

CITY OF VIRGINIA BEACH DEVELOPMENT AUTHORITY  
December 20, 2022, MINUTES

The City of Virginia Beach Development Authority (“VBDA”) held its regular meeting on Tuesday, December 20, 2022, at 8:30 a.m. in the Economic Development Town Center Boardroom at 4525 Main Street, Suite 700, Virginia Beach, VA, pursuant to notice given by the Chair.

Full video of item presentations and discussions can be viewed on our website at the following link – <https://www.yesvirginiabeach.com/vbda>

MEMBERS PRESENT: Lisa M. Murphy, Chair  
William Brunke, Treasurer  
William Brown, Commissioner  
Taylor Franklin, Assistant Secretary  
Ronnie L. Parker, Commissioner  
Joseph Strange, Commissioner  
Guenter H. Weissenseel, Commissioner

CITY COUNCIL: Vice Mayor Rosemary Wilson  
Councilmember Michael Berlucchi  
Councilmember Barbara Henley

ADVISORS PRESENT: Taylor V. Adams, Deputy City Manager  
Lyndon Remias, City Auditor  
Alexander W. Stiles, Senior City Attorney  
Kathy Warren, Deputy Director, Economic Development  
Laura Hayes Chalk, Deputy Director, Economic Development  
Kaitlen Alcock, Planner II  
Michael R. Anaya, Project Development Planner III  
Emily Archer, Project Development Manager  
Charles Bauman, Sr. Business Development Coordinator  
Devin Cowhey, Business Development Manager II  
Katrina N. Flowers, VBDA Accountant  
Vicki L. Kelley, Administrative Specialist I  
Letitia Langaster, Business Development Manager II  
Elisabeth D. Parker, Administrative Technician  
Katelyn Philleo, Business Development Representative I  
Jeffrey L. Smith, Business Development Coordinator  
Svetla Tomanova, Project Development Planner II  
Annagid Walker, Account Clerk III  
Deborah Zywna, Project Development Planner III

REPORTED BY: Taylor V. Adams

RECORDED BY: Elisabeth D. Parker

Chair, Lisa Murphy, began the meeting at 8:30 a.m. and opened the floor for public comment.

**OPEN FLOOR**

Six citizens signed up to speak for public comment. Five attended to speak. All were given a maximum of three minutes to speak. They are listed in the order they signed up to speak below with a summary of their comments below. Please reference the VBDA December 20, 2022 meeting video for full details.

- 1. Lewis Hastie Agenda Item #3 Vanguard Landing (Call-in) - ABSENT
- 2. Lori Bridges Agenda Item #3 Vanguard Landing

Ms. Bridges shared that she submitted a letter of support explaining her extensive experience with the special needs community and her most important role was that of a mother to her son Caleb who is a part of this community. She brought her son with her and delayed taking him to Kellam High School, his favorite place to visit. There, he takes an adaptive PE class and adaptive culinary arts class with students just like him. Caleb will be graduating from high school this June and will no longer have the opportunity to engage with his classmates and peers. Vanguard Landing presents a place and space for Caleb to continue to engage with his community peers. Vanguard Landing has currently met the forbearance requirements, finalized Virginia Housing financing, raised funds for the closing cost, and site plan approval received. Please vote yes for Caleb, the other 8,000 special education students and 300 families who are currently on the waiting list for Vanguard Landing.

3. Jennifer Clement Agenda Item #3 Vanguard Landing

Ms. Clement brought her 22 year-old son with her. Ms. Clement wants her son to be in a facility like Vanguard Landing to secure care for the rest of his life after she no longer can. She does not want the state or city to decide where her son will live, be cared for and protected. That is the ultimate goal of Vanguard Landing. She disagrees with Vanguard Landing being perceived as a form of an institution and feels it is more of a nurturing campus for a community of people with special needs. There are over 120 communities like Vanguard Landing nationwide. Some are for-profit and some are non-profit. Please vote yes to continue the forbearance of the loan for Vanguard Landing under the current circumstances as they have done everything they can to stay within the loan agreement.

4. Genine Cooper Agenda Item #3 Vanguard Landing

Ms. Cooper is a resident of Chesapeake, VA and is in support of Vanguard Landing. Ms. Cooper read a detailed passage from a study done by the Madison House Autism Foundation called, [“A Place in the World: Fueling Housing and Community Options for Adults with Autism and Other Neurodiversities.”](#) Her and her husband have been actively seeking supportive intentional communities for their 36 year-old son to live and thrive in when they pass away. Vanguard Landing is the answer to their prayers. Ms. Cooper stated that Vanguard Landing will include a diverse population with and without intellectual disabilities. Medicaid will be accepted, there will be day and night programs and employment will be offered on and off campus. At this time, Vanguard Landing has a loan commitment from Virginia Housing, site plan approval, and cash equity in the bank required to close on their loan. Please vote yes to clear Vanguard Landing from threat of foreclosure, to continue to honor the 2014 loan agreement with annual payments through 2029 agreeing to subordinate the land loan to the Virginia Housing construction loan or accept the new proposed buyout, seven years early at the close of the Virginia Housing loan. As an 18-year veteran real estate agent, Ms. Cooper believes this is also partly a fair housing issue.

5. Tonya Milling Agenda Item #3 Vanguard Landing (Call-in)

Ms. Milling called in by phone. She is the Executive Director of the Arc of Virginia and it is the only statewide advocacy organization made up of and led by people with developmental disabilities, their families and allies. They do not provide any direct services and therefore has no vested interest in any residential options. She is speaking on behalf of her organization and network members who oppose the development of housing that segregates people with disabilities from the broader community that already exist for everyone. Things have changed since Vanguard Landing first started, most notably the lawsuit by the Department of Justice that found Virginia in violation of ADA for lacking integrated community services. The investment in Vanguard Landing is a significant one and therefore should receive the appropriate serious consideration of the long-term pliability. Financial sustainability for disability housing is dependent upon the ability to become a licensed Medicaid waiver program, an unlikely outcome for this model under the federal common community study. We can't speak for the state, but we do know that Virginia's Department of Behavioral Health and Developmental Services (VDBHDS) is focused on several compliance requisites that can close an entity down if found non-compliant. There are housing options currently available for people with developmental disabilities with the appropriate programs in place to help them be successful including 24-hour care.

6. John Napolitano Agenda Item #3 Vanguard Landing

Mr. Napolitano is speaking in favor of Vanguard Landing as a parent of a 34 year-old daughter with disabilities. Integration is not a reality for my daughter who needs 24-hour care. The parents of persons with disabilities know what's best for their children. Mr. Napolitano has been involved with Vanguard Landing from the beginning and is heavily invested in it. This will not be an institution. This will be a place where adult children will be able to live, work, be social, and vibrant while still being able to interact with

their families. He encouraged all present to not let Vanguard Landing go away. They are very close to making this place a reality despite the many setbacks they have been able to overcome. Please vote yes.

**REGULAR MEETING**

**MEETING MINUTES**

1. Approval of Meeting Minutes, November 15, 2022.

MOTION: Joseph Strange  
 SECOND: William Brunke  
 APPROVED: 7-0-0

**FINANCIALS**

2. Katrina Flowers presented financials for November 2022.

**Operating Account Summary: November 2022**

Beginning Cash – November 1, 2022 **\$3,717,897**

*Significant Cash Receipts*

- Grand Total of Significant Cash Receipts - \$352,199
- \$337,836 Reimbursable for Dome Site Project Expenses
- \$ 5,365 Coordinated Services Management – Annual Bond Administration Fee
- \$ 8,998 Interest Income

*Significant Cash Disbursements*

- Grand Total of Significant Cash Disbursements - \$550,410
  - \$ 53,430 Singer Davis– Legal Services for Dome Site Project
  - \$ 8,904 Kimley Horn – Innovation Park Phase II-Conceptual Planning and Infrastructure
  - \$ 6,440 Cherry Bekaert – Annual Financial Audit for June 30, 2022
  - \$ 56,827 Hunton Andrews Kurth – Legal Services for Dome Site Project
  - \$ 14,205 Globalinx – Monthly Conduit Management for November 2022
  - \$232,587 Cooper Carry– Reimbursable Expense for Dome Site Project
  - \$104,946 Kimley Horn– Reimbursable Expense for Dome Site Project
  - \$ 11,863 WPL – Reimbursable Expense for Dome Site Project
  - \$ 10,923 Olympia Bendix Two – Bio Accelerator Monthly Rent – December 2022
  - \$ 50,285 Live Nation Worldwide, Inc. – Amphitheater Capital Maintenance – Reimbursable
- Ending Cash – November 30, 2022 **\$3,513,542****

**Incentive & Initiative Account Summary: November 2022**

Beginning Cash – November 1, 2022 **\$2,905,543**

*Significant Cash Receipts*

- Grand Total of Significant Cash Receipts - \$524
- \$ 524 Bank Interest Income

*Significant Cash Disbursements*

- Grand Total of Significant Cash Disbursements - \$9,634
  - \$ 9,634 United Property Associates – Final Payment for EDIP Grant Part A
- Ending Cash – November 30, 2022 **\$2,890,270****

**Incentive Summary Reporting: November 2022**

<b>Beginning VBDA EDIP Grant Balance</b>	<b>\$3,528,553</b>
<b>Earned Interest and Activity Analysis Fee</b>	<b>+\$ 70</b>
<b>EDIP Grants Expired (Closed)</b>	<b>+\$ 344,516</b>
<b>New Grants Approved by VBDA</b>	<b><u>-\$ 500,000</u></b>

**CONTRACTS**

3. Approval of a Resolution to continue forbearance on the loan for Vanguard Landing for 90 days. Chair Lisa Murphy offered the Vanguard Landing team the opportunity to make their presentation to the board.

John Faber, legally representing Vanguard Landing, explained that he and other subject matter experts representing Vanguard Landing were there to present some requests concerning the existing forbearance on the 2014 promissory note made by Vanguard Landing payable to the City of Virginia Beach Development Authority and answer questions. In support of those requests, a detailed packet of information was provided to the Authority in the week prior to this meeting with the intention of a board review. The members present are Debbie Dear, Executive Director of Vanguard Landing and the team leader; Doug Brown, who is going to be the Operational Programming Director for Vanguard Landing; John Richards and Pauline Kreitzer from Berkadia. Berkadia is the real estate company that negotiated the Virginia Housing loan commitment currently in place. The two requests are:

1. The first request is to get an extension of the current forbearance on the 2014 note to the later of six months after the date of final site plan approval by the City of Virginia Beach or December 31, 2023. That will allow sufficient time to close the loan with Virginia Housing once the final site plan approval is granted.

- 2a. The second request has two parts. The first alternative for consideration is that Vanguard Landing would like to offer a discounted payoff of the 2014 note. So far, Vanguard Landing has paid roughly \$614,000 on that note. The proposal is to pay the difference between that figure and \$1.5M on the note simultaneously with the closing of the Virginia Housing loan that has been committed. In return, that payment would cancel the outstanding balance of the note and would ask the VBDA to release the lien of the deed of trust that currently secures that note. This is the preferred option.

- 2b. The second alternative asks the VBDA to subordinate the deed of trust that secures the 2014 note to the lien of the deed of trust that will secure the Virginia Housing note on the terms of a subordination agreement that is reasonably acceptable to VBDA and to Virginia Housing. That, along with restoration of the payment schedule and maturity date of the 2014 note. The payment schedule under the 2014 note was annual principal containment curtailments in roughly the amount of \$115,000 and a balloon payment in February of 2029.

*Discussion:*

Commissioner Taylor Franklin asked if they just needed the site plans to be approved or if they needed six months after the site plans were approved to close the loan. Mr. Faber explained that the final loan amount is based on what actually is buildable. They won't know what is actually buildable until the final site plans are approved. Chair Lisa Murphy stated that Senior City Attorney Alexander Stiles asked, since the commitment extension is through March of 2023 is that when they think the closing will be? Mr. Faber stated that is the bond inclusion date. The bond inclusion date is a target date that is determined by the Housing Authority that gathers all the information on a project necessary to put that project out for bid in the bond market. Once the bond auction takes place, that establishes the interest rate and allows Vanguard Landing to move forward from that point. Commissioner Franklin asked if the formal bonds will be in March as long as they have final site and building plan approval. Mr. Faber shared that those are two primary things that are outstanding before the bond inclusion date. Commissioner Franklin asked if they had 30 or 60 days to close after that. Mr. Faber shared that there was no specific time limit. Commissioner Franklin said once they go to close, they have a certain amount of time that they have to close. Mr. Faber asked Mr. John Richards to respond to that question. Mr. Richards introduced himself as Managing Director of Berkadia and Ms. Pauline Kreitzer as Vice President and Senior Financial Analyst for Berkadia. He then explained that they procured the loan from Virginia Housing with an approved commitment in July. The commitment contained an October 3<sup>rd</sup> bond inclusion date which was the original target date. That date was missed because they didn't have site plan approval from the City due to delays from the new storm water management regulations recently put in place. Virginia Housing sells tax-exempt and taxable bonds to fund their loans and they set their schedule at the beginning of each year. Every 60 days they have a taxable

offering and on the off month, they'll have a tax-exempt offering until October which is the last offering of the year due to year-end closing and market changes. October 3<sup>rd</sup> was their last bond offering for 2022. Vanguard Landing originally presented February 2023 to City Council because last year, the first taxable bond offering was in February, but they just learned last week that the first taxable offering in 2023 will be in March. They will then have 60 days to close from that time. Chair Lisa Murphy asked under the Berkadia commitment, when was the initial commitment issued? Mr. Richards shared the initial commitment was issued on July 12<sup>th</sup> and clarified that it was not a Berkadia commitment. It was a Virginia Housing commitment. Relative to originating loans, Virginia Housing has an approved mortgage banking list and historically, Berkadia has been one of the top Virginia Housing Originators. Chair Lisa Murphy asked if there was an approved developer on this project and both Mr. Faber and Mr. Richards answered yes. Mr. Richards went on to reiterate the validity of the deal and that it was still in good standing despite missing the October 3<sup>rd</sup> bond inclusion date for 2022. Commissioner Franklin asked if it was a taxable bond and Mr. Richards affirmed it was. A tax-exempt bond would require income restrictions but the taxable bond allows anyone to live there. Chair Lisa Murphy asked if one of the requirements was that there be a zoning endorsement or zoning opinion that is appropriate for multi-family housing. Mr. Richards confirmed that is correct.

Deputy City Manager Taylor Adams asked Chair Lisa Murphy if he could be recognized before deliberation and she allowed it. Mr. Adams thanked the Vanguard Landing team for presenting options before the board. He shared the first option was already presented to the board and vetted but that the second option regarding a modified payment agreement had not been vetted on a staff level yet. He explained that if this was something the board desired to be vetted on the staff level before formal deliberation, he needs some time and the board's permission to work directly with the Vanguard Landing team and their representatives to fully understand what that second alternative deal would mean. He also shared that in a traditional setting like this, there would need to be two liaisons who were officers of the Authority and at least one Councilmember to the Authority to participate in that conversation. This is not a mandate but a precedent when putting together agreements like this if it is the board's will. The staff asked for a short extension to work through the second alternative deal with officers of the board as liaisons and bring the item back as quickly as possible before the board.

Senior City Attorney Alexander Stiles stated that the Resolution that staff is recommending is just a 90-day forbearance to give them the opportunity to evaluate the two options. Commissioner Dr. William Brown stated he hadn't heard about subordination of the City's loan to Vanguard Landing until recently via a City Council meeting. He asked why they were asking for subordination now so late in the process. Mr. Faber stated that while the commitment was not immediately provided, the City of Virginia Beach has had the commitment for three months which is one month longer than Vanguard Landing had it before Councilman Berlucchi asked for it. Mr. Faber elaborated that the way a development agreement like this ordinarily works is there is a purchase money lender for acquisition of the land which is the position that the VBDA occupies and there is a construction or development lender which is the position that Virginia Housing occupies. The construction or development lender takes a greater risk than the acquisition lender and as a result they can ask the purchase money lender to assume a subordinate position to the construction lender that usually involves a subordination agreement subordinating one loan to the other. Mr. Richards expressed that increased rates over time is what changed the landscape of the deal. It is not a financeable scheme to have a land lender subordinate a loan that has favorable terms from the VBDA. Commissioner William Brunke asked, regarding the encumbered value of the land itself, is a value required as part of the equity contribution of Vanguard Landing or restated, does Vanguard Landing have the equity contribution required, without regard to status of the land? Mr. Richards explained that Vanguard Landing has the cash equity available and the land is being included at the appraised value as part of the equity. Because the loan is not leverage constrained and is debt-service constrained, the land value doesn't matter because the income from the project is only going to support a certain amount of debt. Commissioner Brunke asked Mr. Richards to confirm that they do not need any form of forgiveness of this loan in any amount to complete their requirements. Mr. Richards confirmed that would be the case as long as the loan was subordinated. Commissioner Franklin asked if the City does not forgive the debt, will Vanguard Landing have to put in an additional \$2M? Mr. Richards confirmed additional equity would then be required. Ms. Pauline Kreitzer explained that the land has to be either subordinated or free and clear of debt to be included as an equity piece.

Chair Lisa Murphy explained for the benefit of the board that they first received a copy of the loan commitment two weeks ago and that's when they first heard that Virginia Housing was going to require the VBDA to subordinate its loan. The VBDA has a promissory note that specifically requires them to have a first lien on the property. It was the City Auditor's report that brought to light the need to prioritize this particular loan since two years had passed since the deadline for construction, and buildings had still not been built. These are also taxpayer dollars so more time was needed to review details. The forbearance period started back in June of 2021. Since then, this has been extended twice, for one year and then six months respectively, each time recognizing the VBDA had instructions in place for this being a priority lien. It was made clear that the forbearance was subject to being paid off at the time that Vanguard Landing received the construction loan approval. The VBDA has not had the benefit of time to understand how their funding was going to work in this agreement and so the 90 days will give them the opportunity for due diligence on their part to ensure appropriate safekeeping and honor fiduciary obligations to taxpayer dollars. Commissioner Franklin asked Mr. Faber if the 90 days would prevent them from meeting the bond sale. Mr. Faber said they would miss the March 10, 2023 bond inclusion date. Chair Lisa Murphy offered to ensure that before or at the next VBDA meeting, a conversation would be had so as not to disrupt the March bond inclusion date. She also asked who the developer is. Mr. Richards respectfully declined to share the name given that they are not under contract but did offer the developer is in Richmond, VA. Mr. Faber reiterated time is of the essence and thanked the VBDA for their time.

Commissioner William Brunke made the motion that the Authority hereby approve continued forbearance until March 31, 2023 with respect to any and all events of default and qualifying that that's a period of time in which something can be accomplished. It's not deferring any decision for 90 days.

MOTION: William Brunke  
SECOND: Taylor Franklin  
APPROVED: 7-0-0

Chair Lisa Murphy asked for volunteers to be liaisons for this item. Commissioner Taylor Franklin and Commissioner William Brunke both volunteered to be the VBDA liaisons for this agreement. She then called a motion to continue forbearance for 90 days with the understanding that the VBDA will continue to work on this in the interim with the representatives of Vanguard Landing.

APPROVED: 7-0-0

4. Approval of request to terminate the existing contract and rebid the roof replacement for the Human Services building presented by Svetla Tomanova.

*Discussion:*

Ms. Tomanova related that on investigation, the chosen contractor determined that the cost to perform the work would increase by approximately \$325,000. Senior City Attorney Alexander Stiles stated that given the enormous change in scope, City staff didn't think it was appropriate just to do a change order for the contract. A rebid of the contract would give the opportunity for everyone to participate. Chair Lisa Murphy stated that the new fact that has recently been discovered is that 50 percent of the roof is wet and Svetla Tomanova confirmed that was the case and that it would be the same cost to replace the whole roof which is now what is needed. Chair Lisa Murphy asked if anyone had any additional questions. Commissioner William Brunke stated he was assuming there would be no issue terminating the current contract with TST Roofing under the current circumstances and Mr. Stiles assured him there would not be because there is a clause that allows it.

MOTION: Joseph Strange  
SECOND: Guenter Weissenseel  
APPROVED: 7-0-0

### **BUSINESS PARKS**

5. Approval to accept appropriation and authorize infrastructure work at Corporate Landing presented by Emily Archer.

#### *Discussion:*

Chair Lisa Murphy asked if there was a contract for this already. Emily Archer shared that this is currently being worked out.

MOTION: Ronnie Parker  
SECOND: Guenter Weissenseel  
APPROVED: 7-0-0

### **ADMINISTRATIVE INFORMATION**

6. VBDA Priorities: There was no discussion.
7. VBDA Members: There was no discussion.
8. Director's Report: *T. Adams*

#### *Director's Report:*

Deputy Director Taylor Adams shared it was the last meeting for a long-time employee and a first meeting for a new one. He introduced the new Business Development Representative I, Ms. Katelyn Philleo. She is a Virginia Beach native and will be working on International Business Attractions for the department. Ms. Olivia O'Bry will be leaving the department after 22 years of service. She is the new Office Manager of the Hampton Roads Alliance. Mr. Adams and Chair Lisa Murphy both expressed their well wishes.

Chair Lisa Murphy moved to recess into a closed session.

### **RECESS TO CLOSED SESSION**

The VBDA moved to recess into a closed session pursuant to the exemptions from open meetings allowed by Section 2.2-3711(A) of the Code of Virginia (1950), as amended, for the following purposes:

**CONTRACTS:** Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Va. Code § 2.2-3711(A)(29). (*District 2*) (*District 4*)

**PUBLICLY-HELD PROPERTY:** Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Va. Code § 2.2-3711(A)(3). (*District 2*)

**LEGAL MATTERS:** Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel, pursuant to Va. Code § 2.2-3711(A)(7). (*District 2*)

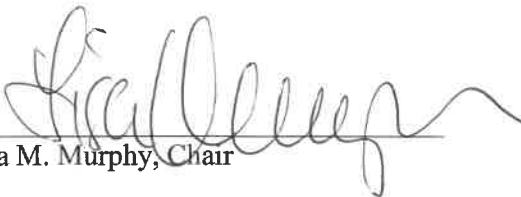
MOTION: Taylor Franklin  
SECOND: William Brunke  
APPROVED: 7-0-0

**RECONVENED INTO OPEN SESSION**

**CERTIFIED CLOSED SESSION**

MOTION: Taylor Franklin  
SECOND: Guenter Weissenseel  
APPROVED: 7-0-0

Chair Lisa Murphy adjourned the meeting at 10:15 am.



Lisa M. Murphy, Chair