

ALBEMARLE COUNTY  
ECONOMIC DEVELOPMENT AUTHORITY MINUTES

June 30, 2021

10:00 A.M.

Electronic Meeting

**Directors Present:** Kat Imhoff, Don Long, Stephen McNaughton, Stuart Munson, George Ray, David Shreve

**Staff Present:** Jim Bowling, EDA Counsel; Roger Johnson, Economic Development Director; Jennifer Schmack, Economic Development Project Manager; Richard DeLoria, Senior Assistant County Attorney; Diantha McKeel, Board of Supervisors Liaison to the EDA, Jack Jouett District

1. **Establish Quorum and Call to Order**

Mr. Long convened the meeting at 4:00 p.m. read the following statement:

Notwithstanding any provision in the EDA Bylaws to the contrary, as permitted under Albemarle County's Continuity of Government Ordinance; Chapter 1283 of the 2020 Acts of the General Assembly; and the Resolution of this body adopted on April 21, 2020, we are holding this meeting by real time electronic means with no Authority member physically present at a single, central location. All Authority members are participating electronically. This meeting is being held in accordance with Section 6 of the County's Continuity of Government Ordinance. All Authority members will identify themselves and state their general physical location by electronic means during the roll call which we will hold next.

This meeting is being recorded and will be uploaded to the County's website.

The public has real time audio-visual access to this meeting over Zoom and real time audio access over telephone, both as provided in the lawfully posted meeting notice. The public is also invited to offer live comment during the meeting's Public Comment period. Comments are limited to three minutes and must be germane to matters on today's agenda. The public is also invited to send questions, comments, and suggestions to the Authority through the County's Economic Development Office at any time.

Mr. DeLoria provided the roll call and confirmed a quorum.

2. **Matters from the Public**

Ms. Schmack confirmed no speakers signed up or raised their hand to speak.

3. **New Business**

a. Southwood/Habitat for Humanity – Mr. Deloria will be leading the discussion and noted that Connor Childress with Scott Kroner, PLC, and Tara Boyd with Boyd & Sipe, PLC, will also be participating. Mr. Childress and Ms. Boyd represent the Habitat for Humanity and Piedmont Housing Alliance.

Mr. Deloria stated this involves the Habitat for Humanity's redevelopment of the Southwood neighborhood. The Albemarle County Board of Supervisors and the EDA entered into a multi-year performance agreement with the Habitat for Humanity for the redevelopment of Southwood. The Southwood neighborhood is 120 acres off old Lynchburg Road, lies in an opportunity zone, has 80 developable acres, and currently involves 341 mobile homes and 1500 residents. The redevelopment plan is going to work toward 700 to 800 new dwelling units, 400 of which are going to be affordable dwelling units. The total investment in the neighborhood redevelopment is approximately \$100 million to \$250 million, in two phases. Phase 1 involves 32.5 acres and Phase 2 involves the current mobile home park. The plan is to develop Phase 1 first in order not to displace the residents that are currently in the mobile homes. Mr. Deloria shared a slide showing the project divided into two blocks – Block A includes attached housing units and Block B includes apartments, commercial development, and a community center. In terms of the performance agreement, the County's total investment in the project is \$3.2 million. The EDA is serving as a conduit and there are no EDA funds involved.

Mr. Deloria stated the performance agreement has several milestones and one of those milestones contemplated that Habitat would develop 80+ affordable dwelling units or have a third party do it. Mr. Deloria shared that his recollection was that in order for the project to be viable, Habitat would sell a portion of the property to a third party to develop. Habitat for Humanity has entered into a purchase and sale agreement (PSA) to sell Piedmont Housing Alliance (PHA) 4.74 acres. The PSA requires PHA to develop the property as a housing project containing in excess of 80 residential apartment units, 100% of which will be rent restricted and occupied by individuals whose income does not exceed 80% of the area median gross income, and 100% of which will qualify for the low income housing tax credit (LIHTC). A Determination Certificate has been shared with the EDA Board members and is necessary in order for Habitat to close the deal with PHA and satisfy certain aspects of the performance agreement.

There are two resolutions for the EDA Board's consideration. One resolution would authorize the Chair to endorse the Determination Certificate once it has been approved by the Board of Supervisors and approved as to form and content by the County Attorney. The second resolution presents a reservation in the sense that the EDA would authorize the Chair to sign the Determination Certificate but would include a reservation indicating that the EDA has not made an independent determination or verification of the contents of the Determination Certificate and is relying on the Board of Supervisors and County staff for that verification. Mr. Deloria shared that Stacy Pethia with the Community Development Department has indicated to him via email she has no issues with the Determination Certificate. Mr. Deloria also shared that the attorney for the Planning Commission did have some comments on the Determination Certificate with the most significant being on page two indicating the 30-year minimum period of affordability may be shortened in the event that the Sale of the Property is acquired by foreclosure and other circumstances. Mr. Deloria noted that the current performance agreement requires the 30-year minimum period of affordability outright, so the Board of Supervisors would have to make a concession in terms of the performance agreement.

Mr. Bowling stated he had contacted Mr. Deloria about the change in the resolution as the EDA Board did not want to be certifying facts without an independent verification of the facts. Mr. Bowling also advised that the EDA Board, to avoid any exposure, should request that the Determination Certificate be changed to indicate that only the County is certifying the various factual allegations set forth in the Determination Certificate, and the EDA Board is accepting those certifications as a conduit entity. The easiest way for the EDA Board members to avoid becoming entangled in any future disputes is to stick to its conduit role in anything that they sign. Mr. Bowling stated he thought the change to the Determination Certificate could be made easily.

Mr. Deloria advised the second resolution indicated that the approval would be conditioned upon the change in the Determination Certificate. Mr. Deloria also noted the EDA's exposure is limited to some extent by being a conduit and no EDA funds are at risk. Mr. Deloria also reminded the EDA Board members of the hold harmless addendum to the performance agreement where Habitat agrees to hold harmless and indemnify the EDA from anything that arises out of the performance agreement. Mr. Deloria stated he agrees with Mr. Bowling that the safest and most conservative route is to go with the second resolution.

Mr. Long asked if Mr. Childress or Ms. Boyd had anything they wanted to add to the discussion.

Mr. Childress thanked the EDA Board for taking this matter up so quickly. Mr. Childress stated that Southwood is a very big and involved development and Habitat for Humanity has appreciated having the EDA's support. He advised that one of the main points of the Determination Certificate is to make sure Habitat is not doing anything to upset the EDA or damage the performance agreement, and the other is to assure that PHA has what it needs to do their project. Mr. Childress then asked Ms. Boyd to speak to PHA's specific parts of the project.

Ms. Boyd stated she was counsel to PHA. PHA is the purchaser of the parcel at the entrance on Hickory Street where a multi-family, low income housing rental project is going to be developed using federal low-income housing tax credits. Ms. Boyd advised that PHA has already applied for the tax credits and should get notice probably mid-July of approval of the allocation depending on when Virginia Housing publishes the results. PHA is pretty confident they will get the credits. The County, EDA, and Habitat performance agreement contemplates a portion of the affordable housing being provided as "LIHTC" (low income housing tax credit) units so PHA will be in a position to build all of those units. The performance agreement requires at least 80 LIHTC units and Ms. Boyd advised that PHA is currently tracking at about 120 LIHTC units so will be able to go above and beyond the minimum.

Ms. Boyd, as PHA's counsel, is helping PHA perform its due diligence. Ms. Boyd stated PHA is a stranger to the performance agreement, so they have reviewed the agreement and identified some items they wanted to get comfort on to assure they are not stepping into any unintended liabilities. Ms. Boyd advised that one item that jumped out was the description of the LIHTC ADUs and the 30-year requirement. In order to get the low income housing tax credits for the 80 units, the federal regulations governing those credits provide a 15 year point during the affordability period when the ownership can turnover and also provide that foreclosure potentially can shorten the period of

affordability. Ms. Boyd stated that assuming no foreclosure and PHA remains in control of the project, which is the plan, the affordability period would be 30+ years. Ms. Boyd advised that the plan was a 30-year affordability period - using the LIHTC, there are a couple technicalities where it could be shortened. The other items in the Determination Certificate are more for clarification purposes. Habitat and PHA would like the comfort of knowing what they are doing is consistent with the performance agreement. Ms. Boyd said she would be happy to answer questions.

Mr. Shreve asked when Ms. Boyd stated PHA is tracking at 120 units, does that mean they have a commitment to build that many from the developer or builder that will ultimately receive the tax credit.

Ms. Boyd responded no, PHA has not started the site planning process and the total number of units will also depend on County approvals. Ms. Boyd shared there are definitely investors that will take the credits.

Mr. Bowling stated he wanted to be sure Ms. Boyd understood the change he was proposing in the Determination Certificate. Since the EDA is merely a conduit, the proposed change is to state that the County is certifying the information in the Determination Certificate and the EDA is joining in to accept that certification with the understanding the EDA has performed no independent verification of the facts in the Determination Certificate.

Mr. Long asked if the Determination Certificate was something PHA was going to provide to somebody else or was it for PHA's confirmation.

Ms. Boyd responded it was for PHA's confirmation, but it's possible in the course of PHA's financing and tax credit diligence there may be lenders that want to look at it.

Mr. Long asked if the EDA just needs to state they are agreeing to whatever the County says, and do they really need to sign other than to say the County is certifying the information and the EDA is agreeing to that certification. Mr. Long stated all the issues are really County issues and does the EDA really need to be a part of it other than stating they are agreeing to it as a party to the agreement.

Mr. Shreve asked if that wasn't the purpose of the second resolution.

Mr. Bowling responded that was correct, but the Determination Certificate itself also needs to be changed. The EDA should not rely solely on the resolution. The goal is to prevent the person signing from ending up in some type of legal proceeding.

Mr. DeLoria stated Ms. Schmack had shared the second resolution with the EDA Board Members. Mr. DeLoria advised that the second resolution, as written, states that the Chair will be authorized to execute the Determination Certificate on behalf of the Authority once it has been amended to reflect the Authority relies on the Board of Supervisors and its staff to determine the appropriateness of the certificate and to independently verify the contents thereof; the Authority has not independently

determined the appropriateness of the certificate or verified its contents; and once it has been approved by the Board of Supervisors and approved as to form and content by the County Attorney. Mr. DeLoria stated this authorizes the Chair to sign if the Determination Certification is amended which captures Mr. Bowling's comments. Mr. Bowling and Mr. Long were both comfortable with the wording in the second resolution.

Ms. Imhoff commented that the County should get a little more assurance on both the number of units and the 30-year requirement. Ms. Imhoff stated what she was seeing listed in the State ranking was 62 units for Phase 1, so she was hearing different unit numbers, and she also thought the 30 year requirement should be pinned down as there is a big difference between 15 years and 30 years to suddenly leave low income housing support and go out in the open market.

Mr. Long asked if the Board of Supervisors had approved or acted on the Determination Certificate yet.

Mr. DeLoria responded it was his understanding the Board of Supervisors would act on it at their first or second meeting in July, and the parties were interested in having it finalized by July 15.

Mr. Long stated he understood what Ms. Imhoff was saying but really thought they were Board of Supervisors issues and not EDA issues.

Ms. Boyd asked to speak to Ms. Imhoff's concerns. Ms. Boyd said she had also gone on the VHDA site and looked at the rankings and saw only 60 units so had contacted her client. The explanation Ms. Boyd received from her client was: the Southwood apartments project is planning to have a total of 121 units so will be in compliance with the performance agreement; the deal is what's called a 9, 4 split deal where a portion of the units (70) are developed under a 9% LIHTC award and the remaining units (51) are developed concurrently under a 4% LIHTC award; the recent award, what's showing on the VDHA web site, is only for the 9% Southwood A portion of the project; the 4% Southwood B project will be submitted later this year, since the 4% credits are non-competitive they are assured to have this portion of the deal funded. Ms. Boyd shared that in PHA's purchase and sale agreement with Habitat there is a kick-out if PHA does not receive the allocation of the competitive credits this summer which is why the July deadline is important.

Mr. Shreve asked what does the 4% LIHTC award reflect – less stringent requirements for affordability or something else altogether.

Ms. Boyd responded it's the same affordability requirements, the amount of the credit is different.

Mr. Shreve asked what the builder/developer received in compensation for a smaller tax credit, if anything.

Ms. Boyd responded she did not know. Ms. Boyd stated it could be a supply issue because Virginia Housing only gets a certain number of federal credits to allocate every year

Mr. Shreve asked if that meant that it was just a question of salesmanship—whether you could sell those 4% tax credits. Ms. Boyd jokingly offered to sell Mr. Shrive some tax credits in response.

Mr. Childress asked Ms. Boyd to speak to the technical nature of the 15-year kickout so as to clarify that it isn't intended as a means for PHA to get out of affordability. Rather, Mr. Childress said that it was a financibility question.

Mr. Shreve said that it was his understanding that this was a treasury requirement for all projects that participate in LIHTC and asked if that was correct.

Ms. Boyd answered that it was.

Mr. Shreve concluded that because it was unavoidable, it wasn't a big deal. Mr. Long answered that it was only a big deal because the performance agreement was different. Mr. Long said that as long as the Board of Supervisors signed off with the knowledge that the program was subject to these limitations, the issue would be resolved. He then asked Ms. Boyd to confirm that was correct.

Ms. Boyd answered that they needed the BoS to either confirm to them that the units in question were indeed intended to be LIHTC units (and therefore subject to LIHTC regs) or that they didn't intend for them to be LIHTC and the 30-year reg was hard-and-fast. If the latter, then securing financing would be more difficult and might even mean that the units don't get built.

Mr. Shrive opined that tax credit programs are often pinned on hopes and dreams—that the entity offering them is dependent on PHA not developing perverse incentives.

Ms. Boyd offered that, for what it was worth, PHA's reputation in the community speaks for itself. It has even bought a project 15 years ago and kept it affordable.

Mr. Shreve asked what percentage of the units would be Section 8 or single family units that qualified for the PHA downpayment or VITA programs.

Mr. Childress said that he did not know but that Habitat was building a large number of Habitat-built units.

Ms. Boyd said that while PHA does use Section 8, they are too far out to currently comment beyond this multi-family development.

Mr. DeLoria commented that because of the language of the performance agreement (pg 12) that the "LIHTC ADU will qualify for affordable housing, for 30 years". He believed this might offer some wiggle room because it doesn't specify that it must remain for 30 years. The Board may say that as long as it qualifies under the Federal regs, then it meets their condition. [36:12]

Mr. Shreve suggested that a clause could be added to specify that it was subject to LIHTC requirements. Mr. DeLoria answered that it may very well have been the boards intention that once you qualify, you have met the condition.

Mr. Munson offered that he has worked with both Habitat and the PHA and that both organizations are respectable and fill a huge public need and that his interactions have been extremely favorable.

Mr Munson read the following motion: **I move that the Economic Development Authority of County of Albemarle, Virginia, adopt the recited Resolution and Authorize the chair to execute the Determining Certificate once it is amended to reflect accurately the Authority's limited role as noted above and once it has been approved by the Board of Supervisors and approved by the County Attorney as to From.** Mr. Ray seconded.

**Motion:** The motion passed unanimously (6-0).

Mr. Long thanked Mr. Childress and Ms. Boyd suggested to Mr. DeLoria that the most expedient way to handle this would be a certificate from the County, once the Board of Supervisors has approved it that says 'we certify all these things' and that the EDA letter can indicate that they are basing their approval on the certificate of the board.

Ms. Boyd indicated that this arrangement was acceptable.

Mr. Johnson said that having worked with the Board of Supervisors and the EDA, the former often relies on the latter as subject matter experts. In light of this, Mr. Johnson suggested that he, Ms. Schmack, and Mr. DeLoria should share notes and minutes from this meeting with the Board of Supervisors.

The Directors indicated collective agreement.

4. **Unfinished Business**

No unfinished business was recorded.

5. **Other Matters**

- a. Mr. Long asked the EDA directors for a general sense of their schedule in the upcoming days, because there is a bond refinancing intended for the now-cancelled July Meeting. The directors generally indicated they would be available in the next few weeks, he asked Ms. Schmack to coordinate scheduling a meeting.
- b. Mr. Long asked Mr. DeLoria if there was any update regarding holding future meetings remotely or in person.

Mr. DeLoria indicated that although the governor's disaster declaration was set to expire midnight on 6/20/2021, the County had authority to extend its disaster ordinance for up to another six months. The digital FOIA provision has been amended to allow local governments and boards to continue operating remotely. The current expectation is that they will continue to do so at least through August.

Mr. DeLoria went on to say that his understanding was that the County Incident Management Team was hoping to open things up more after Labor Day, but no specifics had yet been made. Mr. DeLoria said that he wasn't sure whether public meetings in the County Office Building would be open while the Disaster Declaration was still in effect.

Mr. McNaughton noted that digital meetings had been good for community involvement, work-life balance, and the environment. He asked if there had been any discussions about whether it made sense to continue meeting virtually, in some capacity.

Mr. DeLoria answered that there was no indication that the assembly would address that issue during their special session in August. He said that while there were some technical issues with hybrid meetings, there was nothing stopping them from continuing public engagement digitally in some form.

6. **Adjournment**

There being no further business, Mr. Long adjourned the meeting.

Teste: \_\_\_\_\_  
Donald Long, Chairman

Approved: \_\_\_\_\_  
David Shreve, Secretary-Treasurer