

A regular meeting of the Council of the City of Bedford, Virginia, was held in the Council Hall of the Municipal Building at 7:30 p.m., March 8, 2005.

Members present: Mayor E. Thomas Messier; Councilwoman Mary L. Flood; Councilman Thomas M. Padgett; Councilman C. G. Stanley, Jr.; Vice Mayor W. D. Tharp; and Councilman Robert T. Wandrei.

Members absent: Councilman Jeffrey B. Hubbard

Staff present: City Manager F. Craig Meadows; City Attorney W. W. Berry, IV; and Clerk of the Council Teresa W. Hatcher.

Mayor Messier opened the meeting and led all present in saying the Pledge of Allegiance to the Flag.

Mayor Messier declared that the minutes of a regular Council meeting held on February 22, 2005, were approved as distributed.

The City Manager reported on the following:

- He and the Bedford Main Street Board will attend a meeting in Mt. Airy, NC, on March 10 regarding Mt. Airy's multi-day festival. The Main Street Board has voted to make Centerfest a multi-day event.
- Bedford Area Chamber Awards Dinner – April 5
- The City has issued an RFP for employee health insurance coverage – proposals are due back on April 15.
- The FY 2005-06 proposed budget will be presented at the City Council meeting on April 26.
- Suggested possible dates for a City Council retreat – May 2, 3, 9, 12.
- The Electric Utility Director and City Manager attended the Bedford Industrial Management Committee meeting on March 7 – discussion concerned the electric system and the desire of industry to have natural gas in the community.
- The staff is currently reviewing the final design drawings for the new electric department facility on Monroe Street.
- Memorandum regarding a vacancy on the City School Board – asked Council for input.
- Council members have been given pins from the Virginia Municipal League in recognition of its 100th anniversary
- Adjourn the meeting until March 22 at 6:00 p.m. for Planning Commission interviews.

Mayor Messier asked Council to complete the annual review forms for the City Manager and the City Attorney and return them to Debra Anderson by March 25.

The Mayor opened the public hearing on the cable television franchise renewal at 7:37 p.m.

The public hearing notice follows:

NOTICE OF PUBLIC HEARING

On Tuesday, March 8, 2005, the Bedford City Council will conduct a public hearing to receive comments regarding the City proceeding with the renewal process required by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996. Charter Communications, the current cable operator, is seeking renewal of its cable television franchise. The Public Hearing will focus on two major issues:

- Review of the performance of the cable operator;
- Identification of future cable related community needs.

The hearing will be conducted at 7:30 p.m. in Council Chambers, Municipal Building, 215 East Main Street, Bedford, Virginia. Interested persons may appear at such time and place and present their views.

Teresa Hatcher
Clerk of the Council
City of Bedford, Virginia

James Ervin, Network Administrator, explained that the current franchise expires this summer. Mr. Ervin stated that the staff began the process of re-franchising the cable facility about two years ago with Rice Williams Associates.

Mr. Don Williams of Rice Williams Associates reviewed an overview of the background of the cable television franchise and the franchise renewal process. Mr. Williams reported that a survey was taken of 200 subscribers and a technical audit of the system was performed. Mr. Williams stated that in Bedford there are an enormous number of construction related problems for Charter Communications' plant. Council members had been copies of these reports.

The following individuals spoke regarding the cable television system:

- Dave Ballard, 995 Ashland Avenue, reviewed problems with the cable television service such as: slow service calls, the need for a local telephone number in Bedford for service calls.
- Gene Mulholland, 1715 Sunset Drive, reviewed problems regarding the signal for Comcast Sports Net, incompetence and insensitivity toward the user by the

employees of Charter Communications, the need for a local telephone number for service calls; suggested the City look for another cable television provider or develop its own system.

- Randy Quarles, 1425 Three Otters Road, spoke regarding problems with the cable company not showing up on several occasions for scheduled work; problems with the company's telephone being busy; zero customer service.
- Michael Kelemen, Director of Government Relations for Charter Communications, stated an additional issue that needs to be addressed along with the franchise renewal is a pole attachment agreement. Mr. Kelemen introduced new managers with Charter Communications who will be working with the Bedford area. One of the managers explained how the service call centers work and explained that Charter has been working to resolve problems with the call centers.
- Mayor Messier indicated that he has had problems with the cable television system also.

Mayor Messier closed the public hearing at 8:17 p.m.

Bart Warner, Director of Planning & Community Development, explained that the request for the amendment of Section 902 (Signs) of the Land Development Regulations had been withdrawn. Mr. Warner stated the Planning Commission has decided to take a more comprehensive approach to the issue and expect to package a series of proposed amendments to the ordinance that will be presented to Council in total.

The public hearing on the amendment of Section 902 (Signs) of the Land Development Regulations was not held.

The City Manager reviewed the background of the request for vacation or abandonment of a portion of Independence Boulevard right-of-way (retention pond area on the west side of Independence Boulevard south of the Southern States property) as explained in detail in the City Council Action Form dated March 4, 2005. Mr. Meadows reported that Council held a public hearing on February 22 to consider this matter and no action was taken at that meeting due to the fact that certain details of the proposed transaction had to be worked out and due to the desire to have the entire Council hear the matter.

Mr. Meadows explained the City Attorney has drafted an agreement between the City and the developer to be executed prior to the City Council meeting that will become effective upon approval by Council. The agreement provides that the City will convey the 1.204 acres to KOKO, Inc., by a deed from the City with special warranty of title and reserving rights to use of the present retention pond until a replacement facility is operational. The agreement also calls for delivery of the deed to the developer upon evidence that the developer has acquired by deed fee simple title to the land to be acquired from Community First Bank and from Southern States Bedford Cooperative, Inc.; that a storm water management facility maintenance agreement binding the new combined lot will be put to record in a form approved by the City Attorney, with any necessary subordination agreements from any lien holders agreeing to the maintenance agreement; and that a

letter of credit from a bank is supplied to the City by the developer to assure construction of the new drainage retention facility.

City Manager Meadows reported the City staff has been working diligently with the developer to expedite this matter so the developer can begin work within the next couple of weeks. Mr. Meadows stated that an updated proposed ordinance has been drafted and members of Council had been given copies; however there was not sufficient time to post the ordinance for one week prior to the meeting. Mr. Meadows stated that in view of the fact that there were no persons opposed to this action at the public hearing on February 22, and the matter has been fully advertised, staff recommends that Council treat this as an emergency matter, which would allow the waiver of posting of the ordinance and adopt the proposed ordinance.

The City Manager stated the action requested is for Council, by appropriate motion, to waive posting of the ordinance and by appropriate motion approve passage of the ordinance vacating or abandoning the 1.204 acre portion of Independence Boulevard and authorize the Mayor and Clerk to execute a deed conveying the 1.204 acres to KOKO, Inc., subject to acquisition of fee simple interest by KOKO, Inc., of the adjoining parcels from Community First Bank and Southern States Bedford Cooperative, Inc., execution of the storm water management facility maintenance agreement between the City and KOKO, Inc., imposing maintenance responsibilities upon the developer, and posting of a letter of credit with the City assuring completion of the new retention pond upon the 2.4 ± acres revised tract of combined acreages owned by KOKO, Inc.

Vice Mayor Tharp moved that Council treat this as an emergency matter. Councilman Padgett seconded the motion.

Councilman Wandrei stated he would abstain from voting on both matters as he represents KOKO, Inc.

The motion was then voted upon and carried, five members voting aye, one member (Wandrei) abstaining, and one member absent (Hubbard).

On motion by Vice Mayor Tharp, seconded by Councilman Stanley, voted upon and carried by a roll call vote, Council adopted the ordinance as requested. Roll call vote follows:

Councilwoman Flood	aye
Councilman Hubbard	absent
Councilman Padgett	aye
Councilman Stanley	aye
Vice Mayor Tharp	aye
Councilman Wandrei	Wandrei
abstained	
Mayor Messier	aye

The ordinance follows as adopted:

ORDINANCE NO. 05-4

**AN ORDINANCE VACATING OR ABANDONING
A PORTION OF THE INDEPENDENCE BLVD.
RIGHT-OF-WAY (RETENTION POND AREA ON WEST
SIDE OF INDEPENDENCE BLVD. SOUTH OF SOUTHERN
STATES PROPERTY)**

WHEREAS, KOKO, Inc., a Virginia corporation involved in the development of commercial real estate, is contract purchaser of Parcel C containing 0.719 acres owned by Community First Bank and Parcel B containing 0.520 acres owned by Southern States Bedford Cooperative, Inc., as such parcels are shown on a plat of survey entitled "Re-subdivision of Four Tracts of Land on Independence Blvd.," prepared by Berkley-Howell & Associates, P.C., dated January 19, 2005; and

WHEREAS, a storm drainage retention facility is located adjacent to the western edge of Independence Blvd. on a 1.204 acre tract which is owned by the City and is a part of the Independence Blvd. and such drainage retention facility receives drainage from that street and properties to the east of Independence Blvd.; and

WHEREAS, Parcel C and Parcel B abut the 1.204 acre tract and surround it on the south, west and north; and

WHEREAS, KOKO, Inc. has requested the City to vacate and abandon the 1.204 acre portion of the right-of-way and to convey the abandoned real estate to KOKO, Inc., so that it will own a 2.443 acre tract consisting of Parcel C, Parcel B and the 1.204 acres which can be used for commercial development on Independence Blvd.; and

WHEREAS, KOKO, Inc. has agreed in consideration of said conveyance at its own expense to construct a new storm water drainage retention pond on the rear of the combined parcel and to assume all maintenance obligations in respect to it; and

WHEREAS, a public hearing to consider such vacation was held by the City Council at its regular meeting held on February 22, 2005 after a notice of public hearing was advertised pursuant to Section 15.2-2006 in the Roanoke Times on February 14 and on February 20, and in the Bedford Bulletin on February 16, 2005; and

WHEREAS, at the public hearing no one appeared in opposition, and the City Council finds that it is not necessary for the appointment of viewers and that it is in the public interest to abandon and vacate the said portion of the right-of-way and to convey the 1.204 acres to KOKO, Inc..

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL of the City of Bedford, Virginia, as follows:

Section 1. Pursuant to the provisions of Virginia Code Section 15.2-2006, the City Council does hereby abandon and vacate that portion of the Independence Blvd. right-of-way containing 1.204 acres and more fully shown on a plat of survey entitled "Re-subdivision of Four Tracts of Land on Independence Blvd.," prepared by Berkley-Howell & Associates, P.C., dated January 19, 2005.

Section 2. The City Council, pursuant to Section 15.2-2008 approves the conveyance of the 1.204 acre tract, being the portion of right-of-way abandoned, to KOKO, Inc., and authorizes the Mayor and City Clerk to execute and deliver a deed conveying such property with special warranty of title in form approved by the City Attorney, in consideration of the agreement by KOKO, Inc., to construct a new storm water retention pond at the rear of the combined parcel and to assume the obligation to maintain said new drainage facility.

Section 3. The deed shall be held in escrow by the City Attorney and be delivered to KOKO Inc. upon (a) conveyance of Parcel B and Parcel C to KOKO. Inc., (or conveyance of parcels adjoining the 1.204 acres of sufficient size for the new retention pond), (b) execution of a storm water facility maintenance agreement by KOKO, Inc., as owner of the combined tract agreeing to the construction of the replacement drainage facility and assuming liability for its maintenance as a covenant running with the land in favor of the City and such lands as are drained into such facility and (c) delivery of a letter of credit to the City by a banking institution in the amount of \$90,000 assuring construction of the replacement drainage facility.

Section 4. Pursuant to the provisions of Section 15.2-2006, KOKO Inc., shall reimburse the City Council the cost of publishing the aforesaid notices and the cost of recording a certified copy of this Ordinance in the Clerk's Office of the Circuit Court of Bedford County.

Section 5. This Ordinance shall be effective immediately, and shall be recorded in the Clerk's Office of the Circuit Court of Bedford County together with the deeds conveying the 0.719 acre tract and the 0.520 acre

tract (or tracts of substantially the same size so as to provide sufficient area for the new retention pond), and the storm water facility maintenance agreement described in Section 3 above, and such Ordinance shall be come void if such documents are not executed and recorded within six (6) months of the date hereof.

The following individuals gave presentations regarding FY 2005-06 budget requests for their organizations:

- Central Virginia Community Services – Augustine J. Fagan, Executive Director - \$10,767
- Central Virginia Agency on Aging – Daniel L. Farris, Executive Director - \$9,000
- CASA of Central Virginia – Fran Inge, Director - \$5,000
- Lynchburg Center for Independent Living – Ms. Jackson, Assistant Director - \$2,000

City Manager Meadows stated the City intends to borrow funds to finance the purchase of an Enterprise Resource Planning (“ERP”) (financial software) system for the City. This purchase price (\$340,000) and related borrowing was approved by Council as part of the FY 2004-05 capital budget. Mr. Meadows stated in connection with that borrowing, Council needs to adopt a “reimbursement resolution” providing for the reimbursement to the City from the bond proceeds of certain expenses that will have been incurred in the period sixty days prior to the date of the resolution.

On motion by Vice Mayor Tharp, seconded by Councilman Padgett, voted upon and carried by a roll call vote, Council adopted the proposed resolution of official intent to reimburse expenditures with proceeds of a borrowing. Roll call vote follows:

Councilman Hubbard	absent
Councilman Padgett	aye
Councilman Stanley	aye
Vice Mayor Tharp	aye
Councilman Wandrei	aye
Councilwoman Flood	aye
Mayor Messier	aye

The resolution follows as adopted:

**RESOLUTION OF OFFICIAL INTENT
TO REIMBURSE EXPENDITURES WITH
PROCEEDS OF A BORROWING**

WHEREAS, the City of Bedford, Virginia (the “Borrower”), intends to finance the purchase of an Enterprise Resource Planning System to serve the City’s various offices (the “Project”); and

WHEREAS, plans for the Project have advanced and the Borrower expects to advance its own funds to pay expenditures related to the Project (the “Expenditures”) prior to incurring indebtedness and to receive reimbursement for such Expenditures from proceeds of tax-exempt bonds or taxable debt, or both;

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEDFORD, VIRGINIA:

1. The Borrower intends to utilize the proceeds of tax-exempt bonds (the “Bonds”) or to incur other debt, in an amount not currently expected to exceed \$400,000 to pay the costs of the Project.
2. The Borrower intends that the proceeds of the Bonds be used to reimburse the Borrower for Expenditures with respect to the Project made on or after January 8, 2005, which date is no more than 60 days prior to the date hereof. The Borrower reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Bonds or other debt.
3. Each Expenditure was or will be, unless otherwise approved by bond counsel, either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Bonds, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Borrower so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Borrower.
4. The Borrower intends to make a reimbursement allocation, which is a written allocation by the Borrower that evidences the Borrower’s use of proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Borrower recognizes that exceptions are available for certain “preliminary expenditures,” costs of issuance, certain de minimis amounts, expenditures by “small issuers” (based on the year of issuance and not the year of expenditure) and expenditures for construction of at least five years.

5. The Borrower intends that the adoption of this resolution confirms the “official intent” within the meaning of Treasury Regulations Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended.
6. This resolution shall take effect immediately upon its passage.

Mayor Messier adjourned the meeting at 8:45 p.m. until March 22, 2005, at 6:00 p.m. for Planning Commission interviews.