

A called meeting of the Council of the City of Bedford, Virginia, was held in the Council Hall of the Municipal Building at 5:30 p.m., August 12, 2005.

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

Members absent: None

Staff present: City Attorney W. W. Berry, IV; Director of Planning & Community Development Bart Warner; and Clerk of the Council Teresa W. Hatcher.

Staff absent: City Manager F. Craig Meadows

Mayor Messier opened the meeting.

The purpose of the called meeting was as follows:

1. Appointment of an interim City Manager and employment of consultants to assist in search for a new City Manager.
2. Consideration of amended ordinance enacted on March 8, 2005, authorizing the conveyance of 0.470 acres and 0.525 acres (total of 0.995 acres) to KOKO, Inc. rather than 1.204 acres as previously authorized on March 8, 2005.

Vice Mayor Tharp moved that Council adjourn into closed session pursuant to Section 2.2-3711(a)(1) of the Code of Virginia of 1950, as amended, for discussion of personnel matters and pursuant to Section 2.2-3711(a)(7) of the Code of Virginia of 1950, as amended, for consultation with legal counsel. Councilman Padgett seconded the motion. The motion was voted upon and carried by the following roll call vote:

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

Council adjourned into closed session at 5:30 p.m. The following non-council members attended: City Attorney Berry.

Council reconvened into open session at 6:35 p.m.

The Clerk of Council read aloud the following resolution:

**BE IT RESOLVED** that the Council of the City of Bedford hereby certifies that (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

On motion by Councilman Padgett, seconded by Councilman Hubbard, voted upon and carried by a roll call vote, Council adopted the resolution. Roll call vote follows:

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

Vice Mayor Tharp moved that Council authorize the Mayor to contract with Jack A. Gross as interim City Manager on a month to month basis, with compensation based on the current compensation package authorized to Mr. Meadows, and the Mayor is directed to execute such documents as may be required. The motion was seconded by Councilman Wandrei, voted upon and carried unanimously.

Vice Mayor Tharp moved that Council authorize the Mayor to enter into a contract with Springsted, Inc., to assist the City in the search for a new City Manager. The motion was seconded by Councilman Wandrei, voted upon and unanimously.

Mr. Warner, Director of Planning & Community Development, read aloud the following action form regarding conveyance of property:

The City Council on March 8, 2005 approved vacation of a 1.204 acre portion of the Independence Boulevard right-of-way which was essentially a storm water retention pond located on the west side of Independence Boulevard between Southern States on the north and the First Community Bank lot which is on the south of the retention pond and adjacent to the CVS property. The City Council approved the vacation of the right-of-way and its conveyance to KOKO based upon the agreement by KOKO to build a replacement retention pond further back and west of Independence Blvd. on adjoining property to be obtained by KOKO from a third party, and based upon the agreement by KOKO to assume all City obligations of maintenance.

KOKO was unable to obtain ownership of one of the adjoining parcels upon which the replacement facility was to be built. Accordingly, after meetings with the City Planning Staff and the City Attorney, KOKO has submitted a new plan providing for a replacement pond on property which

it can acquire and providing a new street through the middle of the 1.204 acre parcel, the creation of a new parcel on each side of the public street, and the transfer of the two new parcels to KOKO rather than the entire 1.204 acre parcel previously authorized. KOKO, as part of the new proposal, would bear the expense of constructing the new public street according to State specifications leading approximately 150 feet from Independence Boulevard. The City would retain ownership of the strip of land connecting to the adjoining properties at the western boundary line of the original 1.204 acre tract. This will provide access over a public road from the proposed stop light at the intersection of Independence and Freedom Lane to the undeveloped First Community Bank lot. This has been recommended by a consultant retained by The City to review traffic planning on Independence Blvd.

An attorney for Community First Bank, which owns the parcel of land immediately south of the 1.204 acres and between it and CVS Pharmacy, has written to the Mayor advising that any representations made by KOKO that there was an agreement between it and the Bank for conveyance of property were inaccurate; that the Bank has no objection to the proposal to convey the northern most new Tract to KOKO, but that the Bank would like The City to delay any decision on conveyance of the southern new parcel designated "New Tract 4" so that the Bank and KOKO and the engineers can consider the best use of the tract.

The Planning Department recommends that the City Council approve conveyance of the two parcels to KOKO in view of the immediate plans for development, but with a request that KOKO meet with representatives of Community First Bank to consider development of the southern tract (New Tract 4) and the proposed extension of the public street to the Bank property.

The City Attorney has drafted an ordinance to carry out this recommendation if that is the desire of Council.

If the Council desires to proceed with adoption of the proposed ordinance, it first must vote to waive posting of a notice and to consider the ordinance as an emergency matter.

Councilman Padgett moved that Council consider this an emergency matter and waive the reading of the proposed ordinance. The motion was seconded by Councilman Stanley, voted upon and carried, six members voting aye, one member (Wandrei) abstaining.

On motion by Vice Mayor Tharp, seconded by Councilwoman Flood, voted upon and carried by a roll call vote, Council adopted the proposed ordinance regarding conveyance of property to KOKO, Inc. Roll call vote follows:

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

The ordinance follows as adopted:

**ORDINANCE No. 05-16**

**AN ORDINANCE AUTHORIZING THE CONVEYANCE  
TO KOKO, INC. OF TWO PARCELS CONTAINING  
0.470 ACRES AND 0.540 ACRES (A TOTAL OF 1.015 ACRES)  
LOCATED ON THE WEST SIDE OF INDEPENDENCE BOULEVARD,  
REDUCING THE SIZE OF THE PARCELS WHICH WERE PREVIOUSLY  
AUTHORIZED BY AN ORDINANCE ENACTED ON MARCH 3, 2005**

**WHEREAS**, the City Council, held a public hearing February 22, 2005, after publication of required notices, at which meeting the Council considered a request by KOKO, Inc. (KOKO) to vacate and abandon 1.204 acres of the right-of-way of Independence Boulevard constituting a storm water retention pond adjoining the western edge of Independence Blvd. and a request by KOKO to convey the 1.204 acres to it; and

**WHEREAS**, the City Council on March 8, 2005, after considering such request, by Ordinance enacted on that date, vacated and abandoned the 1.204 acre portion of Independence Blvd. and authorized the conveyance of the real estate to KOKO, subject to certain conditions including proof that certain adjoining properties upon which the replacement retention pond would be located had been obtained by proper deeds and subject to execution of a Stormwater Facility Maintenance Agreement by KOKO; and

**WHEREAS**, KOKO, Inc. was unable to reach an agreement with the owner of one of the adjoining parcels on which the proposed replacement retention pond was to be constructed; and

**WHEREAS**, KOKO, Inc., through negotiations with the City Planning Department, has developed a new development plan which includes a new location for the proposed replacement stormwater retention pond and for the reservation by the City of a strip of land through the center of the 1.204 acre tract in direct alignment with Freedom Lane for construction of a public street, which will result in the creation of a new Tract 4 containing 0.470 acres on the southwest side of the new street and creation of Parcel D containing 0.545 acres on the northwest side of the new street, the proposed subdivision being shown on a plat of survey entitled "Resubdivision of 3 Tracts of Land on Independence Boulevard," prepared by Berkley-Howell & Assoc., P.C., dated August 9, 2005

**WHEREAS**, KOKO, Inc., has agreed as part of its development plan and approval of the subdivision plat to construct a stormwater replacement facility in the new location in accordance with its previous agreements and to construct a roadway within the reserved strip and to comply with all other development requirements of the City of Bedford Land Development Regulations, including delivery of the letter of credit assuring construction of the replacement drainage facility and the public street and public utilities;

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

Section 1. The City Council hereby modifies the terms of Ordinance No. 2000-4 enacted on March 3, 2005 so as to authorize the conveyance to KOKO, Inc. of Parcel D and new Tract 4 as shown on the survey entitled "Resubdivision of 3 Tracts of Land on Independence Boulevard," rather than the conveyance of all of the 1.204 acre tract set forth in the previous Ordinance.

Section 2. The approval of the new site plan and subdivision plat is made in consideration of the agreement by KOKO, Inc. at its own expense to construct a replacement stormwater drainage pond, to assume all maintenance responsibilities in respect to such storm drainage facilities, and to construct the new public street, and accordingly this Ordinance is enacted conditioned upon (a) the conveyance to KOKO, Inc. of parcels from Southern States Bedford Cooperative, Inc. and from Turner and Brenda C. Hopkins to provide the proposed relocation of the pond as shown on the aforesaid plat, (b) execution of a Stormwater Facility Maintenance Agreement by KOKO, Inc. as owner of the new tracts agreeing to construction of the replacement drainage facility at its expense and assuming liability for maintenance of all pipes leading from the 1.204 acre tract to the replacement detention facility and assuming liability for future maintenance of such pipes in such facility as a covenant running with the land in favor of the City and such lands as are drained into such facility; (c) execution of a Development Agreement between The City and KOKO pertaining to the improvements including the new street and the replacement retention pond; and delivery of a letter of credit to The City by a banking institution in the amount of \$100,000 assuring construction of the improvements.

Section 3. All provisions of the Ordinance enacted on March 3, 2005 not inconsistent with the provisions hereof shall remain in full force and effect.

Section 4. 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 parcels required for construction of the replacement stormwater retention pond and the Stormwater Facility Maintenance Agreement, and such Ordinance shall become void if such documents are not executed and recorded prior to October 1, 2005.

Mayor Messier adjourned the meeting at 6:45 p.m.