

Industrial Development Authority of the Clarke County Virginia  
Board of Directors  
June 13, 2019, Minutes

A special meeting of the Industrial Development Authority of the Clarke County Virginia held in the Berryville-Clarke County Government Center, Berryville, Virginia, on Thursday, June 13, 2019, at 1:00 PM.

Directors Present: Mark Cochran, English Koontz, Rodney Pierce, Isreal Preston, William Waite

Directors Absent: Brian Ferrell, Paul Jones – deceased

Board of Supervisors Liaison Present: David Weiss

County Staff Present: Cathy Kuehner, Lora Walburn

Press Present: Mickey Powell

Others Present: Stefan Donner, Mike Graff, Philip Evans

1. Call to Order

At 1:00 pm, Mark Cochran called the meeting to order.

2. Adoption of Agenda

**Director Koontz, seconded by Director Pierce, moved to adopt the agenda as presented. The motion carried as follows:**

Mark Cochran	-	Aye
Brian Ferrell	-	Absent
Paul Jones	-	Absent - Deceased
English Koontz	-	Aye
Rodney Pierce	-	Aye
Isreal Preston	-	Aye
William Waite	-	Aye

3. Shenandoah University Bond Modification

Mike Graff, Partner – McGuireWood LLP, and Philip Evans, General Counsel - Shenandoah University [SU], appeared before the Board to request a modification to the Educational Facilities Revenue Bonds Series 2011. Highlights of overview include:

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- Mike Graff affirmed that McGuireWood represents the IDA.
- Currently, the IDA holds a revenue bond for SU.
- The IDA serves as a pass through under the federal tax law that allows certain types of projects to be incentivized through tax-advantage financing.
- Federal tax law allows for certain types of projects and the bond under review is related to a 501c3 non-profit organization.
- SU is an educational non-profit and entitled under the federal tax law to borrow money for a capital project to do a tax-exempt bond.
- Under the applicable tax laws, SU must find a governmental entity to help it achieve the tax advantage on financing.
- The economic driver is that the lenders that buy tax exempt bonds do not have to pay income tax on the interest earned on the loan allowing them to offer the loan at a lower interest rate.
- No credit of the IDA nor Clarke County is required on the bond issue.
- All costs and expenses, including fees charged to provide the service, are paid by the applicant.
- SU has negotiated with BB&T changes to the financing that are advantageous including pushing the term of the loan out and lowered interest rate. These modifications, under federal tax law, result in the bond being treated as if it were reissued for tax purposes.
- The IDA is asked to approve the modifications via resolution and authorize its officers to sign the modification documents.

Highlights of Board questions and responses from Mike Graff and Mr. Evans include:

- Director Pierce asked how much was currently owed on the existing bond.
  - o \$7.9 million outstanding.
  - o IDA fees from SU are current and would continue under the modification.
  - o Annual IDA fee is 1/20<sup>th</sup> of one percent of the outstanding balance.
- Director Pierce asked for clarification as to the reason why SU initially came to Clarke County whether it should return to Frederick.
  - o Frederick County was over its limit and could not process the bond request. It must have issued \$10 million, which is the limit.
  - o There is a subset of tax-exempt bonds called bank-qualified tax-exempt bonds that means that the lender on the bonds does not have to pay income tax on the interest earned and it also gets to deduct a percentage of the carry cost on the loan.
  - o There are limits on the number of bank-qualified bonds that can be issued within any particular jurisdiction.
  - o Clarke has no plans to issue debt this year.

- Clarke, with \$7.9MM outstanding, would have \$2.1MM left for calendar year 2019.
- Director Waite inquired about the competitiveness of rate received by Clarke's IDA.
  - Clarke's rate is "in the ballpark." Rates are more commonly seen at one eighth of a percent annual or a tenth of a percent annual.
  - Changing the annual fee from SU at this stage would present some challenges.
  - It would make sense, going forward, for the IDA to review its fees.
  - Mike Graff offered to assist the Board in compiling bond fees from neighboring jurisdictions for comparison.
- Chairman Cochran and Director Waite asked for the new term of the bond.
  - 2029 – ten years.
  - Concern expressed that the IDA would be locked into a low rate for a decade.
  - Bond originated 2011.
  - SU and BB&T, via letter agreement, extended the loan from 2021 to 2025. This extension did not result in a significant enough change to require coming back to the IDA.
  - Director Koontz provided the following:
    - Typically, if changing one thing about a debt issue, it is a minor modification.
    - In SU's request before the Board, the term and rate were being modified that qualifies it as a major modification requiring involvement by the IDA.
    - For the IDA's purposes, it should use 2021 since it was the last date the IDA was officially involved.
  - Mike Graff and Philip Evans indicated that they would confirm the date of the extension.
  - Mike Graff added that the type of modification determines whether the borrower has to go back to the issuing authority; and, the triggering change for this modification is the lowering of the interest rate by more than 25 basis points or a quarter of a percent.
- Directors Preston and Waite asked for clarification for the purpose of the meeting.
  - Approve the terms of the modification in the form of the modification agreement.
  - Authorize officers to sign the necessary documents. Mr. Graff noted that some of the paperwork for the bond modification was not yet ready for signature.
  - The agreement deals only with the lowering of the interest rate.
- Fees:
  - David Weiss opined that while the fee structure was a legitimate issue it might be a separate question.
  - Director Waite asked for a review of fees from other localities.
  - Mike Graff offered to assist in compiling fee schedules for Board review.

- Director Koontz asked if the IDA would be charging a fee for modification.
  - o Mike Graff stated that typically an application fee would not be charged; however, if the IDA's fee document provided otherwise, SU would, in due course, pay the fee provided for in the IDA's current policy.

Director Waite stated for the record that as IDA Secretary he would be signing the documents; therefore, he would not make the motion to approve the resolution nor authorize the officers to sign the necessary documents.

David Weiss clarified that all things were staying the same within the document and the agreement other than the interest rate and the put date.

Mike Graff affirmed noting that the IDA was being asked to approve the resolution to authorize the described changes in the form of the document provided along with the resolution.

Chairman Cochran asked for clarification from Director Waite on his willingness to move forward.

Director Waite opined that the concept, extension, and purpose were fine; however, due to the number of years the loan was being extended, he would have liked to have some comparison on the rate.

Philip Evans explained that the loan was only being extended four years.

Director Koontz remarked that the IDA did not know that the loan was previously extended from 2021 to 2025.

Director Waite commented that he was not willing to stand on a couple hundred dollars per year and hold the matter up. He stated that moving forward the IDA should re-evaluate the fee structure to ensure that it is constantly competitive; and, when renegotiating loans, it must ensure that there is policy and procedure in place.

Mike Graff, in response to questions from several Directors, stated that the IDA could raise its fees without notice; but, it would need to decide whether that was the right policy.

Director Waite asked if the two issues could be separated, moving forward with the terms while recognizing that the IDA wants some type of competitive fee.

Mike Graff responded that for the purpose of closing on the modification that SU and BB&T would want to know that the modification had been fully approved. He suggested that the IDA might want to make SU aware that it could be subject to increased fees in future. He recommended adding a note in the document that going forward extensions must be approved by the IDA, which would provide it the ability to impose other conditions.

Mike Graff proposed that the IDA adopt the resolution as presented subject to Director's Waite's amendment and he would work to put the language in the final resolution.

Philip Evans added that any extension beyond 2029 SU would have to pay the then-current fee.

**Director Koontz, seconded by Director Preston, moved to adopt the resolution provided that the amendments suggested by Director Waite are incorporated. The motion carried by the following vote:**

Mark Cochran	-	Aye
Brian Ferrell	-	Absent
Paul Jones	-	Absent - Deceased
English Koontz	-	Aye
Rodney Pierce	-	Aye
Isreal Preston	-	Aye
William Waite	-	Aye

Mike Graff assured that he would provide the revised resolution as soon as possible to staff and would be in touch on the execution of the final documents by IDA officers.

**RESOLUTION OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF CLARKE COUNTY,  
VIRGINIA RELATING TO THE AMENDMENT OF ITS EDUCATIONAL FACILITIES REVENUE  
BOND (SHENANDOAH UNIVERSITY), SERIES 2011**

**WHEREAS**, the Industrial Development Authority of Clarke County, Virginia (the "Authority"), has previously issued its Educational Facilities Revenue Bond (Shenandoah University), Series 2011 (the "Bond"), and loaned the proceeds to Shenandoah University (the "University") pursuant to a Bond Purchase and Loan Agreement dated as of December 15, 2011 (the "Loan Agreement"), between the Authority, the University and Branch Banking and Trust Company, as purchaser of the Bond (the "Bank");

**WHEREAS**, the Bond is secured by a promissory note of the University dated December 27, 2011 (the "Note"), in an amount equal to the principal amount of the Bond;

**WHEREAS**, the Borrower and the Bank have determined that it is desirable to make certain amendments to the interest rate provisions and other modifications to the Bond, the Note and the Loan Agreement; and

**WHEREAS**, there have been presented to this meeting drafts of a First Amendment to Bond Purchase and Loan Agreement (the "Amendment Agreement"), between the Authority, the Borrower and the Bank, together with the forms of the Authority's Allonge to the Bond (the "Allonge to the Bond") and the Borrower's Allonge to the Promissory Note (the "Allonge to the Note" and, together with the Amendment Agreement and the Allonge to the Bond, the "Documents"), which Documents the Authority proposes to execute or approve to carry out the modifications of the Bond, copies of which Documents shall be filed with the records of the Authority;

**BE IT RESOLVED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF CLARKE COUNTY, VIRGINIA:**

1. The changes to the interest rate provisions and other modifications as set forth in the Documents are hereby approved.
2. The forms of the Documents submitted to this meeting are hereby approved. The Chair and Vice Chair of the Authority, either of whom may act, are hereby authorized to execute and deliver the Amendment Agreement.
3. The Chair and Vice Chair of the Authority, either of whom may act, are hereby authorized and directed to execute the Allonge to the Bond by manual or facsimile signature, and the Secretary and Assistant Secretary of the Authority, either of whom may act, are authorized and directed to have the seal of the Authority affixed or printed thereon and to attest such seal by manual or facsimile signature. The Chair and Vice Chair of the Authority, either of whom may act, are authorized and directed to deliver the Allonge to the Bond to the Bank upon terms provided in the Loan Agreement, as amended by the Amendment Agreement.
4. The Documents shall be in substantially the forms presented to this meeting, which are hereby approved, with such completions, omissions, insertions and changes as the Authority counsel and the executing officer of the Authority may approve, with execution constituting conclusive evidence of approval of any such completions, omissions, insertions and changes.
5. The Chair and Vice Chair of the Authority, either of whom may act, are hereby authorized and directed to execute, deliver and file all documents, certificates and instruments, including, without limitation, the execution and filing of an Internal Revenue Service Form 8038, and to take all such further action as they may consider necessary or desirable in connection with the issuance, execution and delivery of the Allonge to the Bond.
6. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto.
7. All fees, costs and expenses of the Authority and its counsel incurred in connection with the review, approval and execution of the Documents shall be paid by the Borrower, including, but not limited to, the Authority's modification fee of \$1,000. The Borrower shall continue to pay the Authority's annual, ongoing administrative fee of 1/20<sup>th</sup> of one percent of the outstanding principal amount of the Bond through December 31, 2029, upon which date such annual administrative fee on the Bond shall be subject to change.
8. The Borrower shall indemnify and save harmless the Authority, its officers, directors, employees and agents, from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses in any way connected with the Documents.
9. All other acts of the officers of the Authority that are in conformity with the purposes and intent of this resolution and in furtherance of the execution and delivery of the Allonge to the Bond are hereby ratified, approved and confirmed.
10. This resolution shall take effect immediately upon its adoption.

#### CERTIFICATE

The undersigned Secretary of the Industrial Development Authority of Clarke County, Virginia (the "Authority"), hereby certifies that the foregoing is a true, correct and complete copy of a resolution adopted by a majority of the Directors of the Authority present and voting at a meeting duly called and held on June 13, 2019, in accordance with law, and that such resolution has not been repealed, revoked, rescinded or amended, and is in full force and effect on the date hereof.

**WITNESS** the following signature this \_\_\_ day of \_\_\_\_\_, 2019.

Approved 07/25/2019

(SEAL)

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Secretary, Industrial Development Authority of  
Clarke County, Virginia

Director Preston asked staff to provide him the current fee schedule.

Director Waite asked staff to add fee schedule review to the July agenda.

#### Next Meeting

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

#### 4. Adjournment

At 1:38 pm, **Director Waite, seconded by Director Koontz, moved to adjourn the meeting. The motion carried by the following vote:**

Mark Cochran	-	Aye
Brian Ferrell	-	Absent
Paul Jones	-	Absent - Deceased
English Koontz	-	Aye
Rodney Pierce	-	Aye
Isreal Preston	-	Aye
William Waite	-	Aye

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