

Economic Development Authority of the City of Portsmouth

Called Meeting
December 11, 2018

6th Floor Conference Room, City Hall
801 Crawford Street, Portsmouth, VA

The Chairman called the meeting to order at 9:50 a.m.

COMMISSIONERS PRESENT: Anthony W. Hinds
Miriam J. Jiggetts – Treasurer
Tracy Link
Malcom Mitchell
Cathy Revell – Chairman

ALSO PRESENT: Robert D. Moore – Secretary
Brian Donahue – Asst. Secretary
Dr. L. Pettis Patton – City Manager
Solomon Ashby – City Attorney
Jeffrey S. Miller – Assistant City Attorney
Elizabeth M. Psimas – Vice Mayor
Ray A. Smith, Sr. City Councilman
Cheryl Spivey – CFO
Robert A. Baldwin – Planning Director
David Rose – Davenport & Company

ABSENT: Aaron J. Kelley – Vice Chairman
Don L. Scott

ACTION: At 9:53 a.m., on a motion by Ms. Jiggetts and seconded by Ms. Link, the Authority entered into a closed meeting, WHEREAS, the Virginia Freedom of Information Act provides that the Board of Commissioners may hold closed meetings for certain purposes set forth in Paragraph 2.2-3711(A) of the Code of Virginia of 1950, as amended (“Code”); and WHEREAS, in compliance with the requirements of the Code the topics to be discussed are set forth below, and the sub-paragraphs of Paragraph 2.2-3711(A) authorizing discussion of the topics in closed session are set forth in parentheses after each topic; NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners shall meet in Closed Meeting for the purpose of discussing disposition of publicly held real property interests where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body (1500 Block of High Street) [3]; and for the purpose of consulting with legal counsel pertaining to actual or probable litigation, where such consultation in open meeting would adversely affect the negotiating or litigating posture of the public body (The Commons at Portsmouth Center) [7]. **Roll Call Vote:** Mr. Hinds – yes; Ms. Jiggetts – yes; Mr. Kelley – absent; Ms. Link – yes; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – absent.

ACTION: At 10:36 a.m., on a motion by Ms. Revell and seconded by Mr. Hinds, the Authority approved a resolution directing, the Virginia Freedom of Information Act certification required by section 2.2-3712.D of the 1950 Code of Virginia as amended, be included in the Authority's minutes of this meeting, WHEREAS, the Authority has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act (Act); NOW, THEREFORE, BE IT HEREBY RESOLVED that each Commissioner, unless her/his prior contrary statement is in the minutes of this meeting, hereby certifies that to the best of her/his knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter, and (ii) only such public business matters as were identified in the motion by which closed meeting was convened were heard, discussed or considered in the closed meeting by the Commissioners. **Roll Call Vote:** Mr. Hinds – yes; Ms. Jiggetts – yes; Mr. Kelley – absent; Ms. Link – yes; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – absent.

ACTION: On a motion by Ms. Link and seconded by Ms. Jiggetts, the Commissioners approved the following resolution as presented. **Roll Call Vote:** Mr. Hinds – yes; Ms. Jiggetts – yes; Mr. Kelley – absent; Ms. Link – yes; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – absent.

RESOLUTION
(Victory Crossing Settlement)

WHEREAS, in 2004 EDA entered into an agreement (the "Development Agreement") with Victory Crossing Developers II, LLC (the "Developer") for the conveyance of property and development of a project known at various times as Victory Village or The Commons at Portsmouth Center (the "Project"); and

WHEREAS, as required by the Development Agreement, EDA subsequently conveyed several parcels of property to the Developer; and

WHEREAS, while the Developer did construct certain infrastructure improvements, the Project as a whole was not developed and, in 2016, EDA filed suit against the Developer for the purpose of exercising a right of reverter set forth in the Development Agreement; and

WHEREAS, the Developer filed a counterclaim against EDA and also filed a lawsuit against the City of Portsmouth; and

WHEREAS, the City, EDA and the Developer have reached an agreement in principle to exercise the reverter right and resolve all litigation (the "Settlement Agreement"); and

WHEREAS, the Settlement Agreement requires the Developer to reconvey all of the property it currently owns to EDA, a total of approximately 19.19 acres (the "Reverter Property"); and

WHEREAS, the Settlement Agreement requires EDA to pay a reverter price of \$5,123,929.42 for the Reverter Property; and

WHEREAS, the reverter price is approximately the assessed value of the Reverter Property;
and

WHEREAS, the intent is that, in order to fund EDA's compliance with the Settlement Agreement and acquisition of the Reverter Property (including closing costs), the City will provide a short-term loan to EDA in an amount not to exceed \$5,150,000 (the "Loan"); and

WHEREAS, with the assistance of the City, EDA intends to issue tax-exempt bonds to repay the Loan in full on or before March 31, 2019; and

WHEREAS, the City and EDA intend to enter into (1) a Cooperation Agreement in substantially the form attached hereto as Exhibit A and (2) loan documents to memorialize the intended transactions described in this Resolution; and

WHEREAS, at its December 11, 2018 meeting City Council will consider adoption of a Resolution approving the Settlement Agreement, the Loan and the Cooperation Agreement, and an Ordinance appropriating funds for the Loan; and

WHEREAS, all authorizations and approvals in this Resolution are contingent upon City Council's approval of the Settlement Agreement, the Loan and the Cooperation Agreement.

NOW, THEREFORE, it is hereby RESOLVED that:

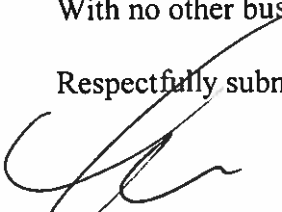
1. The Settlement Agreement, Loan and Cooperation Agreement are hereby approved and authorized on behalf of the EDA.
2. The EDA is authorized to borrow funds in accordance with the terms of the Loan described herein and to acquire property in accordance with the terms of the Settlement Agreement described herein.
3. The EDA will use the funds derived from the Loan to acquire the Project.
4. EDA and the City intend to finance the cost of acquiring the Project through the issuance of tax-exempt debt (the "Bonds"), in an amount not to exceed \$5,150,000 plus an amount necessary to pay closing costs, and to use the proceeds of the Bonds to reimburse the City for the amount of the Loan used to acquire the Project.
5. This Resolution represents a declaration of "official intent" under Treas. Reg. § 1.150-2.
6. The Chair, Vice Chair, and Secretary of the EDA and their designees are each hereby authorized to execute the Settlement Agreement, Cooperation Agreement and documents memorializing the Loan, together with such other documents and instruments as may be necessary or desirable to effectuate the intent of this Resolution, and to take such further actions as may be necessary or desirable to effectuate the intent of this Resolution.

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ACTION: On a motion by Ms. Link and seconded by Mr. Hinds, the Commissioners agreed to terminate the Purchase and Sale Agreement by and between the EDA and 1541 High Street Partners, LLC dated March 20, 2018. **Roll Call Vote:** Mr. Hinds – yes; Ms. Jiggetts – yes; Mr. Kelley –absent; Ms. Link – yes; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – absent.

With no other business before the Board the meeting was adjourned at 10:39 a.m.

Respectfully submitted,



Robert D. Moore
Secretary