

CLARKE COUNTY BOARD OF SUPERVISORS
April 8, 2010 Special Meeting 12:00 p.m.
Meeting Room AB

At a special meeting of the Board of Supervisors of Clarke County, Virginia, held in the Meeting Room AB, 2nd Floor Berryville Clarke County Joint Government Center, 101 Chalmers Court, 2nd Floor, Berryville, Virginia on Thursday, April 8, 2010.

Board of Supervisors Members Present

Barbara Byrd; A. R. Dunning, Jr.; J. Michael Hobert; David Weiss

Board of Supervisors Members Absent

John Staelin

Staff Present

David Ash, Tom Judge, Lora Walburn

Others Present

Robina Rich Bouffault, Tony Roper, Keith Dalton, Becky Layne

Call to Order

Chairman Hobert called the Board of Supervisors meeting to order at 12:00 p.m.

Supervisor Dunning joined the meeting at 12:06 p.m.

Consider adoption of a resolution to provide the option to finance the additional High School Construction Bonds in the amount of \$9,790,000 through Build America Bonds rather than VPSA should that option prove advantageous.

Chairman Hobert reviewed the purpose of the meeting to review financing options for high school construction bond funds through Build America Bonds versus VPSA.

At the request of the Chair, Tom Judge provided an overview of the funding process including distribution and review of the analysis of bond funds provided by Morgan Keegan. He advised that the resolution would allow the County to exercise the alternate option to use stimulus funding should it become available. He noted the County would still be given final approval.

Highlights of the teleconference with Chris Kulp, Bond Counsel, include:

- Overview of Build America Bonds that did not exist prior to 2009 and will be available through calendar year 2010.
- Most localities seeking funding have taken advantage of the federal subsidy option.
- Two localities opted not to use these funds. In one locality, the borrowing was at too low a level to realize a sufficient savings. In the other locality, it was a timing issue with the inability to call a special council meeting in sufficient time to consider the option.
- There is an anticipated savings of \$300,000. Savings are projected to be \$400,000. (\$300,000 on net present-value basis.)
- Upon application, receive direct-pay subsidy every six months on the date the payment is due that is equal to 35% of the interest being paid on that date.
- Build America Bonds are anticipated to be the lower-cost option particularly in the middle and later maturities.
- Will require additional documentation that will increase legal costs associated with the bonding.
- There is no absolute guarantee that the federal government will not change the program but it is highly unlikely that they would act retroactively for bonds issued under the current program.
- The resolution previously adopted by the School Board is acceptable with no additional action required.
- Additional strings that the federal government might tie to the funds were discussed.
- The Buy America or Davis Bacon provisions do not apply to Build America Bonds.
- Bond counsel is unaware of any other unusual reporting or strings for the Build America option. Further, taking advantage of this option should not change the way the locality would normally go about procuring and building the project. Bond counsel will provide a written statement to that effect.

Supervisor Dunning moved to adopt Resolution 10-08R as presented allowing the Supervisors the option that will be exercised by the Chair and the County Administrator to select the optional form of financing.

Following further discussion, **Supervisor Dunning** amended his motion to add that **approval contingent upon the receipt of a written statement that taking advantage of this option should not change the way the locality would normally go about procuring and building the project.**

The motion carried by the following vote:

J. Michael Hobert, Chair	- Aye
David S. Weiss, Vice Chair	- Aye
Barbara J. Byrd	- Aye
A.R. Dunning, Jr.	- Aye
John R. Staelin	- Absent

Resolution No. 10-08R

A Resolution Supplementing A Prior Resolution Authorizing The Issuance Of Not To Exceed \$9,790,000 General Obligation School Bonds Of The County Of Clarke, Virginia, Series 2010a, To Be Sold To The Virginia Public School Authority By Further Authorizing Such Bonds To Be Issued In One Or More Series, Including A Series Of Build America Bonds And Providing For The Form And Details Thereof

WHEREAS, the Board of Supervisors (the "Board") of the County of Clarke, Virginia (the "County"), has determined that it is necessary and expedient to borrow an amount not to exceed \$9,790,000 and to issue its general obligation school bonds for the purpose of financing certain capital projects for school purposes; and

WHEREAS, the County held a public hearing, duly noticed, on March 16, 2010, on the issuance of the Bonds (as hereinafter defined) in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the "Virginia Code"); and

WHEREAS, the School Board of the County has, by resolution, requested the Board to authorize the issuance of the Bonds and consented to the issuance of the Bonds; and

WHEREAS, the Bond Sale Agreement (as defined below) shall indicate that \$9,790,000 is the amount of proceeds requested (the "Proceeds Requested") from the Virginia Public School Authority (the "VPSA") in connection with the sale of the Bonds; and

WHEREAS, on March 16, 2010, the Board authorized the issuance and sale of general obligation school tax-exempt bonds in an aggregate principal amount not to exceed \$9,790,000, certain details of such bonds and other transactions relating to the issuance of the sale of the bonds (the "Authorizing Resolution"); and

WHEREAS, on March 25, 2010 VPSA's Board of Commissioners approved a series resolution authorizing the issuance of VPSA of School Financing Bonds for VPSA's spring pool financing (the "VPSA Resolution"); and

WHEREAS, the VPSA Resolution provides an option for a local issuer to sell to VPSA "Build America Bonds" (the "Build America Bond Option") pursuant to Section 54AA of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the County desires to take advantage of the Build America Bond Option; and

WHEREAS, the Board desires to supplement the Authorizing Resolution to provide for the option for the County to sell Build America Bonds to VPSA; and

WHEREAS, the Board has determined it is necessary to delegate to the Chairman of the Board and the County Administrator authority to determine certain details of the Bonds including whether to issue any Bonds as Build America Bonds, the redemption provisions of the Bonds and other necessary details of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF CLARKE, VIRGINIA:

1. **Authorization of Bonds and Use of Proceeds.** In the Authorizing Resolution, the Board has determined that it is advisable to contract a debt and issue and sell its general obligation school bonds in one or more series in an aggregate principal amount not to exceed \$9,790,000 (the "Bonds") for the purpose of financing certain capital projects for school purposes (the "School Projects"). The Chairman of the Board and the County Administrator are each hereby authorized to approve the issuance of a series of the Bonds as Build America Bonds (Federally Taxable) ("Build America Bonds") (cash subsidy payment from the United States Treasury) and make an election and designation of such Bonds as Build America Bonds (Federally Taxable). The issuance and sale of the Bonds as tax-exempt bonds shall be upon the terms established by the Authorizing Resolution (except as expressly modified by this Resolution), and the issuance and sale of the Bonds as Build America Bonds shall be upon the terms established by this Resolution.

2. **Details of the Bonds.** The Bonds shall be issued in one or more series, be dated the date of issuance and delivery of the Bonds, shall be designated, as appropriate, "General Obligation School Bonds, Series 2010A" and/or "General Obligation School Bonds, Series 2010B (Federally Taxable - Build America Bonds)"; shall bear interest from the date of delivery thereof payable semi-annually on each January 15 and July 15 beginning January 15, 2011 (each an "Interest Payment Date"), at the rates established in accordance with Section 3 of this Resolution; and shall mature on July 15 in the years (each a "Principal Payment Date") and in the amounts acceptable to any of the Chairman of the Board and the County Administrator (the "Principal Installments"), subject to the provisions of Section of this Resolution.

3. **Interest Rates and Principal Installments.** The Chairman of the Board and the County Administrator, either of whom may act, are hereby authorized and directed to accept the interest rates on the Bonds established by the VPSA, provided that each interest rate shall be no more than five one-hundredths of one percent (0.05%) over the interest rate to be paid by the VPSA for the corresponding principal payment date of the bonds to be issued by the VPSA (the "VPSA Bonds"), a portion of the proceeds of which will be used to purchase the Bonds, and provided further that the true interest cost of the Bonds does not exceed six percent (6.0%) per annum for tax-exempt bonds or eight percent (8.0%) per annum for Build America Bonds (not taking into account the cash subsidy from the United States Treasury).

4. **Form of the Bonds.** The Bonds of each Series shall be initially in the form of a single, temporary typewritten bond substantially in the form approved in the Authorizing Resolution for tax- exempt bonds and substantially in the form of Exhibit A attached hereto for Build America Bonds.

5. **Prepayment or Redemption.**

(a) *Tax-Exempt Bonds*

The Principal Installments of any tax-exempt Bonds held by the VPSA coming due on or before July 15, 2020, and the definitive Bonds for which the Bonds held by the VPSA may be exchanged that mature on or before July 15, 2020, are not subject to prepayment or redemption prior to their stated maturities. The Principal Installments of any tax-exempt Bonds held by the VPSA coming due after July 15, 2020, and the definitive bonds for which the Bonds held by the VPSA may be exchanged that mature after July 15, 2020, are subject to prepayment or redemption at the option of the County prior to their stated maturities in whole or in part, on any date on or after July 15, 2020, upon payment of the prepayment or redemption prices (expressed as percentages of Principal Installments to be prepaid or the principal amount of the tax-exempt Bonds to be redeemed) set forth below plus accrued interest to the date set for prepayment or redemption:

Dates	Prices
July 15, 2020 through July 14, 2021	101%
July 15, 2021 through July 14, 2022	100½
July 15, 2022 and thereafter	100

provided, however, that the tax-exempt Bonds shall not be subject to prepayment or redemption prior to their stated maturities as described above without first obtaining the written consent of the registered owner of the Bonds. Notice of any such prepayment or redemption shall be given by the Bond Registrar to the registered owner by registered mail not more than ninety (90) and not less than sixty (60) days before the date fixed for prepayment or redemption.

(b) *Build America Bonds*

The Board hereby delegates to the Chairman of the Board and the County Administrator, either of whom may act, the authority, subject to the limitations contained herein, to determine the redemption provisions of any Bonds elected to be treated as Build America Bonds pursuant to the delegation set forth in Section 1 herein. Based on financial market considerations any Build America Bonds may (i) contain the option to be redeemed at a price for the bonds that is not to exceed 101% of the principal amount of the bonds to be redeemed, no earlier than 8 years and no later than 10.5 years, after the date of issue, and/or (ii) have a “make whole redemption” price based on financial market conditions and (iii) upon the occurrence of an “Extraordinary Event” (as hereinafter defined) be optionally redeemed on any business day. The Build America Bonds which are subject to such redemption may be redeemed, before their respective maturities on any date not earlier than the redemption date, determined as set forth above, in whole or in part (in integral multiples of \$5,000), upon payment of the redemption price, determined as set forth above, plus accrued interest to the redemption date. Provided, however, that the Build America Bonds shall not be subject to prepayment or redemption prior to their stated maturities as described above without first obtaining the written consent of the registered owner of the Build America Bonds. Notice of any such prepayment or redemption shall be given by the Bond Registrar to the registered owner by registered mail not more than ninety (90) and not less than sixty (60) days before the date fixed for prepayment or redemption.

An “Extraordinary Event” will have occurred if a material adverse change has occurred to Section 54AA or Section 6431 of the Code (as such Sections were added by Section 1531 of the American Recovery and Reinvestment Act of 2009, pertaining to “Build America Bonds”) pursuant to which the County’s 35% cash subsidy payment from the United States Treasury is reduced or eliminated.

6. **Certificate as to Arbitrage and Use of Proceeds Certificate.** The Chairman of the Board and County Administrator, either of whom may act, and such officer or officers of the County as any of them may designate are hereby authorized and directed to execute one or more Certificate as to Arbitrage and a Use of Proceeds Certificate each setting forth the expected use and investment of the proceeds of the Bonds and

containing such covenants as may be necessary in order to show compliance with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and applicable regulations relating to the exclusion from gross income of interest on applicable tax-exempt Bonds and on applicable VPSA tax-exempt bonds. The Board covenants on behalf of the County that (i) the proceeds from the issuance and sale of the Bonds will be invested and expended as set forth in such Certificate as to Arbitrage and such Use of Proceeds Certificate and that the County shall comply with the other covenants and representations contained therein and (ii) the County shall comply with the provisions of the Code so that interest on any tax-exempt Bonds and on the corresponding VPSA tax-exempt Bonds will remain excludable from gross income for Federal income tax purposes or for any Build America Bonds the County will comply with Section 54AA or Section 6431 of the Code.

* * *

The undersigned Clerk of the Board of Supervisors of the County of Clarke, Virginia, hereby certifies that the foregoing constitutes a true and correct extract from the minutes of a special meeting of the Board of Supervisors held on April 8, 2010, and of the whole thereof so far as applicable to the matters referred to in such extract. I hereby further certify that such meeting was a special meeting and that, during the consideration of the foregoing resolution, a quorum was present. Members present at the meeting were: Barbara Byrd; A. R. Dunning, Jr.; J. Michael Hobert; David Weiss. Members absent from the meeting were: John R. Staelin. Members voting in favor of the foregoing resolution were: Barbara Byrd; A. R. Dunning, Jr.; J. Michael Hobert; David Weiss. Members voting against the foregoing resolution were: none. Members abstaining from voting on the foregoing resolution were: none.

WITNESS MY HAND and the seal of the Board of Supervisors of the County of Clarke, Virginia, this 8th day of April, 2010.

Clerk, Board of Supervisors of
the County of Clarke, Virginia

[SEAL]

EXHIBIT A

(FORM OF TEMPORARY BOND)

NO. TR-1

\$ _____

UNITED STATES OF AMERICA

COMMONWEALTH OF VIRGINIA

COUNTY OF CLARKE

General Obligation School Bond

Series 2010[B] [Federally Taxable – Build America Bonds]

The **COUNTY OF CLARKE, VIRGINIA** (the "County"), for value received, hereby acknowledges itself indebted and promises to pay to the **VIRGINIA PUBLIC SCHOOL AUTHORITY** the principal amount of _____ DOLLARS (\$ _____), in annual installments in the amounts set forth on Schedule I attached hereto payable on July 15, 20__ and annually on July 15 thereafter to and including July 15, 20__ (each a "Principal Payment Date"), together with interest from the date of this Bond on the unpaid installments, payable semi-annually on January 15 and July 15 of each year, commencing on January 15, 2011 (each an "Interest Payment Date"; together with any Principal Payment Date, a "Payment Date"), at the rates per annum set forth on Schedule I attached hereto, subject to prepayment or redemption as hereinafter provided. Both principal of and interest on this Bond are payable in lawful money of the United States of America.

For as long as the Virginia Public School Authority is the registered owner of this Bond, U.S. Bank National Association, as bond registrar (the "Bond Registrar"), shall make all payments of principal, premium, if any, and interest on this Bond, without the presentation or surrender hereof, to the Virginia Public School Authority, in immediately available funds at or before 11:00 a.m. on the applicable Payment Date or date fixed for prepayment or redemption. If a Payment Date or date fixed for prepayment or redemption is not a business day for banks in the Commonwealth of Virginia or for the Commonwealth of Virginia, then the payment of principal, premium, if any, or interest on this Bond shall be made in immediately available funds at or before 11:00 a.m. on the business day next succeeding the scheduled Payment Date or date fixed for prepayment or redemption. Upon receipt by the registered owner of this Bond of said payments of principal, premium, if any, and interest, written acknowledgment of the receipt thereof shall be given promptly to the Bond Registrar, and the County shall be fully discharged of its obligation on this Bond to the extent of the payment so made. Upon final payment, this Bond shall be surrendered to the Bond Registrar for cancellation.

The full faith and credit of the County are irrevocably pledged for the payment of the principal of and the premium, if any, and interest on this Bond. The resolution adopted by the Board of Supervisors authorizing the issuance of the Bonds provides, and Section 15.2-2624, Code of Virginia 1950, as amended, requires, that there shall be levied and collected an annual tax upon all taxable property in the County subject to local taxation sufficient to provide for the payment of the principal, premium, if any, and interest on this Bond as the same shall become due which tax shall be without limitation as to rate or amount and shall be in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

This Bond is duly authorized and issued in compliance with and pursuant to the Constitution and laws of the Commonwealth of Virginia, including the Public Finance Act of 1991, Chapter 26, Title 15.2, Code of Virginia 1950, as amended, and resolutions duly adopted by the Board of County Supervisors of the County and the School Board of the County to provide funds for capital projects for school purposes.

This Bond may be exchanged without cost, on twenty (20) days written notice from the Virginia Public School Authority, at the office of the Bond Registrar on one or more occasions for one or more temporary bonds or definitive bonds in marketable form and, in any case, in fully registered form, in denominations of \$5,000 and whole multiples thereof, and having an equal aggregate principal amount, having principal installments or maturities and bearing interest at rates corresponding to the maturities of and the interest rates on the installments of principal of this Bond then unpaid. This Bond is registered in the name of the Virginia Public School Authority on the books of the County kept by the Bond Registrar, and the transfer of this Bond may be effected by the registered owner of this Bond only upon due execution of an assignment by such registered owner. Upon receipt of such assignment and the surrender of this Bond, the Bond Registrar shall exchange this Bond for definitive Bonds as hereinabove provided, such definitive Bonds to be registered on such registration books in the name of the assignee or assignees named in such assignment.

[The principal installments of this Bond which mature on or before _____, 20__ are not subject to redemption before maturity. Bonds which mature after _____ 1, 20__ may be redeemed, at the option of the County, before their respective maturities on any date not earlier than _____ 1, 20__, in whole or in part (in integral multiples of \$5,000), upon payment of the redemption price of ____ plus accrued interest to the redemption date.

[and/or]

The principal installments of this Bond [maturing on or before _____, 20__] are subject to redemption prior to maturity at the option of the County, in whole or in part, on any business day, at the Make-Whole Redemption Price (as defined herein). The "Make-Whole Redemption Price" is the greater of (i) the issue price of this Bond (but not less than 100%) of the principal installments amount of this Bond to be redeemed or (ii) the sum of the present value of the remaining scheduled payments of principal and interest on the principal installments to the maturity date of this Bond to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which the principal installments of this Bond to be redeemed, discounted to the date on which the principal installments of this Bond are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate plus [15] basis points, plus, in each case, accrued and unpaid interest on the bonds of this series to be redeemed on the redemption date.

The principal installments bonds of this Bond are subject to redemption at any time prior to their maturity at the option of the County, in whole or in part, upon the occurrence of an Extraordinary Event (as defined herein), at a redemption price (the "Extraordinary Optional Redemption Price") equal to the greater of (i) the issue price of this Bond (but not less than 100%) of the principal amount of such Bonds to be redeemed or (ii) the sum of the present value of the remaining scheduled payments of principal and interest on to the maturity date of this Bond to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which this Bond are to be redeemed, discounted to the date on which the bonds of this series are to be redeemed on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate, plus [100] basis points, plus, in each case, accrued and unpaid interest on the bonds of this series to be redeemed on the redemption date.

An "Extraordinary Event" will have occurred if a material adverse change has occurred to Section 54AA or Section 6431 of the Code (as such Sections were added by Section 1531 of the American Recovery and Reinvestment Act of 2009, pertaining to "Build America Bonds") pursuant to which the County's 35% cash subsidy payment from the United States Treasury is reduced or eliminated.

For purpose of determining the Make-Whole Redemption Price or Extraordinary Optional Redemption Price, the following definition applies:

"Treasury Rate" means, with respect to any redemption date for a particular Bond, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days, but not more than 45 calendar days, prior to the redemption date (excluding inflation indexed securities) (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the maturity date of the Bond to be redeemed; provided, however that if the period from the redemption date to such maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

Provided, however, that this Bond shall not be subject to prepayment or redemption prior to their stated maturities as described above without the prior written consent of the registered owner of this Bond. Notice of any such prepayment or redemption shall be given by the Bond Registrar to the registered owner by registered mail not more than ninety (90) and not less than sixty (60) days before the date fixed for prepayment or redemption.

All acts, conditions and things required by the Constitution and laws of the Commonwealth of Virginia to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed in due time, form and manner as so required, and this Bond, together with all other indebtedness of the County, is within every debt and other limit prescribed by the Constitution and laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Clarke has caused this Bond to be issued in the name of the County of Clarke, Virginia, to be signed by its Chairman or Vice-Chairman, its seal to be affixed hereto and attested by the signature of its Clerk or any of its Deputy Clerks, and this Bond to be dated _____, 2010..

COUNTY OF CLARKE, VIRGINIA

By: _____

(SEAL)

ATTEST:

Clerk, County of Clarke, Virginia

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE: _____
the within Bond and irrevocably constitutes and appoints

_____ attorney to exchange said Bond for definitive bonds in lieu of which this Bond is issued and to register the transfer of such definitive bonds on the books kept for registration thereof, with full power of substitution in the premises.

Date: _____

Registered Owner

Signature Guaranteed:

(NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Bond Registrar, which requirements include Membership or participation in STAMP or such other "signature guarantee program" as may be determined by the Bond Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

(NOTICE: The signature above must correspond with the name of the Registered Owner as it appears on the front of this Bond in every particular, without alteration or change.)

David Weiss moved to approve the following:

Be it resolved that the County Administrator is authorized to incur an amount not to exceed \$10,000 for the preparation of additional legal documents by Hunton and Williams associated with exercising the Build America Bond option, should this option be exercised.

Be it resolved that the County Administrator is authorized to incur an amount not to exceed \$5,000 for a financial analysis of the differential

between the tax exempt VPSA bond and the taxable Build America Bond,
should such an analysis be required.

The motion carried by the following vote:

J. Michael Hobert, Chair	-	Aye
David S. Weiss, Vice Chair	-	Aye
Barbara J. Byrd	-	Aye
A.R. Dunning, Jr.	-	Aye
John R. Staelin	-	Absent

Adjournment

There being no further business to be brought before the Boards at 12:51 pm Chairman Hobert adjourned the Board of Supervisors meeting.

Next Regular Meeting Date

The next regular meeting of the Board of Supervisors is set for Tuesday, April 20, 2010 at 1:00 p.m. in the Main Meeting Room, 101 Chalmers Court, 2nd Floor, Berryville, Virginia.

ATTEST: April 8, 2010

J. Michael Hobert, Chair

David L. Ash, County Administrator

Minutes Recorded and Transcribed by:
Lora B. Walburn
Deputy Clerk, Board of Supervisors