

AT A MEETING OF THE MIDDLESEX COUNTY BOARD OF SUPERVISORS
HELD ON TUESDAY, FEBRUARY 3 , 2009, IN THE BOARD ROOM OF THE
HISTORIC COURTHOUSE, SALUDA, VIRGINIA:

Present: Kenneth W. Williams, Pinetop District
Robert A. Crump, Saluda District
John D. Miller, Jr., Saluda District
Wayne Jessie, Sr., Jamaica District
Fred S. Crittenden, Pinetop District

Charles M. Culley, Jr., County Administrator
Marcia Jones, Assistant Administrator
Michael T. Soberick, County Attorney

CALL TO ORDER

The Chairman, Mr. Crump, called the meeting to order. Mr. Jessie led the group in prayer and Mr. Culley led the Pledge of Allegiance.

MINUTES

The motion to approve the minutes from the meetings of January 6th and January 20th, amending those of January 20th to include conditions attached to the approval of Special Exception Application 2008-02, was made by Mr. Williams, seconded by Mr. Miller and carried unanimously.

DISBURSEMENTS

The motion to approve the disbursements as presented was made by Mr. Miller seconded by Mr. Jessie and carried unanimously. Checks numbered 63923 through 64008 totaling \$176,684.68 were disbursed as approved.

CONSTITUTIONAL OFFICERS

Sheriff:

Sheriff Abbott reported that a new \$10.00 fee for moving violations passed through the General Assembly. It was noted that this money needed to remain in the County, and should not pass through the court books for disbursement to the State.

Treasurer

Betty Bray, Treasurer, reported that collections were good and normal for this time of year.

Commissioner of Revenue

Mrs. Davenport had nothing to report.

HIGHWAY MATTERS

Resident Administrator, Marcie Parker, was present to represent the Highway Department.

Budget: Mrs. Parker reported that state funded portions of her budget were cut again, almost half of what she reported at the January meeting. Discretionary funds have been requested in order to keep the September advertisement date for the Stampers Bay project. The Brandon Point project will remain in the plan. Park View Lane and the Rocks Drive projects are now off the plan. The Commonwealth Transportation Board will meet again on February 19th to approve the latest 6-year plan.

Personnel: John Longest was introduced to replace Brown Croxton, who retired after 31 years with VDOT.

SCHOOL MATTERS

Superintendent Rusty Fairheart was present to represent the School Board and gave an updated report.

Mr. Fairheart requested the Board consider a date for a joint meeting of the School Board and Supervisors. Mr. Culley suggested the two groups meet on February 24th.

ENDORSEMENT REQUEST – VACO SECRETARY/TREASURER

Mr. Miller requested the Board's endorsement for the position of Secretary/Treasurer with the Virginia Association of Counties. The motion to adopt the following resolution was made by Mr. Crittenden, seconded by Mr. Jessie and carried unanimously:

**RESOLUTION TO ENDORSE
JOHN D. (JACK) MILLER, JR.
FOR THE POSITION OF SECRETARY/TREASURER
OF THE VIRGINIA ASSOCIATION OF COUNTIES**

WHEREAS, John D. Miller, Jr. has served on the Middlesex County Board of Supervisors for 12 years, since 1996; and

WHEREAS, as Supervisor, Mr. Miller has represented the Middlesex County Board of Supervisors on many committees, including the Planning Commission, Planning District Commission, Dragon Run Steering Committee, Library Board, Community Criminal Justice Board, Disability Services Board, Legislative Liaison, Community Services Board; and

WHEREAS, Mr. Miller has also served many roles with the Virginia Association of Counties, including Region 2 Director, Chairman of the Environment and Agriculture Committee, and serving on the Resolution Committee; and

WHEREAS, the leadership and service of Mr. Miller have shown his commitment and dedication to public service;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Middlesex County formally endorses the candidacy of John D. (Jack) Miller, Jr. for the position of Secretary-Treasurer of the Virginia Association of Counties.

<i>Kenneth W. Williams</i>	<i>aye</i>
<i>Fred S. Crittenden</i>	<i>aye</i>
<i>Robert A. Crump</i>	<i>aye</i>
<i>John D. Miller, Jr.</i>	<i>aye</i>
<i>Wayne H. Jessie</i>	<i>aye</i>

REIMBURSEMENT REQUEST

The motion to approve the reimbursement of a \$250.00 application fee to Charles Bass for an application withdrawn prior to processing for a hearing was made by Mr. Williams, seconded by Mr. Crittenden and carried unanimously.

ART ON THE HALF SHELL

The Art on the Half Shell group requested the Board's sponsorship of a tent at a cost of \$600.00 for their event scheduled for May 9. After some discussion, it was requested that the group have a representative attend the March 3rd meeting to discuss the rental agreement. Mr. Crump suggested that the group may want to use the Lion's Club for rentals, which he has found to be cheaper than using those from a rental company. The motion to table action was made by Mr. Miller, seconded by Mr. Williams and carried unanimously.

MIDDLESEX VOLUNTEER FIRE DEPARTMENT

Mr. Joe Moschetti presented an annual report of calls to the Board. Board members suggested that Mr. Moschetti show the report to other departments; they would be asked to prepare a similar report.

AUDIT REPORT

Mr. Paul Lee, from Robinson, Farmer, Cox Associates, presented the audit of FY 08. Mr. Lee noted that a management letter had been prepared recommending that an accounting manual be prepared and used to assist with continuity of services. Mr. Lee reported that the County appeared to be in good fiscal condition. The motion to accept the report was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously.

REIMBURSEMENT RESOLUTION

Mr. R. T. Taylor of Davenport & Company, and Mr. Dan Siegel of Sands, Anderson, Marks and Miller were present to discuss the proposed reimbursement of funds previously spent from the general fund for the hangar and high school roof projects. The total of these projects and preliminary engineering exceeds \$955,000.00. At the time of the projects there was available cash in the general fund for these capital projects, however, the Board adopted resolutions at the time to allow for reimbursement in the future. Borrowing the funds now to replenish the general fund can be done at a lower interest than if the funds had been borrowed in 2007.

Davenport & Company had submitted requests for proposals to 15 different financial institutions and received 4 back. The lowest rate offered was from SunTrust at 4.15% however, this proposal did not have the flexibility of early payoff. A proposal from Bank of Lancaster offered at 4.35% did allow for early payoff.

Mr. Crittenden suggested waiting until incentive packages were released from Washington to see if that money could be used by the County. Mr. Culley noted that he did not believe incentive money could be used for refunding or paying off debt. Mr. Williams noted his objection because he had been opposed to the hangar project.

The motion to approve the borrowing with the Bank of Lancaster, due to the flexibility of being able to refinance or pay the note off early, was made by Mr. Jessie, seconded by Mr. Miller and carried by a roll call vote of four (4) in favor to one (1) opposed (Mr. Williams).

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MIDDLESEX, VIRGINIA

WHEREAS, the Board of Supervisors (**the "Board of Supervisors"**) of the County of Middlesex, Virginia (**the "County"**) has directed Davenport & Company LLC (**the "Financial Advisor"**) to prepare a Request for Proposal (**the "RFP"**) to obtain financing proposals to reimburse the County for the costs of certain capital expenditures used for (i) the completion of the acquisition, construction, equipping and renovation of the County's existing Middlesex High School Roof Project and certain design costs relating to the SCW Roof Project (**the "Roof Project"**) and (ii) the acquisition, construction, equipping and furnishing of the County's new 10-unit Airport T-hangars (**the "Hangar Project", together with the Roof Project, the "Project"**); and

WHEREAS, the Financial Advisor has received responses to the RFP that reflect attractive financing for the Project and, after reviewing the responses, the Financial Advisor along with the County's Bond Counsel, Sands Anderson Marks & Miller, a Professional Corporation, Richmond, Virginia (**"Bond Counsel"**) have recommended that the Board of Supervisors select the proposal (**the "Proposal"**) from The Bank of Lancaster (**the "Bank"**); and

WHEREAS, the Board of Supervisors has reviewed each of the responses and recommendations from the Financial Advisor and Bond Counsel and has determined that the Proposal is the most beneficial response to the RFP and provides attractive financing terms for the Project and the Board of Supervisors on behalf of the County desires to accept such Proposal and proceed with the financing reflected therein; and

WHEREAS, the Board of Supervisors will request the Authority to issue, offer and sell its lease revenue bond in the principal amount up to \$1,035,000 (**the "Bond"**) pursuant to the Proposal to finance the reimbursement to the County for the cost of the Project, to lease the Leased Property (as defined below) to the County, with principal payments paid annually and interest at the rate of not to exceed 4.35% per annum payable semiannually, over an approximately 15 year term of the Bond, to accomplish certain purposes of the Virginia Industrial Development and Revenue Bond Act (**the "Act"**), with the County providing its moral obligation in support of the payment of the Bond; and

WHEREAS, the Authority, based on the request of the Board of Supervisors, would (a) use the proceeds of the Bond to pay to reimburse the County for the costs incurred in connection with the Project, including cost of issuing the Bond, (b) lease the Leased Property (as defined below) from the Middlesex County School Board (**the "School Board"**) for an approximately 25 year term under a ground lease and in turn, lease the Leased Property to the County for an approximately 15 year term under a lease agreement with the Authority and, (c) secure the Bond by an assignment of its rights under such lease agreements (except the right to receive indemnification, to receive notices and to give consents and to receive its administrative expenses) to the Bank, under an assignment agreement between the Authority and the Bank, which is to be acknowledged and consented to by the County and the School Board, all in accordance with a bond purchase agreement among the Bank, the County and the Authority;

WHEREAS, there have been presented to this meeting drafts of the following documents (**collectively, the "Documents"**) in connection with the transactions described above, copies of which shall be filed with the records of the Board of Supervisors:

- a. a Ground Lease, dated as of February 1, 2009, among the School Board, the County and the Authority conveying to the Authority a leasehold interest in the property described therein (**the "Ground Lease"**);
- b. a Lease Agreement, dated as of February 1, 2009, between the Authority and the County (**the "Lease Agreement"**) conveying to the County a leasehold interest in such real estate and improvements thereon (**the "Leased Property"**);
- c. a Bond Purchase Agreement, dated as of February 1, 2009 among the Authority, the County and the Bank, pursuant to which the Bond is to be issued (**the "Bond Purchase Agreement"**);
- d. an Assignment Agreement, dated as of February 1, 2009 between the Authority and the Bank, assigning to the Bank certain of the Authority's rights under the Lease Agreement and the Ground Lease, which is to be acknowledged and consented to by the County and the School Board (**the "Assignment Agreement"**);
- e. a Specimen Bond.

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Middlesex, Virginia:

1. The Board of Supervisors hereby accepts the Proposal from the Bank and instructs the Financial Advisor and Bond Counsel to take all such action as necessary or appropriate to conclude the financing as so set forth in the Proposal by the issuance of the Bond of the Authority based upon the recommendation of the Financial Advisor and Bond Counsel.
2. All costs and expenses in connection with the undertaking of the reimbursement to the County for the cost of the Project and the issuance of the Bond, including the Authority's expenses, the fees and expenses of the County, and the fees and expenses of Bond Counsel, the County Attorney, the Financial Advisor and the Bank, and other fees and expenses related thereto, for

the sale of the Bond, shall be paid from the proceeds therefrom or other funds of the County. If for any reason the Bond is not issued, it is understood that all such expenses shall be paid by the County and that the Authority shall have no responsibility therefor.

3. The following plan for financing the reimbursement to the County for the cost of the Project is approved. The Authority shall use the proceeds from the issuance of the Bond to finance on behalf of the County the reimbursement to the County for the cost of the Project and to lease the Leased Property from the School Board for a lease term of not to exceed approximately twenty-five years and to lease the Leased Property to the County for a lease term not less than the term of the Bond at a rent sufficient to pay when due the interest and principal on the Bond. The obligation of the Authority to pay principal and interest on the Bond will be limited to rent payments received from the County under the Lease Agreement. The obligation of the County to pay rent under the Lease Agreement will be subject to the Board of Supervisors of the County making annual appropriations for such purpose. The Board of Supervisors on behalf of the County has adopted this resolution as its moral obligation to the repayment of the Bond. The Bond will be secured by an Assignment Agreement to the Bank as the holder thereof. If the Board of Supervisors exercises its right not to appropriate money for rent payments, the Bank may terminate the Lease Agreement or otherwise exclude the County from possession of the Leased Property. The issuance of the Bond on the terms set forth in a Bond Purchase Agreement is hereby approved.
4. The Board of Supervisors hereby approves the Documents and the form of the Bond in the principal amount of up to \$1,035,000, with an amortization of approximately 15 years, payable as to principal annually at an interest rate of not to exceed 4.35% with such changes, including but not limited to changes in the amounts, dates, payment dates and rates as may be approved by the officer executing them whose signatures shall be conclusive evidence of his approval of the same. The County Administrator is hereby authorized to determine the final terms of the Bond, including, but not limited to the principal amount, maturity, amortization and interest rate based upon the recommendation of the Financial Advisor, whose determination shall be conclusive, as evidenced by his execution of such Bond.
5. The Chairman or Vice Chairman of the Board of Supervisors, or either of them, and the County Administrator and Clerk of the Board of Supervisors are each hereby authorized and directed to execute the Documents and such other instruments and documents as are necessary to create and perfect a complete assignment of the rents and profits due or to become due in favor of the Bank, to issue the Bond, and to lease the Leased Property.
6. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (**the "Code"**) or otherwise cause the interest on the Bond to be includable in gross income for Federal income tax purposes under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the Authority or the County at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds from the sale of the Bond.
7. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.
8. All other acts of the officers of the County that are in conformity with the purposes and intent of this resolution and in furtherance of the issuance and sale of the Bond and the undertaking of the reimbursement to the County for the cost of the Project is hereby approved, ratified and confirmed.
9. The County by acceptance of this financing agrees to indemnify, defend and save harmless, to the extent permitted by law, 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 Authority, the issuance of the Bond or the reimbursement to the County for the cost of the Project or the lease of the Leased Property.

10. Nothing in this Resolution, the Bond or any documents executed or delivered in relation thereto shall constitute a debt or a pledge of the faith and credit of the Authority or the County, and the Authority shall not be obligated to make any payments under the Bond or the Documents except from payments made by or on behalf of the County under the Lease Agreement pursuant to annual appropriation thereof in accordance with applicable law.
11. The County hereby designates the Bond in the principal amount of up to \$1,035,000 as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code, and allocates to the Authority in relation to the issuance of the Bond, up to \$1,035,000 of its allocation of "qualified tax-exempt obligations" for the purpose of Section 265(b)(3) of the Code. The County has not issued, and does not reasonably anticipate (nor do any of its subordinate entities reasonably anticipate) issuing more than \$10,000,000 in qualified tax exempt obligations during calendar year 2009 and the County (and any of its subordinate entities) will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to Section 265(b)(3) of the Code during such calendar year.
12. The Board of Supervisors on behalf of the County hereby designates the Bond as eligible for the "small issuer exception" to the rebate requirements of Section 148(f)(2) and (3) of the Code pursuant to Section 148(f)(4)(D)(vii) of the Code, as the Authority is a subordinate entity of the County under Section 148(f)(4)(D) of the Code and the County is a governmental unit with general taxing powers, no bond which is a part of the Bond will be a private activity bond, 95% or more of the net proceeds of the Bond are to be used for local governmental activities of the Authority and the County, and the aggregate face amount of all tax-exempt bonds, excluding private activity bonds to be issued by the County and the Authority during the calendar year 2009 is not reasonably expected to exceed \$5,000,000 increased by the lesser of \$10,000,000 or so much of the aggregate face amount of the Bond as are attributable to financing the construction of public school facilities within the meaning of Section 148(f)(4)(D)(vii). The Board of Supervisors on behalf of the County hereby allocates to the Authority up to \$1,035,000 of its small issuer size limitation for the calendar year 2009 to the Bond for purposes of Section 148(f)(4)(D) of the Code.
13. This resolution shall take effect immediately.

ADOPTED THIS 3rd DAY OF FEBRUARY, 2009.

CERTIFICATION OF ADOPTION OF RESOLUTION

The undersigned Clerk of the Board of Supervisors of the County of Middlesex, Virginia hereby certifies that the Resolution set forth above was duly adopted during an open meeting on February 3, 2009, by a majority of the members of the Board of Supervisors at a regular meeting with the following votes:

Aye: Robert A. Crump
Wayne H. Jessie, Sr.
Fred S. Crittenden
John D. Miller, Jr.

Nay: Kenneth W. Williams

Abstentions:

Signed this 3rd day of February, 2009.

By: Charles M. Culley, Jr.

APPROPRIATIONS

The motion to approve the appropriation of \$10,983.00, the amount of overpayment made by the County on the Athletic Field project was made by Mr. Miller, seconded by Mr. Williams and carried unanimously. The School Board has reimbursed these funds to the County. The plans have been held until money issues improve. FROM: 3-1-18030-0001 TO: 4-49-10010-7000.

The motion to approve an insurance reimbursement for a damaged sheriff's vehicle was made by Mr. Jessie, seconded by Mr. Miller and carried unanimously. FROM: 3-1-23020-0048, \$6,525.00 TO: 4-1-31020-5407.

The motion to approve an additional appropriation of \$10,000.00 for landfill monitoring was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously. FROM: 3-1-41060-0001, \$10,000.00 TO: 4-1-42070-3008. Additional costs have been incurred because of adding a second extraction unit. The County is looking into building its own unit rather than renting or purchasing a complete unit.

LETTER TO GENERAL ASSEMBLY

The motion to proceed with sending a letter to the General Assembly opposing permanent cuts to education funding was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously.

PEER REVIEW POLICY

Matt Walker, Planning Director, discussed the peer review policy that will be used by the Planning Department, giving the department the flexibility of having engineers/consultants, familiar with the County's ordinances and policies, review plans. An applicant would have the option of choosing an engineer or consultant, from a pre-approved list, who would act as the County's agent. There would be no cost to the County for this.

Mr. Soberick noted that language should be added that would allow the County to remove a vendor for any reason. Board members were in agreement that this would be helpful to the County. The motion to approve the policy was made by Mr. Miller, seconded by Mr. Crittenden and carried unanimously.

COMMITTEE REPORTS

Board members presented their reports on committee activities. It was noted that the Planning District Commission would be looking into regional reassessment and regional dredging projects.

SCOTT KAUFFMAN

The motion to make a donation in Scott Kauffman's name to the Gloucester-Mathews Humane Society was made by Mr. Williams, seconded by Mr. Miller and carried unanimously. It was noted that Mr. Kauffman had served for 11 years on the County's Airport Committee.

APPOINTMENTS

No action was taken regarding current vacancies.

CLOSED MEETING

The motion to convene in closed session to discuss matters pertaining to personnel, pursuant to Code of Virginia, §2.2-3711.A1, was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously. Upon reconvening in open session, the following motion was made by Mr. Miller, seconded by Mr. Jessie and carried unanimously:

- To the best of the members' knowledge only public business matters lawfully exempted from open meeting requirements under Code of Virginia §2.2-3711.A1 as identified in the motion by which the Closed Meeting convened were heard, discussed, or considered by the public body.

Action:

There was no action taken as a result of the Closed Meeting.

ADJOURN

There being no further business, the motion to adjourn the meeting until February 17, 2009 was made by Mr. Miller, seconded by Mr. Williams and carried unanimously.

Robert A. Crump, Chairman
Board of Supervisors