of any locality is hereby authorized to adopt such corrective resolutions as may be necessary to carry out the requirements of the immediately preceding sentence. All proceedings heretofore taken to provide for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any authority are hereby validated, ratified, approved and confirmed, and any such bonds so issued shall be valid, legal, binding and enforceable obligations of such authority.

1980, c. 304, § 15.1-1391; 1997, c. 587.



## County of Clarke Industrial Development Authority

### Clarke County Industrial Development Authority (IDA) Investment Guiding Principles

#### **BACKGROUND:**

The Clarke County Industrial Development Authority (IDA) issues bonds, refinances bonds, buys and sells property, and otherwise conducts appropriate and authorized business as set forth in the code of Virginia. These activities can and do generate funds that the IDA maintains generally in the following two ways:

- 1) A checking account with the Bank of Clarke County used primarily for financing annual operating costs, as well as the initial account for the receipt and distribution of funds.
- 2) An investment account with Eagle Investment Group, a subsidiary of Bank of Clarke County, to maximize total return with prudent levels of risk during the pursuit of investment opportunities to achieve the stated IDA mission. These funds are specifically endorsed by the IDA Finance Committee. Average risk tolerance consistent with other investments made in the name of Clarke County.

In order to fulfill its statutory mission to serve the citizens of Clarke County and the Commonwealth of Virginia “through the increase of the their commerce, or through the promotion of the safety, health, welfare, convenience or prosperity,” the IDA further considers reinvesting the proceeds from its activities to retain and recruit business and other qualifying enterprises, including manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions, and the further use of the County’s agricultural products and natural resources, the IDA follows certain investment guiding principles.

#### **INVESTMENT GUIDING PRINCIPLES:**

The amount of the funds vary according to distribution needs but are generally divided into 4 groups:

- 1) Account balances under \$50,000 of liquid funds in the checking account to provide flexibility for the IDA Committee to access funds promptly without penalty.
- 2) Account balances in excess of \$50,000 and less than \$100,000 should be invested in financial instruments that can be accessed within 6 months without penalty. This investment is intended to generate a satisfactory, safe return to focus on short term investment opportunities.

- 3) Account balances in excess of \$100,000 and less than \$150,000 should be invested in financial instruments that can be accessed within one year without penalty. This investment, due to the term of the investment, is to generate slightly higher but safe returns to meet longer high-value investment opportunities.
- 4) Account balances in excess of \$150,000 should be referred immediately to the IDA committee for discussion. Consistent with the mission of the IDA, special attention should be paid to distribute these funds as soon as possible to promote worthy opportunities aligned with the IDA mission.

In addition, the Authority's Board of Directors should target being self-sufficient by generating enough investment income to offset annual operating expenses.

Industrial Development Authority of the Clarke County, Virginia  
 FY2020 Draft Budget

| Expenditures Category      | FY2019 Budget    |                    |
|----------------------------|------------------|--------------------|
| Advertising                | \$ 400           | Public Hearings    |
| Audit                      | \$ 1,675         | RFC                |
| Civic Contributions        | \$ 6,000         | SBDC LFCC          |
| Director Fees              | \$ 1,400         | Meeting Attendance |
| Insurance                  | \$ 1,300         | VACorp             |
| Postage                    | \$ 25            |                    |
| Professional Services      | \$ 1,250         | Legal              |
| <b>Total Expenditures:</b> | <b>\$ 12,050</b> |                    |

| Expenditures Category      | FY2020 Budget   |                    | Change            |
|----------------------------|-----------------|--------------------|-------------------|
| Advertising                | \$ 400          | Public Hearings    | \$ -              |
| Audit                      | \$ 1,715        | RFC                | \$ 40             |
| Civic Contributions        | \$ 3,500        | SBDC LFCC          | \$ (2,500)        |
| Director Fees              | \$ 1,400        | Meeting Attendance | \$ -              |
| Insurance                  | \$ 1,340        | VACorp             | \$ 40             |
| Postage                    | \$ 25           |                    | \$ -              |
| Professional Services      | \$ 1,250        | Legal              | \$ -              |
| <b>Total Expenditures:</b> | <b>\$ 9,630</b> |                    | <b>\$ (2,420)</b> |

| Estimated Revenues         | Estimated Amount | Actual Revenue   | (+/-) as of 02/2019 |
|----------------------------|------------------|------------------|---------------------|
| <b>Bonds:</b>              |                  |                  |                     |
| Grafton School, Inc. Bond  | \$ 1,100         | \$ 1,073         | \$ (28)             |
| LFCC Bond                  | \$ 3,400         | \$ 3,228         | \$ (172)            |
| Shenandoah University Bond | \$ 3,800         | \$ 3,908         | \$ 108              |
|                            | <u>\$ 8,300</u>  | <u>\$ 8,208</u>  | <u>\$ (92)</u>      |
| Interest Income:           | \$ 3,000         | \$ 3,193         | \$ 193              |
| <b>Total Revenue:</b>      | <b>\$ 11,300</b> | <b>\$ 11,401</b> | <b>\$ 101</b>       |

| Estimated Revenues         | Estimated Amount | Actual Revenue  |
|----------------------------|------------------|-----------------|
| <b>Bonds:</b>              |                  |                 |
| Grafton School, Inc. Bond  | \$ 655           | \$ (445)        |
| LFCC Bond                  | \$ 2,750         | \$ (650)        |
| Shenandoah University Bond | \$ 3,700         | \$ (100)        |
|                            | <u>\$ 7,105</u>  |                 |
| Interest Income:           | \$ 3,200         | \$ 200          |
| <b>Total Revenue:</b>      | <b>\$ 10,305</b> | <b>\$ (995)</b> |

## Industrial Development Authority YTD Check Log

| FY   | Status | Check No. | Date       | Description           | Category            | Credit      | Debit       | Balance      | Additional Information           |
|------|--------|-----------|------------|-----------------------|---------------------|-------------|-------------|--------------|----------------------------------|
| 2019 | C      | 562       | 7/5/2018   | VACorp                | Insurance           | \$ -        | \$ 1,338.00 | \$ 52,212.37 | 07/01/2018 thru 06/30/ 2019      |
| 2019 | C      | 563       | 8/1/2018   | Mark Cochran          | Director Fees       | \$ -        | \$ 50.00    | \$ 52,162.37 | Meeting 07/26/2018               |
| 2019 | C      | 564       | 8/1/2018   | English Koontz        | Director Fees       | \$ -        | \$ 50.00    | \$ 52,112.37 | Meeting 07/26/2018               |
| 2019 |        | 565       | 8/1/2018   | Brian Ferrell         | Director Fees       | \$ -        | \$ 50.00    | \$ 52,062.37 | Meeting 07/26/2018               |
| 2019 | Void   | 566       | 6/11/2018  | VACorp                | Insurance           | \$ 1,338.00 | \$ 1,338.00 | \$ 52,062.37 | Voided, Reissued 07/05/2018 #562 |
| 2019 | C      | 567       | 8/1/2018   | Bill Waite            | Director Fees       | \$ -        | \$ 50.00    | \$ 52,012.37 | Meeting 07/26/2018               |
| 2019 | C      | 568       | 10/25/2018 | William Waite         | Director Fees       | \$ -        | \$ 50.00    | \$ 51,962.37 | Meeting 10/25/2018               |
| 2019 | C      | 569       | 10/25/2018 | David Juday           | Director Fees       | \$ -        | \$ 50.00    | \$ 51,912.37 | Meeting 10/25/2018               |
| 2019 | C      | 570       | 10/25/2018 | Mark Cochran          | Director Fees       | \$ -        | \$ 50.00    | \$ 51,862.37 | Meeting 10/25/2018               |
| 2019 | Void   | 571       | 10/25/2018 | Void                  | Void                | \$ -        | \$ -        | \$ 51,862.37 |                                  |
| 2019 | C      | 572       | 10/25/2018 | English Koontz        | Director Fees       | \$ -        | \$ 50.00    | \$ 51,812.37 | Meeting 10/25/2019               |
| 2019 | C      | 573       | 10/25/2018 | Rodney Pierce         | Director Fees       | \$ -        | \$ 50.00    | \$ 51,762.37 | Meeting 10/25/2021               |
| 2019 | C      | 574       | 11/19/2018 | FFSBDC                | Civic Contributions | \$ -        | \$ 6,000.00 | \$ 45,762.37 | LFSBDC Annual Contribution       |
| 2019 | C      | Dep       | 12/26/2018 | Grafton School        | Bond Fees           | \$ 1,072.50 | \$ -        | \$ 46,834.87 | 2018 Bond Fee                    |
| 2019 | C      | Dep       | 12/31/2018 | LFCC                  | Bond Fees           | \$ 3,228.18 | \$ -        | \$ 50,063.05 | 2018 Bond Fee                    |
| 2019 | C      | Dep       | 1/24/2019  | Shenandoah University | Bond Fees           | \$ 3,907.50 | \$ -        | \$ 53,970.55 | 2018 Bond Fee                    |
| 2019 | C      | 575       | 1/24/2019  | Mark Cochran          | Director Fees       | \$ -        | \$ 50.00    | \$ 53,920.55 | Meeting 01/24/2019               |
| 2019 | C      | 576       | 1/24/2019  | Brian Ferrell         | Director Fees       | \$ -        | \$ 50.00    | \$ 53,870.55 | Meeting 01/24/2019               |
| 2019 | C      | 577       | 1/24/2019  | English Koontz        | Director Fees       | \$ -        | \$ 50.00    | \$ 53,820.55 | Meeting 01/24/2019               |
| 2019 | Void   | 578       | 1/24/2019  | Void                  | Void                | \$ -        | \$ -        | \$ 53,820.55 |                                  |
| 2019 | C      | 579       | 1/24/2019  | William Waite         | Director Fees       | \$ -        | \$ 50.00    | \$ 53,770.55 | Meeting 01/24/2019               |

4/17/2019

Lora B. Walburn, IDA Clerk

FY2019 Industrial Development Authority YTD Financial Reports

| Expenditures Category      | Amount           | Jul-18             | Aug-18           | Sep-18      | Oct-18           | Nov-18             | Dec-18      | Jan-19           | Feb-19      | Mar-19      | Expended YTD       | Remaining Balance |
|----------------------------|------------------|--------------------|------------------|-------------|------------------|--------------------|-------------|------------------|-------------|-------------|--------------------|-------------------|
| Advertising                | \$ 400           | \$ -               | \$ -             | \$ -        | \$ -             | \$ -               | \$ -        | \$ -             | \$ -        | \$ -        | \$ -               | \$ 400            |
| Audit                      | \$ 1,675         | \$ -               | \$ -             | \$ -        | \$ -             | \$ -               | \$ -        | \$ -             | \$ -        | \$ -        | \$ -               | \$ 1,675          |
| Civic Contributions        | \$ 6,000         | \$ -               | \$ -             | \$ -        | \$ -             | \$ 6,000.00        | \$ -        | \$ -             | \$ -        | \$ -        | \$ 6,000.00        | \$ -              |
| Director Fees              | \$ 1,400         | \$ -               | \$ 200.00        | \$ -        | \$ 250.00        | \$ -               | \$ -        | \$ 200.00        | \$ -        | \$ -        | \$ 650.00          | \$ 750            |
| Insurance                  | \$ 1,300         | \$ 1,338.00        | \$ -             | \$ -        | \$ -             | \$ -               | \$ -        | \$ -             | \$ -        | \$ -        | \$ 1,338.00        | \$ (38)           |
| Postage                    | \$ 25            | \$ -               | \$ -             | \$ -        | \$ -             | \$ -               | \$ -        | \$ -             | \$ -        | \$ -        | \$ -               | \$ 25             |
| Professional Services      | \$ 1,250         | \$ -               | \$ -             | \$ -        | \$ -             | \$ -               | \$ -        | \$ -             | \$ -        | \$ -        | \$ -               | \$ 1,250          |
| <b>Total Expenditures:</b> | <b>\$ 12,050</b> | <b>\$ 1,338.00</b> | <b>\$ 200.00</b> | <b>\$ -</b> | <b>\$ 250.00</b> | <b>\$ 6,000.00</b> | <b>\$ -</b> | <b>\$ 200.00</b> | <b>\$ -</b> | <b>\$ -</b> | <b>\$ 7,988.00</b> | <b>\$ 4,062</b>   |

| Estimated Revenues         | Estimated Amount | Actual Revenue   | +/- Estimate   |
|----------------------------|------------------|------------------|----------------|
| <b>Bonds:</b>              |                  |                  |                |
| Grafton School, Inc. Bond  | \$ 1,100         | \$ 1,073         | \$ (28)        |
| LFCC Bond                  | \$ 3,400         | \$ 3,228         | \$ (172)       |
| Shenandoah University Bond | \$ 3,800         | \$ 3,908         | \$ 108         |
|                            | <b>\$ 8,300</b>  | <b>\$ 8,208</b>  | <b>\$ (92)</b> |
| <b>Interest Income:</b>    | <b>\$ 3,000</b>  | <b>\$ 3,193</b>  |                |
| <b>Total Revenue:</b>      | <b>\$ 11,300</b> | <b>\$ 11,401</b> | <b>\$ 101</b>  |

**FY2019 Investment Summary**

| Asset Summary                | Jul '18      | Aug '18      | Sep '18      | Oct '18       | Nov '18      | Dec '18       | Jan '19     | Feb '19      | Mar '19      | FY2019 YTD  |
|------------------------------|--------------|--------------|--------------|---------------|--------------|---------------|-------------|--------------|--------------|-------------|
| Beginning Balance            | \$101,143.09 | \$103,037.93 | \$103,607.30 | \$103,851.44  | \$100,807.14 | \$101,919.53  | \$98,481.63 | \$102,083.85 | \$104,477.20 |             |
| Dividends, Interest, & Other |              |              |              |               |              |               |             |              |              |             |
| Income                       | \$ 256.31    | \$ 240.89    | \$ 241.16    | \$ 274.62     | \$ 237.28    | \$ 1,344.45   | \$ 100.83   | \$ 211.03    | \$ 286.06    | \$ 3,192.63 |
| Net Change in Portfolio      | \$ 1,638.53  | \$ 328.48    | \$ 2.98      | \$ (3,318.92) | \$ 875.11    | \$ (4,782.35) | \$ 3,501.39 | \$ 2,182.34  | \$ 787.20    | \$ 1,214.76 |
| Ending Balance               | 103,037.93   | 103,607.30   | 103,851.44   | 100,807.14    | 101,919.53   | 98,481.63     | 102,083.85  | 104,477.22   | 105,550.46   |             |

# Economic Development and Tourism Director Update By Len Capelli

- a) Economic Development Strategic Plan Review - 2019  
Priorities Review and Recommendation

# Economic Development Strategic Plan



## Distribution:

Berryville Area Development Authority  
Berryville Town Council  
Berryville Planning Commission  
Boyce Town Council  
Clarke County Board of Supervisors  
Clarke County Planning Commission  
Economic Development Advisory Committee  
Industrial Development Authority

### Director Economic Development and Tourism Focal Areas 2020 thru 2024

| <i>Item</i>   | <i>Description</i>  | <i>Quarterly Activities / Status Update</i>   |
|---|---|---|
| <p>1. <b>Activities to attract new and assist existing businesses</b></p> | <p>Engage in activities to attract new businesses and assist existing businesses with expansion efforts and other growth activities.</p>    | <p>04-15-2020: This is intended to be a “living document.” Quarterly updates will be incorporated into this “living” plan with 20 updates over the 5-year period by the dates below provided for each item until completion [if applicable].</p> <p>07-15-2020:</p> <p>10-15-2020:</p> <p>01-15-2021:</p> <p>04-15-2021:</p> <p>07-15-2021:</p> <p>10-15-2021:</p> <p>01-15-2022:</p> <p>04-15-2022:</p> <p>07-15-2022:</p> <p>10-15-2022:</p> <p>01-15-2023:</p> <p>04-15-2023:</p> <p>07-15-2023:</p> <p>10-15-2023:</p> <p>01-15-2024:</p> <p>04-15-2024:</p> <p>07-15-2024:</p> <p>10-15-2024:</p> <p>01-15-2025:</p> |
| <p>2. <b>Community communications</b></p>                                 | <p>Communications with the local community regarding economic development issues and activities, website updates, flyers, etc. with the</p> |   |

| <i>Item</i>  | <i>Description</i>   | <i>Quarterly Activities / Status Update</i> |
|--|--|---|
|  | support / assistance of the Public Information Officer.  |   |
| 3. <b>Coordinated economic efforts</b>                     | Joint efforts between Clarke County and Town of Berryville: <ul style="list-style-type: none"> <li>- Economic Development Advisory Committee (EDAC) activities</li> <li>- Industrial Development Authority (IDA) activities</li> <li>- Other / Miscellaneous</li> </ul>  |   |
| 4. <b>Promotions, support, surveys of local businesses</b> | Efforts, assist key businesses in various economic sectors, for example: <ul style="list-style-type: none"> <li>- Agriculture: crops, equine, livestock, etc.</li> <li>- Auto restoration</li> <li>- Construction</li> <li>- Healthcare</li> <li>- Landscaping</li> <li>- Light industrial</li> <li>- Restaurants</li> <li>- Retail</li> </ul> |   |
| 5. <b>Promote rural economic innovation</b>                | Efforts / activities: <ul style="list-style-type: none"> <li>- Alternative energy</li> <li>- E-commerce and telework</li> <li>- Economic and demographic trends updates</li> <li>- Historic downtown, historic buildings, and/or sites</li> <li>- Regional food systems</li> <li>- Sustainable agricultural systems</li> </ul>                 |   |

| <i>Item</i>  | <i>Description</i>   | <i>Quarterly Activities / Status Update</i> |
|--|--|---|
| 6. <b>Public water and sewer</b>                               | Assist efforts of businesses seeking access to public water and sewer in Waterloo and Double Toll Gate Areas.  |   |
| 7. <b>Resources</b>  | Activities / status of existing economic development resources including infrastructure, site availability and readiness, market demand, broadband / internet access, etc.   |   |
| 8. <b>Tax: Transient occupancy [Tourism]</b>                   | <p>Foster ongoing relationships with peer-to-peer, sharing economy, and/or two-sided marketplace.</p> <p>Provide support to the Commissioner of the Revenue and approving agencies, where appropriate, to ensure proper licensing, zoning, regulations, etc.</p>                                     |   |
| 9. <b>Tourism / Economic Development regional associations</b> | <p>Efforts / activities:</p> <ul style="list-style-type: none"> <li>- Appalachian Trail</li> <li>- Artisan Trail</li> <li>- Northern Shenandoah Regional Commission</li> <li>- Shenandoah Valley Tourism Partnership</li> <li>- Spirits Trail</li> <li>- Top of Virginia Regional Chamber</li> </ul> |   |
| 10. <b>Tourism / Economic Development state associations</b>   | <p>Efforts / activities:</p> <ul style="list-style-type: none"> <li>- Virginia Economic Developers Association [VEDA]</li> <li>- Virginia Economic Development Partnership [VEDP]</li> </ul>   |   |

| <i>Item</i>                | <i>Description</i>   | <i>Quarterly Activities / Status Update</i> |
|----------------------------|--|---|
|                            | <ul style="list-style-type: none"> <li>- Virginia Department of Agriculture and Consumer Services [VDACS]</li> <li>- Virginia Tourism Corporation</li> </ul> |   |
| 11. Tourism strategic plan | Assist in updating and formalizing the Tourism Strategic Plan developed by the Town Planner and aid, where possible, its implementation.                     |   |

**Economic Development and Tourism Functions of Other Entities / Agencies**

| <i>Item</i>                              | <i>Description</i>   | <i>Responsibility</i> | <i>Quarterly Activities / Status Update</i> |
|--|--|-----------------------|---|
| 1. Business inventory / business license | Maintain updates to inventory of existing business through business license process. Liaise with new and existing businesses to bring them into compliance with County Code. | COR                   | 04-15-2020:                                 |
|  |  |                       | 07-15-2020:                                 |
|  |  |                       | 10-15-2020:                                 |
|  |  |                       | 01-15-2021:                                 |
|  |  |                       | 04-15-2021:                                 |
|  |  |                       | 07-15-2021:                                 |
|  |  |                       | 10-15-2021:                                 |
|  |  |                       | 01-15-2022:                                 |
|  |  |                       | 04-15-2022:                                 |
|  |  |                       | 07-15-2022:                                 |
|  |  |                       | 10-15-2022:                                 |
|  |  |                       | 01-15-2023:                                 |
|  |  |                       | 04-15-2023:                                 |
| 07-15-2023:                              |  |                       |   |
| 10-15-2023:                              |  |                       |   |
| 01-15-2024:                              |  |                       |   |

| <i>Item</i>                                    | <i>Description</i>   | <i>Responsibility</i>                          | <i>Quarterly Activities / Status Update</i>              |
|--|--|--|--|
|  |  |  | 04-15-2024:<br>07-15-2024:<br>10-15-2024:<br>01-15-2025: |
| 2. Tax: Transient occupancy / business license | Inventory / monitor participating owners / properties for overnight accommodations and notify appropriate departments / agencies to ensure proper licensing, zoning, regulations, etc. | COR  |  |
| 3. Tax: Prepared food and beverage             | Examine cost/benefit of establishing a prepared food and beverage tax.   | Board of Supervisors                           |  |
| 4. Tax: Vacancy tax                            | Investigate vacancy tax to ensure opportunities are not blocked.   | Board of Supervisors                           |  |
| 5. Task Force                                  | Establish a task force of appointed officials and staff to respond, as appropriate and requested, to prospect visits, to review incentive requests, etc.                               | Board of Supervisors, Berryville, Town Council |  |
| 6. Coordinated economic efforts                | Coordinated economic efforts of the Berryville Area Development Authority (BADA), Berryville Planning Commission, Clarke County Planning Commission                                    | Planning Directors Berryville, Clarke          |  |
| 7. Zoning and subdivision ordinances           | Identify any regulatory and procedural provisions that have the potential to unduly restrict or encumber   | Planning Directors Berryville, Clarke          |  |

| <i>Item</i>                        | <i>Description</i>  | <i>Responsibility</i> | <i>Quarterly Activities / Status Update</i> |
|------------------------------------|---|-----------------------|---|
|                                    | compatible economic development activities and suitable, realistic housing development, including review of current use lists of by-right and special uses, and the speed and complexity of the County's and Town of Berryville's review processes. |                       |   |
| <b>8. Branding strategy</b>        | Develop branding strategy, with logo, style guide, etc.   | PIO                   |   |
| <b>9. Community communications</b> | Under the guidance and direction of the Director of Economic Development, communicate with local community on economic development and tourism issues and activities, update website[s], prepare flyers, etc.                                       | PIO                   |   |

*End of document.*

Adjourn

## Supporting Material:

- ✓ Building Department YTD New Single Family Dwellings
- ✓ IDA Follow-up Items
- ✓ Economic Development Advisory Committee Draft Minutes March 20, 2019

Building Department - Clarke County  
New Single Family Dwellings 2019

|           | Battletown | Berryville | Boyce | Chapel | Greenway | Longmarsh | TOTAL | COMMENTS |
|-----------|------------|------------|-------|--------|----------|-----------|-------|----------|
| January   |            |            | 1     |        |          | 1         | 2     |          |
| February  |            |            | 1     | 1      | 1        |           | 3     |          |
| March     |            |            | 3     |        |          | 1         | 4     |          |
| April     |            |            |       |        |          |           |       |          |
| May       |            |            |       |        |          |           |       |          |
| June      |            |            |       |        |          |           |       |          |
| July      |            |            |       |        |          |           |       |          |
| August    |            |            |       |        |          |           |       |          |
| September |            |            |       |        |          |           |       |          |
| October   |            |            |       |        |          |           |       |          |
| November  |            |            |       |        |          |           |       |          |
| December  |            |            |       |        |          |           |       |          |
| TOTAL     |            |            | 5     | 1      | 1        | 2         | 9     |          |
|           |            |            |       |        |          |           |       |          |

IDA Board of Directors  
Follow Up Items Status Report

| <i>Year</i> | <i>Meeting Date</i> | <i>Item</i> | <i>Description</i>   | <i>Follow Up</i> | <i>Status</i> | <i>Date Complete</i> |
|-------------|---------------------|-------------|--|------------------|---------------|----------------------|
| 2018        | 10/25/2018          | 50          | Provide selected economic development priorities to Clerk for review at the January meeting. | IDA Directors    | Waite 01/2019 |                      |
| 2019        | 1/24/2019           | 51          | Correct, process, and post approved minutes on the website.                                  | Lora B. Walburn  | Complete      | 1/25/2019            |
| 2019        | 1/24/2019           | 52          | Provided approved 2019 calendar to scheduler.  | Lora B. Walburn  | Complete      | 1/26/2019            |
| 2019        | 1/24/2019           | 53          | Schedule status update on hotel feasibility study to April agenda.                           | Lora B. Walburn  | Complete      | 4/17/2019            |

Clarke County Economic Development Advisory Committee  
March 20, 2019 Minutes

A meeting of the Economic Development Advisory Committee (EDAC) held in the Berryville/Clarke County Government Center, Berryville, Virginia, on Wednesday, March 20, 2019, at 1:00 PM.

Board: Jim Barb, Chris Bates, Christy Dunkle, Christina Kraybill, Bev McKay, Elizabeth "Betsy" Pritchard

Absent: Eric Myer, John Milleson

Staff: Len Capelli, Cathy Kuehner, Brianna R. Taylor, Lora B. Walburn

Press: Mickey Powell – The Winchester Star

Also Present: Nathan Stalvey

Lora Walburn, EDAC Clerk, provided the following update:

- Eric Myer sent his regrets at being unable to attend his last EDAC meeting. Dr. Myer was first appointed to serve on January 21, 2003.
- At its March 19, 2019, Regular Meeting, the Board of Supervisors named Lee Shaffer to assume the seat vacated by Dr. Myer.
- At its February 19, 2019, Regular Meeting, the Board of Supervisors named Chris Bates to assume the seat vacated by Bryan Conrad, who was first appointed to serve on the EDAC on December 19, 2000.

1. Call to Order

At 1:02 pm, Vice Chair Kraybill called the meeting to order.

2. Adoption of Agenda

To accommodate presenters' scheduling conflict, reverse order of agenda hearing Item 5 before Item 4.

**Christy Dunkle, seconded by Betsy Pritchard, moved to adopt the agenda as modified. The motion carried by the following vote:**

|                |   |     |
|----------------|---|-----|
| Jim Barb       | - | Aye |
| Chris Bates    | - | Aye |
| Christy Dunkle | - | Aye |

|                             |   |        |
|-----------------------------|---|--------|
| Christina Kraybill          | - | Aye    |
| Beverly B. McKay            | - | Absent |
| John Milleson               | - | Absent |
| Eric Myer                   | - | Absent |
| Elizabeth "Betsy" Pritchard | - | Aye    |

### 3. Approval of Minutes

**Christy Dunkle, seconded by Betsy Pritchard, moved to approve the January 23, 2019, minutes as presented. The motion carried as follows:**

|                             |   |        |
|-----------------------------|---|--------|
| Jim Barb                    | - | Aye    |
| Chris Bates                 | - | Aye    |
| Christy Dunkle              | - | Aye    |
| Christina Kraybill          | - | Aye    |
| Beverly B. McKay            | - | Absent |
| John Milleson               | - | Absent |
| Eric Myer                   | - | Absent |
| Elizabeth "Betsy" Pritchard | - | Aye    |

### 4. Hotel Feasibility Study

Nathan Stalvey, Chair Berryville Main Street [BMS] Board, provided an update on its hotel feasibility study. Highlights include:

- Received three bids
- The BMS Executive Committee will open the bids Thursday, March 21, 2019, at 4:00 pm at the Clarke County Historic Association.
- Plan to make a decision by April 1 on which is most qualified to conduct the study.
- BMS hopes to have EDAC's support.
- Anticipate a different outcome from the 2013 report with the increase in visitors, traffic, and venues.
- Report has an intentionality to locate the hotel in Berryville being walking distance to the town center.
- This study will update the 2013 report.
- The Industrial Development Authority is funding the study.

Bev McKay joined the meeting at 1:06 pm

## 5. Director Economic Development Update

Highlights of Len Capelli's update include:

- Two pieces of property for sale close to the Industrial Park:
  - 50 acres, not totally contiguous
  - 12 acres with an address of 0 Jack Enders Boulevard
  - Working to get properties listed in Virginia Scan.
  - Christy Dunkle put forth that she would be available to talk about water and sewer with interested parties.
  - Properties zoned BP under the Town's ordinances.
- Food processing facility inquiry:
  - Received an inquiry this week.
  - Company seeking a 50,000 square-foot building by the end of this summer.
  - While Clarke cannot accommodate this request, the county will remain on the list for future leads of this type.
- Attended GoVirginia meetings last week at Lord Fairfax Community College and Harrisonburg:
  - Valley Region includes: Augusta, Bath, Clarke, Frederick, Highland, Page, Rockbridge, Rockingham, Shenandoah, Warren, and the cities of Harrisonburg, Buena Vista, Lexington, Winchester, Staunton, Waynesboro
  - Targeted growth industries in the valley region include:
    - Financial and business services
    - Health care
    - Light manufacturing
    - Value-added food manufacturing
    - Bio-medical / Bio-technical
    - IT / Communications
    - Transportation / Logistics
  - Mr. Capelli supports teaming with colleges in the region to work on development of farm robotics.
- Attending the spring VETA / Virginia Economic Development Association conference next week to discuss ways to finance ventures to aid in attracting business to the region.
- Job Funding:
  - Recently passed reinstating most of the funds for the jobs program.
  - Recap of legislative session will be held at the George Washington Hotel tomorrow morning.

- Plan to review how to work with local businesses to aid in hiring and application of grants to help attract and retain employees.
- Advertising
  - WINC starting to run a series of 30-second ads promoting the Shenandoah Valley Spirit Trail. Ads will run for the remainder of March and in April and May, to help promote wineries, breweries, and distilleries.
    - Breweries, wineries, and distilleries:
      - In response to Bev McKay's query, Christy Dunkle advised that she has fielded inquiries about a distillery on Boom Road.
      - Len Capelli added that he has had several discussions with individuals interested in farm-based distilleries; but, all have backed off due to zoning issues limiting the number of events, number persons, hours of operation, etc.
      - Limiting Factors:
        - + Special events: County special event permit limits events to nine calendar days per year; to conduct a greater number of special events would require special use permit.
        - + Water: Breweries use a great deal of water.
    - Shenandoah Valley Tourism Partnership Journalists Tour May 6 through 9. On May 7, four journalists will be in Clarke:
      - Breakfast at Smithfield Farm
      - Lunch and wine tasting at Veramar Vineyard
      - Tour and fresh strawberry picking at McIntosh Fruit Farm
  - Battletown Inn Update:
    - Owner Jerry Johnson assures that it will be open by fall.
    - Sue Whitbeck, Mr. Johnson's spouse, is taking over the renovation.
  - Airbnb and Other Similar Entities:
    - Clarke on list to be granted ability to collect occupancy tax.
    - County attorney is reviewing the agreement.
    - Contacted Vice President of Finance and the head of the tax department for Expedia that owns HomeAway and Vacation Rentals By Owners, online booking agencies having over 300 listings in Clarke.
    - Approximately 190 to 230 Airbnb's registered in Clarke.
    - Expedia is larger given that it owns Hotels.com and other on-line booking agencies.
    - City of Abingdon getting \$1,000 per month in occupancy tax from Airbnb.

- Meeting tomorrow for lunch with the fellow heading up the relationship with the state, the detention center, and the Inland Port Authority. Hoping to start a dialogue on how Clarke might help this endeavor.

#### Economic Development Strategic Plan

- Christy Dunkle asked for a point of clarification on tourism strategic plan.
- Tourism Plan is not just for the Town of Berryville but for both Town and County.
- The Tourism Plan she developed needs update for both the County and Town.

#### Town of Berryville Business Update with Christy Dunkle

- C2Management:
  - o Moving from WoodMark building to Winchester Cold Storage building.
  - o Renovations being done inside the building.
  - o Utility work will be done across the street before the road is paved sometime this spring.
  - o Business was able to design what it needed to give it the space it needed.
- Presto Dinners: Take-away meals will be locating near former Rosie's Bakery.
- Spot next to Reed Pharmacy: There is some current interest but no specific information.
- NIK's: Will be reopening soon.
- Kelsey Cakes: Limited days but seem to be doing well.

#### 6. Next Meeting

The next meeting is scheduled for Wednesday, May 15, 2019.

#### 7. Adjournment

Being no further business, at 1:33 pm, Vice Chair Kraybill adjourned the meeting.

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Minutes recorded and transcribed by Lora B. Walburn