

MOTION:

**April 19, 2005
Regular Meeting
Ord. No. 05-**

SECOND:

**RE: CREATE THE CHERRY HILL COMMUNITY DEVELOPMENT
AUTHORITY – WOODBRIDGE AND DUMFRIES MAGISTERIAL
DISTRICTS**

ACTION:

WHEREAS, the Board of County Supervisors of Prince William County, Virginia (the "Board") has received a petition (the "Petition") from Lee Carolina, LLC (the "Landowner") for the creation of the Cherry Hill Community Development Authority (the "CDA"), and the Landowner has represented that they own at least 90% of the land within the proposed CDA district; and

WHEREAS, a public hearing has been held on April 19, 2005 by the Board on the adoption of this Ordinance and notice has been duly provided as set forth in §15.2-1427 of the Code of Virginia of 1950, as amended and §§15.2-5104 and 15.2-5156 of the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2, Code of Virginia of 1950, as amended (the "Act"); and

WHEREAS, the Board proposes to create the CDA in order to provide the public improvements described in the Petition; and

WHEREAS, the creation of the CDA to assist in financing certain improvements in connection with the proposed development within the CDA District will benefit the citizens of Prince William County, Virginia (the "County") by providing additional recreational, retail and business opportunities for the citizens of the County, as well as infrastructure improvements benefiting the citizens of the County, an improved transportation system, and additional employment opportunities and expansion of the County's tax base and will meet the increased demands placed upon the County as a result of development within the CDA district; and

WHEREAS, the Landowner has waived in writing the right to withdraw its signature from the Petition in accordance with §15.2-5156 of the Act;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Supervisors of Prince William County, Virginia:

1. Creation of Authority. The Cherry Hill Community Development Authority is hereby created as a public body politic and corporate and political subdivision of the Commonwealth of Virginia in accordance with the applicable provisions of the Act. The CDA shall have the powers set forth in the Act.

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2. Boundaries of CDA. The CDA boundaries shall initially include the property identified in the attached Exhibit A (the "Initial CDA District"), provided, however, that any property listed on Exhibit A under "Other Properties" shall be released and excluded from the CDA District if such property is not acquired by the Landowner by July 31, 2005. In accordance with §15.2-5157 of the Act, a copy of this Ordinance shall be recorded in the land records of the Circuit Court of Prince William County for each tax map parcel in the CDA district as such CDA district exists at the time of issuance of the CDA's bonds (the "Bonds") and the CDA district shall be noted on the land records of the County. The Board, upon the request of the CDA or the Landowner, may, by resolution, release or exclude from the CDA district (i) at any time before the issuance of the Bonds certain portions of land as long as at least 1,500 acres of land remain in the CDA district and (ii) after the issuance of the Bonds only de minimis portions of land not to exceed approximately ten acres. In addition, the CDA may release and exclude from the CDA district parcels of land with respect to which all special assessments have been paid or prepaid.

3. Facilities and Services. The CDA is created for the purpose of exercising the powers set forth in the Act, including financing, constructing, acquiring and developing, and owning and maintaining if necessary, certain improvements in connection with the development of a mixed use development as described in the Petition and the CDA's Articles of Incorporation. The CDA shall have all the powers provided by the Act. The CDA shall not provide services which are provided by, or obligated to be provided by, any authority already in existence pursuant to the Act unless such authority provides the certification required by §15.2-5155 of the Act.

4. Articles of Incorporation. Attached as Exhibit B are the proposed Articles of Incorporation of the CDA. The County Executive is authorized and directed to execute and file such Articles of Incorporation on behalf of the Board with the State Corporation Commission in substantially the form attached as Exhibit B with such changes, including insubstantial changes to the boundary description of the CDA district described therein, as the County Executive may approve. The County Executive is authorized to approve such changes or corrections to the Articles of Incorporation prior to filing with the State Corporation Commission as do not change the purpose or function of the CDA as set forth in this Ordinance and in the Petition.

5. Capital Cost Estimates. The Board hereby finds, in accordance with §15.2-5103(B) of the Act, that it is impracticable to include capital cost estimates.

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6. Membership of the Authority.

(a) The powers of the CDA shall be exercised by an authority board consisting of five members.

(b) All members of the CDA board shall be appointed by the Board in accordance with the provisions of §15.2-5113.

(c) The initial members of the CDA board shall be as set forth in the Articles of Incorporation for the terms set forth therein.

(d) Each CDA board member shall receive such compensation for his or her services as a CDA board member as may be authorized from time to time by resolution of the CDA board, provided that no member shall receive compensation in excess of \$300 per meeting attended unless authorized by resolution of the Board.

7. Plan of Finance; Issuance of Bonds.

(a) The improvements, services and operations to be undertaken by the CDA as described herein and in the Petition shall be funded from all or some of the following sources: (i) bonds to be issued by the CDA; (ii) special assessments to be levied pursuant to Virginia Code Section 15.2-5158A5 and (iii) any other source of funding available to the CDA including rates, fees and charges to be levied by the CDA for the services and facilities provided or funded by the CDA.

(b) The Bonds to be issued by the CDA, in one or more series from time to time, will be used to pay all or a portion of the costs of certain infrastructure as described herein and in the Petition, the costs of issuing the Bonds and any required reserves, and interest on the Bonds prior to and during construction and for a period up to three years after completion.

(c) Any bonds issued by the CDA or any other financing arrangements entered into by the CDA will be debt of the CDA, will not be a debt or other obligation of the County and will not constitute a pledge of the faith and credit of the County.

8. Effective Date. This Ordinance shall take effect immediately.

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ATTACHMENTS: A – Initial CDA District Boundaries
B – Proposed Articles of Incorporation

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

County Attorney

Director, Finance Department

CERTIFIED COPY

Clerk to the Board

EXHIBIT A

Description of Community Development Authority Boundaries

Owner:	Lee Carolina LLC	
Tax Map Parcels:		Acres:
8289-87-7842		32.18
8389-08-4661		98.16
8389-17-6221		91.19
8389-06-9329		17.76
8389-05-7189		7.38
8389-35-6438		322.50
8289-85-2989		99.44
8289-75-0340		13.66
8289-64-9987		89.32
8289-91-1918		10.00
8389-53-2532		3.50
8289-91-7845		32.50
8389-24-2376		110.36
8389-54-1879		57.10
8288-88-1665		233.07
8389-00-0137		27.04
8389-11-0801		53.02
8388-18-4994		75.46
8389-41-3404		313.89
8389-42-9772		2.15
8389-52-1394		0.50
8389-52-1680		0.74
8389-52-2672		1.04
8389-52-1849		0.46
8389-52-4232		3.57
8389-52-5473		2.40
8389-52-0622		0.99
8288-57-6195		2.23
8288-57-5956		0.70
8389-23-4204		14.46
8389-32-1295		2.63
8389-32-5571		12.95
8389-60-1576		53.00
8389-53-5711		1.07
8389-42-6195		4.00
8389-53-4443		1.07

8389-52-4387	1.02
8389-63-1137	10.64
8389-52-7685	0.58
8389-43-1626	1.33
8389-62-3777	2.46
8389-62-7185	0.35
8389-62-5228	1.02
8389-53-4114	1.07
8389-43-3928	2.76
8389-62-5845	2.13
8389-62-0327	3.00
8389-62-0162	0.50
8389-24-0523	14.79
8389-62-5354	0.16
8289-93-7231	6.80
8389-43-8622	1.07
8389-43-7941	1.07
8389-43-6730	1.07
8389-63-6343	0.86
8389-63-4442	0.25
8389-42-4267	12.00
8388-68-6019	<u>16.20</u>
Subtotal:	1,872.62

Other Properties	
Tax Map Parcels:	Acres:
8389-62-5363	1.26
8389-62-0140	3.70
8369-62-1254	0.30
8389-52-8065	2.92
8389-53-6042	1.70
8389-53-7408	<u>1.07</u>
Subtotal:	10.95
Total CDA Acreage:	<u>1,883.57</u>

EXHIBIT B

Articles of Incorporation of Cherry Hill Community Development Authority

The undersigned, pursuant to Chapter 51, Title 15.2 of the Code of Virginia, adopts the following Articles of Incorporation for the Cherry Hill Community Development Authority and states as follows:

Article I

Name

The name of this authority is CHERRY HILL COMMUNITY DEVELOPMENT AUTHORITY (the "CDA").

Article II

Organization

Pursuant to an ordinance adopted by the Board of County Supervisors of Prince William County, Virginia ("Board of County Supervisors") on April 19, 2005, the CDA shall be organized by the County of Prince William, Virginia under the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended) (the "Act"), as a public body politic and corporate and a political subdivision governed by the laws of the Commonwealth of Virginia.

Article III

Members

The affairs of the CDA shall be conducted by an authority board of five members ("CDA Board"). The initial Board members are as set forth in Exhibit A attached hereto and incorporated by reference. All members shall be appointed by the Board of County Supervisors. Each member shall serve a four year term, except the initial members who shall serve the terms of office set forth in Exhibit A hereto. The election of officers of the CDA shall be as set forth in the By-Laws of the CDA. Qualifications and appointment of members of the CDA Board shall be consistent with the requirements of the Act.

The CDA Board shall have the powers and duties set forth in the Act and in these Articles of Incorporation and the By-Laws, to the extent that such powers and duties are not inconsistent with the Act.

Article IV

Principal Office

The CDA's principal office shall be c/o Edward S. Byrne, Senior Vice President, KSI, 8081 Wolftrap Road, Suite 300, Vienna, Virginia 22182. The CDA may conduct its business and maintain offices for such purposes at such other places within or without Prince William County, Virginia as may from time to time be deemed advisable by the CDA Board, and not in conflict with the requirements of the Act.

Article V

Authority District

The land initially encompassed within the CDA is set forth in Exhibit B attached hereto (the "Initial Authority District") provided that the Board of County Supervisors, upon the request of the CDA or the landowners petitioning to create the CDA, may release and exclude from the CDA district (i) at any time before the issuance of the CDA's bonds certain portions of land as long as at least 1,500 acres of land remain in the CDA district and (ii) after such bonds are issued only certain de minimis portions of land not to exceed approximately ten acres and provided further that any property listed on Exhibit B under "Other Properties" shall be released and excluded from the CDA district if such property is not acquired by one of the Petitioners, as defined in the Petition attached hereto. In addition, the CDA may release and exclude from the CDA district portions of land with respect to which all special assessments have been paid or prepaid.

Article VI

Purposes and Powers

The CDA is organized for the purpose of exercising all powers granted by the Act, including financing, funding, planning, establishing, acquiring, constructing or reconstructing, enlarging, extending, equipping, operating and maintaining all or a portion of the infrastructure improvements generally described in the Petition attached hereto to create the CDA. The CDA shall have all powers granted to a "community development authority" under the Act.

Article VII

Not-for-Profit

The CDA shall not be organized or operated for pecuniary gain or profit. No part of the net earnings of the CDA shall inure to the benefit of, or be distributable to any member, director, officer, or any other private person, except that the CDA shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes set forth in Article VI.

Article VIII

Amendment of Articles

These Articles of Incorporation may be amended at any time and from time to time by the Board of County Supervisors as now or hereafter prescribed by the Act.

Article IX

Registered Office and Registered Agent

The address of the initial registered office of the CDA is Walsh Colucci Lubeley Emrich & Terpak, PC, 4310 Prince William Parkway, Suite 300, Prince William, Virginia 22192. The initial Registered Agent of the CDA is Michael D. Lubeley, whose business address is identical to that of the initial registered office and who is a resident of Virginia and a member of the Virginia State Bar.

Article X

Initial Members

The names and addresses of the initial members of the CDA Board are as set forth on the attached and incorporated Exhibit A.

Article XI

Indemnification

(a) For purposes of this Article XI the following definitions shall apply:

(i) "expenses" include counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification;

(ii) "liability" means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation;

(iii) "legal entity" means a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise; and

(iv) "proceeding" means any threatened, pending, or completed action, suit, proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

(b) In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation, the members, directors and officers of the CDA shall not be liable to the CDA.

(c) The CDA shall indemnify any individual who is, was or is threatened to be made a party to a proceeding (including a proceeding by or in the right of the CDA) because such individual is or was a member, director or officer of the CDA or because such individual is or was serving the CDA or any other legal entity in any capacity at the request of the CDA while a member, director or officer of the CDA, against all liabilities and reasonable expenses incurred in the proceeding except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a member, director or officer of a legal entity controlled by the CDA shall be deemed service at the request of the CDA. The determination that indemnification under this paragraph (c) is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a member or director, as provided by law, and in the case of an officer, as provided in Section (d) of this Article; provided, however, that if a majority of the members of the CDA has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel agreed upon by the CDA Board and such person. Unless a determination has been made that indemnification is not permissible, the CDA shall make advances and reimbursements for expenses incurred by a member, director or officer in a proceeding upon receipt of an undertaking from such member, director or officer to repay the same if it is ultimately determined that such member, director or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the member, director or officer and shall be accepted without reference to such member's, director's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that a member, director or officer acted in such a manner as to make such member, director or officer ineligible for indemnification. The CDA is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its members, directors or officers to the same extent provided in this paragraph (c).

(d) The CDA may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its members, directors and officers pursuant to paragraph (c) of this Article, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the members, directors, officers, employees and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the CDA, and may contract in advance to do so. The determination that indemnification under this paragraph (d) is permissible, the authorization of such indemnification and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under paragraph (c) of this Article shall be limited by the provisions of this paragraph (d).

(e) The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the CDA. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the CDA and indemnification under policies of insurance purchased

and maintained by the CDA or others. However, no person shall be entitled to indemnification by the CDA to the extent such person is indemnified by another, including an insurer. The CDA is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the CDA or any other legal entity at the request of the CDA regardless of the CDA's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the CDA from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

(f) No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation as of the ____ day of April, 2005, as duly authorized by the Board of County Supervisors of Prince William County, Virginia by Ordinance adopted April 19, 2005.

By: _____
Craig S. Gerhart, County Executive, County
of Prince William, Virginia

EXHIBIT A

Initial CDA Board Members

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>	<u>E-Mail Address</u>
Gary Bowman President	Bowman Consulting Group 14020 Thunderbolt Place Suite 300 Chantilly, VA 20151	(703) 464-1000	<u>gbowman@bowmanecg.com</u>
Tracy Gordon	2989 Birch Creek Court Dumfries, VA 22026	(703) 441-6525	
Jamie Nalls Vice President	Virginia Commerce Bank 374 Maple Avenue East Vienna, VA 22180	(703) 319-3180	<u>jnalls@vcbonline.com</u>
Jim Riley President	Southbridge Board of Directors 2890 Medford Drive Dumfries, VA 22026	(703) 526-1084	<u>jim@jimriley.org</u>
Anthony Thrall	18312 Possum Point Road Dumfries, VA 22026	(703) 221-3336	

Exhibit B

Description of Initial Community Development Authority Boundaries

Owner:	Lee Carolina, LLC	
Tax Map Parcels:		Acres:
	8289-87-7842	32.18
	8389-08-4661	98.16
	8389-17-6221	91.19
	8389-06-9329	17.76
	8389-05-7189	7.38
	8389-35-6438	322.50
	8289-85-2989	99.44
	8289-75-0340	13.66
	8289-64-9987	89.32
	8289-91-1918	10.00
	8389-53-2532	3.50
	8289-91-7845	<u>32.50</u>
	Subtotal:	817.59

Owner:	Lee Carolina II, LLC	
Tax Map Parcels:		Acres:
	8389-24-2376	110.36
	8389-54-1879	57.10
	8288-88-1665	233.07
	8389-00-0137	27.04
	8389-11-0801	53.02
	8388-18-4994	75.46
	8389-41-3404	313.89
	8389-42-9772	2.15
	8389-52-1394	0.50
	8389-52-1680	0.74
	8389-52-2672	1.04
	8389-52-1849	0.46
	8389-52-4232	3.57
	8389-52-5473	2.40
	8389-52-0622	0.99
	8288-57-6195	2.23
	8288-57-5956	0.70
	8389-23-4204	14.46
	8389-32-1295	2.63
	8389-32-5571	12.95

8389-60-1576	53.00
8389-53-5711	1.07
8389-42-6195	4.00
8389-53-4443	1.07
8389-52-4387	1.02
8389-63-1137	10.64
8389-52-7685	0.58
8389-43-1626	1.33
8389-62-3777	2.46
8389-62-7185	0.35
8389-62-5228	1.02
8389-53-4114	1.07
8389-43-3928	2.76
8389-62-5845	2.13
8389-62-0327	3.00
8389-62-0162	0.50
8389-24-0523	14.79
8389-62-5354	0.16
8289-93-7231	6.80
8389-43-8622	1.07
8389-43-7941	1.07
8389-43-6730	1.07
8389-63-6343	0.86
8389-63-4442	0.25
8389-42-4267	12.00
8388-68-6019	16.20
	Subtotal: 1,055.03

Other Properties	
Tax Map Parcels:	Acres:
8389-62-5363	1.26
8389-62-0140	3.70
8369-62-1254	0.30
8389-52-8065	2.92
8389-59-6042	1.70
8389-53-7408	1.07

Subtotal 10.95

Total CDA Acreage: 1,883.57




Craig S. Gerhart
County Executive

COUNTY OF PRINCE WILLIAM
OFFICE OF EXECUTIVE MANAGEMENT
1 County Complex Court, Prince William, Virginia 22192-9201
(703) 792-6600 Metro 631-1703 FAX: (703) 792-7484

March 31, 2005

BOARD OF COUNTY SUPERVISORS
Sean T. Connaughton, Chairman
Maureen S. Caddigan, Vice Chairman
Hilda M. Barg
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John D. Jenkins
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John T. Stirrup

TO: Board of County Supervisors

FROM: Christopher E. Martino
Director of Finance 

THRU: Craig S. Gerhart
County Executive

RE: Adoption of an Ordinance to Establish the Cherry Hill Community Development Authority (CDA) – Woodbridge and Dumfries Magisterial Districts

I. Background is as follows:

- A. A Community Development Authority (CDA) can be created by the Board of County Supervisors acting on petition of a majority of the property owners or those owning a majority of the assessed value within the proposed boundaries of the CDA district.
1. Authority to Issue Bonds – Once established, a CDA is empowered to issue revenue bonds to finance infrastructure improvements including transportation facilities (e.g. roads, bridges, sidewalks, signs, etc.), stormwater management facilities, utilities, parks and recreation facilities, fire prevention facilities, and school facilities leased, sold or donated to the local school board. The Code of Virginia stipulates that bonds issued by a CDA as approved by ordinance may not be considered debt of the local government.
 2. Repayments of Bonds – Debt service on CDA bonds is paid solely from special taxes or assessments imposed on real property within the CDA district. The local jurisdiction creating the CDA may not use funds other than those derived from the special tax assessments on the CDA district to pay debt service of the CDA.

- B. CDA Guidelines – On December 2, 1997, the Board approved guidelines to follow when considering petitions to establish CDAs in Prince William County (guidelines were subsequently amended and restated in 1998, see Resolution 98-1069. A technical amendment was also approved by the Board on March 15, 2005). The guidelines (as technically amended) state that a CDA must advance the County’s economic or community development Strategic Plan goal and be structured to or comply with other requirements in order to protect the County’s financial position.
- C. Staff Review – The County’s CDA guidelines establish a review process whereby petitions to establish CDAs are reviewed and evaluated to determine whether they comply with those guidelines.
1. Phase One Review - The following items were considered in the attached staff analysis as part of the phase 1 review (prior to creating the CDA):
 - Does the proposed CDA advance the County’s economic or community development strategic goal?
 - Do the improvements and/or services to be provided by the CDA conform to the County’s planning documents?
 - Do the improvements and/or services to be provided by the CDA have an adverse impact on the County’s bond rating?
 - Do the improvements and/or services to be provided by the CDA represent a significant public benefit?
 - Is the petitioner current on all taxes and assessments?
 - Does the petitioner’s plan of finance propose sufficient funds to construct the proposed improvements and are the cost estimates reasonable?
 - Is the petitioner’s financial history free of bankruptcy, insolvency and the like?
 - Has the petitioner had success developing/building projects of comparable size and complexity?
 - Are the land values, after the proposed improvements are in place, sufficiently in excess of the value of the proposed improvements?
 2. Phase Two Review - The following items will be considered as part of the phase 2 review (assuming the Board creates the CDA and prior to issuing bonds):

- a. Memorandum of Understanding - Has the petitioner agreed to a Memorandum of Understanding in order to establish the petitioner's responsibilities and agreements with regard to type and manner of levying and collecting assessments, project timing, change of ownership, structure of debt service payments, and any other condition or agreement deemed desirable or necessary for the successful establishment and operation of the CDA.
- b. Qualifications - Are the petitioner-designated CDA Board members qualified to serve in such a capacity?

II. Current Situation is as follows:

- A. Application – Lee Carolina, LLC and Lee Carolina II, LLC, affiliates of KSI Services, Inc., submitted an application and draft petition to Prince William County to establish the Cherry Hill Community Development Authority encompassing 1,883.57 acres surrounding Harbor Station Parkway, Cherry Hill Road, and Congressional Way. (The Petitioners are considering a consolidation of the two LLCs which may, or may not, occur prior to the Public Hearing. A merger of the two entities should not adversely impact the filing or the facts in the case. Should the combination occur prior to Board action, the required documentation, including the proposed Board resolution will be revised appropriately).
- B. Public Hearing – The Code of Virginia requires that a public hearing be advertised once per week for three successive weeks. No less than ten days must pass between the last advertisement and the date of the hearing on the creation of the CDA. The Board authorized such a hearing to take place. The hearing date, originally scheduled for April 5th, was moved to April 19th at the request of the petitioners' counsel. The requisite advertisement will have taken place by then.
- C. Staff Review and Recommendation – Staff has reviewed the application and determined that the proposed Cherry Hill CDA complies with the items in the County's adopted CDA guidelines considered in the phase one review. On that basis, Staff recommends that the Board adopt the ordinance creating the Cherry Hill CDA.
- D. Board Action Requested – The Board of County Supervisors is requested to adopt an ordinance establishing the Cherry Hill Community Development Authority.

III. Issues in order of importance are as follows:

- A. Compliance with CDA Guidelines – Does the alternative support the requirement that the CDA be in conformance with County’s Adopted CDA Guidelines?
- B. Legal – Does the alternative support the requirement that the proposed CDA be in compliance with the laws of the Commonwealth?
- C. Timing – Does the alternative action meet existing time commitments?
- D. Fiscal Implications – Does the alternative result in any fiscal implications?
- E. Policy and Service Level Implications – Does the alternative raise any issues with policy or service level implications?

IV. Alternatives are as follows:

- A. Adopt the Ordinance to Establish the Proposed Cherry Hill Community Development Authority (CDA).
 - 1. Compliance with CDA Guidelines – County staff finds that the Cherry Hill CDA complies with Prince William County’s adopted CDA guidelines through the phase 1 review.
 - 2. Legal – The proposal appears to be in compliance with applicable laws governing the creation of a CDA.
 - 3. Timing – County staff, at the request of the petitioners’ counsel moved the date of the public hearing from April 5, 2005 to April 19th, 2005. The Board’s consideration of this matter meets the time considerations of the Petitioners.
 - 4. Fiscal Implications – Staff analysis concludes that the proposed Cherry Hill CDA, and the concomitant development, will produce a positive fiscal impact for Prince William County.
 - 5. Policy and Service Level Implications – None identified beyond those required relating to the CDA Guidelines.

B. Take No Action.

1. Compliance with CDA Guidelines – This alternative does not conform to the conclusion of Staff's analysis that the Cherry Hill CDA complies with Prince William County's adopted CDA guidelines through the phase 1 review.
2. Legal – No Board action is required with this alternative.
3. Timing – The Board's consideration of this matter meets the time considerations of the Petitioners.
4. Fiscal implications – None identified beyond those discussed relating to the CDA Guidelines.
5. Policy and Service Level Implications – None identified beyond those required relating to the CDA Guidelines.

V. Recommendation is that the Board concur with Alternative A and adopt the attached Ordinance establishing the Cherry Hill CDA

Attachments:

1. Petition to Create the Cherry Hill Community Development Authority.
2. Articles of Incorporation of Cherry Hill Community Development Authority
3. 30-Day Waiting Period Waiver
4. Staff Analysis
5. Ordinance to Establish the Cherry Hill Community Development Authority.

Staff Contact: Chris Martino x6700

**Petition
For The
Creation Of The
Cherry Hill
Community Development
Authority**

**PETITION
FOR THE CREATION OF THE CHERRY HILL
COMMUNITY DEVELOPMENT AUTHORITY**

**COUNTY OF PRINCE WILLIAM, VIRGINIA
April 7, 2005**

WHEREAS, the undersigned (the "Petitioner") is the owner of certain parcels of land in the County of Prince William, Virginia, (the "County") containing approximately 1,872.62 acres and intends to acquire an additional approximately 10.95 acres for a total of approximately 1,883.57 acres, surrounding Harbor Station Parkway, Cherry Hill Road and Congressional Way in the Dumfries and Woodbridge Magisterial Districts, as more particularly described on Exhibit P-A attached hereto; and

WHEREAS, Petitioner desires to develop such property as a mixed use development consisting of an approximately 2.0 million square feet of commercial space, parking facilities and a commuter rail station and certain residential facilities and related amenities, including a golf course, tennis courts, clubhouse and trail system and park facilities, all of which would provide additional recreational, retail and business opportunities to the citizens of the County, as well as education and infrastructure improvements benefiting the citizens of the County and which would improve the region's transportation system, increase housing and employment opportunities and expand the County's tax base; and

WHEREAS, the Petitioner proposes to create a community development authority as permitted under Virginia Code Sections 15.2-5152, et seq., and other applicable provisions of Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended (the "Act") to provide financing for certain infrastructure necessary to meet the increased demands placed upon the County as a result of development within the community development authority district;

NOW, THEREFORE, Petitioner respectfully requests that the Board of County Supervisors of the County of Prince William adopt an ordinance creating the Cherry Hill Community Development Authority pursuant to the provisions of the Act, and in support of such request, Petitioner represents and states as follows:

1. **Standing and Jurisdiction.** Petitioner is currently the owner of at least 90% of the real estate to be included in the community development authority. All such real estate is located wholly within the County.

2. **Name and Boundaries of the Proposed District.** Petitioner requests that the Board of County Supervisors create the Cherry Hill Community Development Authority (the "CDA") pursuant to the authority granted in the Act. The boundaries of the CDA district (the "District") will be as described on Exhibit P-A attached hereto (provided that any properties listed under "Other Properties" on Exhibit P-A shall not be included in the CDA if such property has not been acquired by the Petitioner by July 31, 2005) as such boundaries may be modified by the Board of County Supervisors upon request of the Petitioner or the CDA (i) at any time before the issuance of the herein defined Bonds by deletion of certain portions of land as long as at least 1,500 acres of land remain in the CDA district and (ii) after the issuance of the Bonds by deletion of only de minimis portions of land not to exceed approximately ten acres. The District will be entitled the Cherry Hill Community Development Authority District.

3. **Services and Facilities to be Undertaken by the CDA.** The CDA will undertake to finance, acquire and construct certain public improvements pursuant to Section 15.2-5158 of the Act, as generally described on Exhibit P-B attached hereto and incorporated herein (the "Improvements") and will undertake to provide such other facilities and services as

are permitted by the Act. All Improvements will be constructed in accordance with applicable governmental standards after obtaining all necessary permits and approvals therefor.

4. Proposed Plan for Providing and Financing the Improvements.

A. The CDA will issue bonds in one or more series (the "Bonds") to finance all or a portion of the improvements shown on Exhibit P-B (the "Improvements") under the authority of the Act, specifically Virginia Code Sections 15.2-5158 and 15.2-5125 as those Sections may be amended. The Bonds will be issued in one or more series in an amount sufficient to pay the costs of the Improvements, the costs of issuing the Bonds, any debt service reserves and interest on the Bonds during acquisition and construction of the Improvements and for a period of not more than three years after completion of construction.

B. The Petitioner proposes that the CDA request the Board of County Supervisors to establish a special assessment upon the property within the District to finance the Improvements as provided in Virginia Code Section 15.2-5158(A)(5).

C. The CDA or its designee will contract for the construction of the Improvements and for their operation and maintenance until such time as the Improvements are conveyed to or dedicated and accepted by the applicable governmental entity or until such time as the responsibility for operation and maintenance is assumed by another entity in accordance with applicable laws and regulations.

5. Benefits from CDA Construction of Facilities. Petitioner represents that the following benefits are expected to be derived from the construction of the Improvements by the CDA:

A. The proposed Improvements and services to be undertaken by the CDA will support commercial, business and service space and educational and recreational facilities to

serve County citizens, will support a wider range of transportation and housing options and will promote economic development in the County by creating new jobs and attracting commercial establishments that will generate additional tax revenues for the County.

B. The development supported by the Improvements is expected to diversify and increase the County's tax base.

C. The financing of the Improvements by the CDA will provide needed public improvements, such as road improvements, parking and a new Virginia Railway Express Station and will permit such Improvements to be constructed more expeditiously than would otherwise be possible.

6. **CDA Board Members**. The members of the Board of the CDA shall be selected under the applicable provisions of Virginia Code Section 15.2-5113. The Petitioner recommends the persons on the attached Exhibit P-C to be appointed by the Board of County Supervisors to serve as the initial members of the CDA Board.

Respectfully submitted,

PETITIONER:

LEE CAROLINA LLC, a Virginia limited liability company

By: SANDLER AT HARBOR STATION,
L.L.C., a Virginia limited liability company,
Managing Member

By: _____

Name: _____

Title: _____

EXHIBIT P-A

Description of Community Development Authority Boundaries

Owner: Lee Carolina LLC

Tax Map Parcels:	Acres:
8289-87-7842	32.18
8389-08-4661	98.16
8389-17-6221	91.19
8389-06-9329	17.76
8389-05-7189	7.38
8389-35-6438	322.50
8289-85-2989	99.44
8289-75-0340	13.66
8289-64-9987	89.32
8289-91-1918	10.00
8389-53-2532	3.50
8289-91-7845	32.50
8389-24-2376	110.36
8389-54-1879	57.10
8288-88-1665	233.07
8389-00-0137	27.04
8389-11-0801	53.02
8388-18-4994	75.46
8389-41-3404	313.89
8389-42-9772	2.15
8389-52-1394	0.50
8389-52-1680	0.74
8389-52-2672	1.04
8389-52-1849	0.46
8389-52-4232	3.57
8389-52-5473	2.40
8389-52-0622	0.99
8288-57-6195	2.23
8288-57-5956	0.70
8389-23-4204	14.46
8389-32-1295	2.63
8389-32-5571	12.95
8389-60-1576	53.00
8389-53-5711	1.07
8389-42-6195	4.00
8389-53-4443	1.07
8389-52-4387	1.02

8389-63-1137	10.64
8389-52-7685	0.58
8389-43-1626	1.33
8389-62-3777	2.46
8389-62-7185	0.35
8389-62-5228	1.02
8389-53-4114	1.07
8389-43-3928	2.76
8389-62-5845	2.13
8389-62-0327	3.00
8389-62-0162	0.50
8389-24-0523	14.79
8389-62-5354	0.16
8289-93-7231	6.80
8389-43-8622	1.07
8389-43-7941	1.07
8389-43-6730	1.07
8389-63-6343	0.86
8389-63-4442	0.25
8389-42-4267	12.00
8388-68-6019	<u>16.20</u>
Subtotal:	1,872.62

Other Properties

Tax Map Parcels:	Acres:	
8389-62-5363	1.26	
8389-62-0140	3.70	
8369-62-1254	0.30	
8389-52-8065	2.92	
8389-53-6042	1.70	
8389-53-7408	<u>1.07</u>	
Subtotal:	10.95	
Total CDA Acreage:	<u>1,883.57</u>	

EXHIBIT P-B

Preliminary Description of Improvements

Proposed Improvement

Road Improvements

- Route 1 utility relocation
- Route 1 improvements at Route 234
- Route 234
- HS Parkway – Route 1 to Wayside Drive
- HS Parkway – Wayside Drive to Cherry Hill
- Wayside Drive turn lane improvements

Street improvements include all underground utilities and other related improvements and costs.

- R.O.W. acquisition for Route 1 improvements
- VRE station and parking deck

EXHIBIT P-C

Proposed Initial CDA Board Members

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>	<u>E-Mail Address</u>
Gary Bowman President	Bowman Consulting Group 14020 Thunderbolt Place Suite 300 Chantilly, VA 20151	(703) 464-1000	<u>gbowman@bowmancg.com</u>
Tracy Gordon	2989 Birch Creek Court Dumfries, VA 22026	(703) 441-6525	
Jamie Nalls Vice President	Virginia Commerce Bank 374 Maple Avenue East Vienna, VA 22180	(703) 319-3180	<u>jnalls@vcbonline.com</u>
Jim Riley President	Southbridge Board of Directors 2890 Medford Drive Dumfries, VA 22026	(703) 526-1084	<u>jim@jimriley.org</u>
Anthony Thrall	18312 Possum Point Road Dumfries, VA 22026	(703) 221-3336	

**Article of Incorporation
of the
Cherry Hill
Community Development
Authority**

**Articles of Incorporation
of
Cherry Hill Community Development Authority**

The undersigned, pursuant to Chapter 51, Title 15.2 of the Code of Virginia, adopts the following Articles of Incorporation for the Cherry Hill Community Development Authority and states as follows:

Article I

Name

The name of this authority is CHERRY HILL COMMUNITY DEVELOPMENT AUTHORITY (the "CDA").

Article II

Organization

Pursuant to an ordinance adopted by the Board of County Supervisors of Prince William County, Virginia ("Board of County Supervisors") on April 19, 2005, the CDA shall be organized by the County of Prince William, Virginia under the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended) (the "Act"), as a public body politic and corporate and a political subdivision governed by the laws of the Commonwealth of Virginia.

Article III

Members

The affairs of the CDA shall be conducted by an authority board of five members ("CDA Board"). The initial Board members are as set forth in Exhibit I-A attached hereto and incorporated by reference. All members shall be appointed by the Board of County Supervisors. Each member shall serve a four year term, except the initial members who shall serve the terms of office set forth in Exhibit I-A hereto. The election of officers of the CDA shall be as set forth in the By-Laws of the CDA. Qualifications and appointment of members of the CDA Board shall be consistent with the requirements of the Act.

The CDA Board shall have the powers and duties set forth in the Act and in these Articles of Incorporation and the By-Laws, to the extent that such powers and duties are not inconsistent with the Act.

Article IV

Principal Office

The CDA's principal office shall be c/o Edward S. Byrne, Senior Vice President, KSI, 8081 Wolftrap Road, Suite 300, Vienna, Virginia 22182. The CDA may conduct its business and maintain offices for such purposes at such other places within or without Prince William County, Virginia as may from time to time be deemed advisable by the CDA Board, and not in conflict with the requirements of the Act.

Article V

Authority District

The land initially encompassed within the CDA is set forth in Exhibit I-B attached hereto (the "Initial Authority District") provided that the Board of County Supervisors, upon the request of the CDA or the landowner petitioning to create the CDA, may release and exclude from the CDA district (i) at any time before the issuance of the CDA's bonds certain portions of land as long as at least 1,500 acres of land remain in the CDA district and (ii) after such bonds are issued only certain de minimis portions of land not to exceed approximately ten acres and provided further that any property listed on Exhibit I-B under "Other Properties" shall be released and excluded from the CDA district if such property is not acquired by the Petitioner, as defined in the Petition attached hereto. In addition, the CDA may release and exclude from the CDA district portions of land with respect to which all special assessments have been paid or prepaid.

Article VI

Purposes and Powers

The CDA is organized for the purpose of exercising all powers granted by the Act, including financing, funding, planning, establishing, acquiring, constructing or reconstructing, enlarging, extending, equipping, operating and maintaining all or a portion of the infrastructure improvements generally described in the Petition attached hereto to create the CDA. The CDA shall have all powers granted to a "community development authority" under the Act.

Article VII

Not-for-Profit

The CDA shall not be organized or operated for pecuniary gain or profit. No part of the net earnings of the CDA shall inure to the benefit of, or be distributable to any member, director, officer, or any other private person, except that the CDA shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes set forth in Article VI.

Article VIII

Amendment of Articles

These Articles of Incorporation may be amended at any time and from time to time by the Board of County Supervisors as now or hereafter prescribed by the Act.

Article IX

Registered Office and Registered Agent

The address of the initial registered office of the CDA is Walsh Colucci Lubeley Emrich & Terpak, PC, 4310 Prince William Parkway, Suite 300, Prince William, Virginia 22192. The initial Registered Agent of the CDA is Michael D. Lubeley, whose business address is identical to that of the initial registered office and who is a resident of Virginia and a member of the Virginia State Bar.

Article X

Initial Members

The names and addresses of the initial members of the CDA Board are as set forth on the attached and incorporated Exhibit I-A.

Article XI

Indemnification

(a) For purposes of this Article XI the following definitions shall apply:

(i) "expenses" include counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification;

(ii) "liability" means the obligation to pay a judgment, settlement, penalty, fine, or other such obligation;

(iii) "legal entity" means a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise; and

(iv) "proceeding" means any threatened, pending, or completed action, suit, proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

(b) In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of

directors or officers of a corporation to the corporation, the members, directors and officers of the CDA shall not be liable to the CDA.

(c) The CDA shall indemnify any individual who is, was or is threatened to be made a party to a proceeding (including a proceeding by or in the right of the CDA) because such individual is or was a member, director or officer of the CDA or because such individual is or was serving the CDA or any other legal entity in any capacity at the request of the CDA while a member, director or officer of the CDA, against all liabilities and reasonable expenses incurred in the proceeding except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a member, director or officer of a legal entity controlled by the CDA shall be deemed service at the request of the CDA. The determination that indemnification under this paragraph (c) is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a member or director, as provided by law, and in the case of an officer, as provided in Section (d) of this Article; provided, however, that if a majority of the members of the CDA has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel agreed upon by the CDA Board and such person. Unless a determination has been made that indemnification is not permissible, the CDA shall make advances and reimbursements for expenses incurred by a member, director or officer in a proceeding upon receipt of an undertaking from such member, director or officer to repay the same if it is ultimately determined that such member, director or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the member, director or officer and shall be accepted without reference to such member's, director's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that a member, director or officer acted in such a manner as to make such member, director or officer ineligible for indemnification. The CDA is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its members, directors or officers to the same extent provided in this paragraph (c).

(d) The CDA may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its members, directors and officers pursuant to paragraph (c) of this Article, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the members, directors, officers, employees and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the CDA, and may contract in advance to do so. The determination that indemnification under this paragraph (d) is permissible, the authorization of such indemnification and the evaluation as to the reasonableness of expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under paragraph (c) of this Article shall be limited by the provisions of this paragraph (d).

(e) The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the CDA. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the CDA and indemnification under policies of insurance purchased and maintained by the CDA or others. However, no person shall be entitled to indemnification by the CDA to the extent such person is indemnified by another, including an insurer. The CDA is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the CDA or any other legal entity at the request of the CDA regardless of the CDA's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the CDA from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

(f) No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation as of the ____ day of April, 2005, as duly authorized by the Board of County Supervisors of Prince William County, Virginia by Ordinance adopted April 19, 2005.

By: _____
Craig S. Gerhart, County Executive, County
of Prince William, Virginia

EXHIBIT I-A

Initial CDA Board Members

<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>	<u>E-Mail Address</u>
Gary Bowman President	Bowman Consulting Group 14020 Thunderbolt Place Suite 300 Chantilly, VA 20151	(703) 464-1000	<u>gbowman@bowmancg.com</u>
Tracy Gordon	2989 Birch Creek Court Dumfries, VA 22026	(703) 441-6525	
Jamie Nalls Vice President	Virginia Commerce Bank 374 Maple Avenue East Vienna, VA 22180	(703) 319-3180	<u>jnalls@vcbonline.com</u>
Jim Riley President	Southbridge Board of Directors 2890 Medford Drive Dumfries, VA 22026	(703) 526-1084	<u>jim@jimriley.org</u>
Anthony Thrall	18312 Possum Point Road Dumfries, VA 22026	(703) 221-3336	

Exhibit I-B

Description of Initial Community Development Authority Boundaries

Owner: Lee Carolina LLC

Tax Map Parcels:	Acres:
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8389-06-9329	17.76
8389-05-7189	7.38
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8289-91-1918	10.00
8389-53-2532	3.50
8289-91-7845	32.50
8389-24-2376	110.36
8389-54-1879	57.10
8288-88-1665	233.07
8389-00-0137	27.04
8389-11-0801	53.02
8388-18-4994	75.46
8389-41-3404	313.89
8389-42-9772	2.15
8389-52-1394	0.50
8389-52-1680	0.74
8389-52-2672	1.04
8389-52-1849	0.46
8389-52-4232	3.57
8389-52-5473	2.40
8389-52-0622	0.99
8288-57-6195	2.23
8288-57-5956	0.70
8389-23-4204	14.46
8389-32-1295	2.63
8389-32-5571	12.95
8389-60-1576	53.00
8389-53-5711	1.07
8389-42-6195	4.00
8389-53-4443	1.07
8389-52-4387	1.02
8389-63-1137	10.64

8389-52-7685	0.58
8389-43-1626	1.33
8389-62-3777	2.46
8389-62-7185	0.35
8389-62-5228	1.02
8389-53-4114	1.07
8389-43-3928	2.76
8389-62-5845	2.13
8389-62-0327	3.00
8389-62-0162	0.50
8389-24-0523	14.79
8389-62-5354	0.16
8289-93-7231	6.80
8389-43-8622	1.07
8389-43-7941	1.07
8389-43-6730	1.07
8389-63-6343	0.86
8389-63-4442	0.25
8389-42-4267	12.00
8388-68-6019	<u>16.20</u>
Subtotal:	1,872.62

Other Properties

Tax Map Parcels:	Acres:
8389-62-5363	1.26
8389-62-0140	3.70
8369-62-1254	0.30
8389-52-8065	2.92
8389-53-6042	1.70
8389-53-7408	<u>1.07</u>
Subtotal:	10.95

Total CDA Acreage: 1,883.57

**Waiver With Respect
To Creation Of
Cherry Hill
Community Development
Authority**

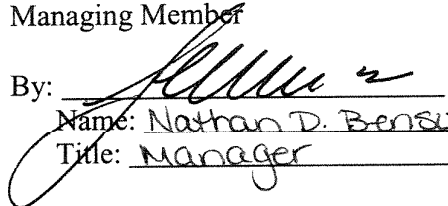
**WAIVER WITH RESPECT TO CREATION OF
CHERRY HILL COMMUNITY DEVELOPMENT AUTHORITY**

The undersigned is a petitioning landowner for the Cherry Hill Community Development Authority (the "CDA"). The undersigned hereby waives pursuant to Virginia Code Section 15.2-5156B, mailing of the proposed Ordinance to be considered by the Board of County Supervisors entitled "ORDINANCE CREATING THE CHERRY HILL COMMUNITY DEVELOPMENT AUTHORITY," notice of the adoption of such Ordinance and the 30 day period referred to in Section 15.2-5156B.

Dated: _____, 2005

LEE CAROLINA, LLC, a Virginia limited liability company

By: SANDLER AT HARBOR STATION,
L.L.C., a Virginia limited liability company,
Managing Member

By: 
Name: Nathan D. Benson
Title: Manager

Staff Analysis

Cherry Hill

Community Development

Authority

BACKGROUND

The petitioners for the creation of the Cherry Hill CDA are Lee Carolina, LLC and Lee Carolina II, LLC both affiliates of KSI Services, Inc., the project developer. The corporate office of KSI Services, Inc. is 8081 Wolftrap Road, Suite 300, Vienna, Va. 22182. The legal address of Lee Carolina, LLC and Lee Carolina II, LLC is 448 Viking Drive, Suite 220, Virginia Beach, VA 23452. The petitioners have requested that correspondence relating to the proposed CDA be sent c/o KSI Services at its corporate address in Vienna, VA.

On April 6, 2005, the petitioners indicated they were considering a consolidation of Lee Carolina II into Lee Carolina. The consolidation of the two entities will provide some efficiencies to the resulting entity and should not result in any material change in the content of the petition or the facts used by staff to render a recommendation. Our counsel concurs. The petitioners' bond counsel has indicated that the notice filing by the petitioners is adequate with or without the merger. Should the combination occur prior to Board consideration of the petition, the appropriate changes will be made to the supporting legal documents to reflect Lee Carolina, LLC as the sole petitioner.

KSI Services, Inc., the project developer, has many years of experience in commercial and residential development and management with extensive experience including apartments, senior housing, golf courses and planned communities. The CDA proposal is consistent with its depth of experience in developing and marketing similar projects; however, it must be noted that the affiliate firms of KSI, Lee Carolina, LLC and Lee Carolina II, LLC, are the petitioners of record and that KSI, serving as the developer is not a petitioner. The petitioners are affiliates of KSI by virtue of common ownership among the entities.

The Cherry Hill CDA is a mixed-use project consisting of approximately 1,884 acres located in the Woodbridge and Dumfries Magisterial Districts of Prince William County. As submitted, the project provides for 2.0 million square feet of commercial space, and approximately 2,500 total residences including single family, townhouse and multi-family dwellings.

The petition, as amended, calls for approximately \$59 million in tax exempt, CDA bonds, to be issued in two bond issues, and applied as follows:

Improvement

Estimated Cost

Route 1 Utility Relocation	\$2,100,000
Route 1 Improvements at Route 234	\$4,221,320
Route 234 Widening	\$2,474,567
HS Parkway - Rt. 1 to Wayside Drive	\$7,759,614
ROW Acquisition at Grade	\$14,700,000
VRE Station	\$5,250,000

VRE Parking Deck	\$6,300,000
TOTAL	<u>\$42,805,501</u>
HS Parkway – Wayside Drive to Cherry Hill* Wayside Drive turn lane improvements* *These are proffered improvements included to resolve a CDA adjacency issue. See final paragraph of Staff Analysis	

The remainder of the proceeds from the bond issuance, according to the petitioner, will be used to fund a debt service reserve fund, a capitalized interest service, and to pay issuance costs, as noted in the table below:

Total Improvements	\$ 42.8 million
Less interest earnings	(0.4) million
Issuance Costs	1.7 million
Capitalized Interest	9.0 million
Reserve Fund	<u>5.9 million</u>
Total	\$ 59.0 million

The bonds issued by the CDA will be repaid by assessments on the property owners within the CDA. More than half of the total assessments will be paid by commercial property owners.

In addition to the improvements funded by the CDA bond issues, the petitioner will provide a total of \$72.6 million in proffered improvements, consisting of road improvements, trails, an elementary school site, sanitary pump station and stormwater management.

CONFORMANCE WITH COUNTY CDA GUIDELINES

As described in the CDA Guidelines, petitions to form a CDA will be evaluated to determine if establishing the CDA is in the best interest of the County, to ascertain the CDA’s ability to construct the proposed improvements, to pay its long-term obligations, and to ensure that the County’s financial position is protected. The required review is broken down into two phases: Phase 1, which occurs prior to establishing a proposed CDA, and Phase 2, which occurs after a CDA is established, but prior to the CDA issuing bonds. The subsections below follow the sequencing of the County’s Adopted Guidelines and address Phase 1 review issues.

1. Limited to Projects which Advance Economic and Community Development

a) Proposal’s strengths

The Cherry Hill CDA, as represented by the petitioner, would accelerate commercial and residential development in the area by providing funding for necessary infrastructure improvements including road construction, road improvement, and stormwater management infrastructure. The proposal additionally provides for a VRE rail station and parking which will enhance the proposed commercial development inside the CDA and provide a convenient

access point for northbound commuters. Additionally, the petitioners believe the infrastructure provided by the CDA will likely accelerate the planned development of a hotel and conference center.

The waterfront exposure of the CDA site and planned amenities will result in higher dollar commercial and residential development within the CDA and may encourage similar development in abutting property out to Route 1.

b) Proposal's weaknesses

The planned improvements to be funded by the CDA bond issues are extensive with the payment for those improvements ultimately falling to the property owners within the boundaries of the CDA. The statute permits assessments to be done two different ways, an ad valorem special tax not to exceed 25 cents per \$100 of assessed value or via a special assessment not to exceed the value of the benefits provided. The petitioners have chosen to have the CDA assess the property owners on a special assessment basis with the assessment amount determined by a formula of use by dwelling type.

That notwithstanding, the ultimate cost to the residential property owners will amount to an equivalent of approximately 12 cents (on single family dwellings) to 22 cents (on condominiums) per \$100 of the proposed initial value of a residence. While the assessment cost to single family residences is affordable, the relative expense to condominium owners begins to become significant, particularly when added to the County's regular real estate tax assessment. Estimated initial annual assessments range from \$680 to \$960 depending upon property type.

c) Determination

The Cherry Hill CDA petition complies with this guideline. In the opinion of County staff, creation of this CDA would advance the County's economic and community development strategic goals.

2. **Description of Project and CDA Petition** – This guideline requires the Petitioner to satisfy certain minimal information requirements.

a) Proposal's strengths

The petitioners have provided the minimum required information.

b) Proposal's weaknesses

Minor details are being resolved. Petitioners are cooperating with staff.

c) Determination

The Cherry Hill CDA, as proposed, complies with this guideline.

3. **Consistency with County Planning Documents** – The Petitioner must demonstrate that the project or purpose for establishing the CDA is consistent with the Comprehensive Plan, Zoning Ordinance, and if applicable, the Capital Improvements Program.

a) Proposal's strengths

The Prince William County Department of Planning has reviewed the petition and related materials and finds no reason to reject it. Any remaining issues will be resolved prior to execution of an MOU.

b) Proposal's weaknesses

None identified.

c) Determination

The Cherry Hill CDA, as proposed, complies with this guideline.

4. **Impact on County Bond Rating** – This guideline requires that the proposed CDA not have a negative effect on the County's bond rating.

a) Proposal's strengths

The CDA would contribute to the growth of the County's tax base. Moreover, a fiscal impact evaluation by staff of the proposal submitted by the petitioner raises no issues of concern regarding the County's bond rating.

b) Proposal's weaknesses

The size of the proposed CDA, in terms of bond financing of improvements to be undertaken, is of note as it consumes a large percentage of the County's remaining available CDA financing (overlapping debt) capacity. Based on the County's FY2005 total assessed value, overlapping debt capacity is approximately \$250 million. The proposed \$59 million in bonds consumes approximately 23.5% of that total. It must be understood, however, that the final bonds will not be issued until 2009 and that it is highly likely that the County's real estate assessed value base will grow significantly.

c) Determination

The Cherry Hill CDA, as proposed, complies with this guideline. However, the County's guidelines stipulate a ceiling on the overall amount of CDA debt of ¾% of the total assessed value of taxable property within the County. Approval of this CDA would bring the County closer to that ceiling. Complying with the CDA guidelines qualify, but does not entitle, a petitioner to creation of a CDA. As with all CDA petitions, Staff recommends that the Board give due consideration to whether this CDA merits expending some of the

County's limited capacity to authorize CDA debt. In this instance, Staff believes the proposal will not have a deleterious effect on the County's bond rating and that the size of the proposed debt, relative to the debt ceiling, is justified by the benefits provided by the CDA.

5. **Due Diligence** – County Staff has performed a preliminary due diligence investigation for the Phase 1 review of the petition as follows. Remaining due diligence investigation required by the County's guidelines (Phase II) will be performed if the Board approves creation of the CDA and prior to the issuance of bonds.
 - a) **Proposal's strengths**
 - i. The petitioner represents that it is current regarding taxes and assessments in localities in which prior projects are located. A sample list of such projects (KSI projects) and their location, including detailed contact information, was provided. In-depth investigation will be carried out as needed in Phase 2.
 - ii. Initial analysis indicates the petitioners' plan of finance is reasonable. Off-site inspection of the petitioners' financial statements was performed and those statements appear adequate to support the size and scope of the project.
 - iii. The County has not commissioned an appraisal of the land that would be contained in the Cherry Hill CDA; however, based on the acreage within the CDA and the proposed bond financing, a value of \$1.62 per square foot would meet the minimum requirements at issue (with financed improvements assumed to be in place). Based on projected build-out values, the project is well within the 10% debt to value benchmark.
 - b) **Proposal's weaknesses**

None noted.
 - c) **Determination**

The Cherry Hill CDA, as proposed appears to comply with this guideline. In making this determination, we have relied upon the development history and market reputation of the developer, KSI as well as inspection of the petitioners' financial statements.
6. **Project Review and Analysis** – This guideline requires the County to evaluate the proposed development to determine whether the project plan is sound and has a high likelihood of success. The evaluation must also confirm why CDA financing is superior to other financing mechanisms from a public interest perspective.
 - a) **Proposal's strengths**

The Cherry Hill CDA would help meet the County's goals of attracting quality development to the eastern area of the County and provide the necessary funding for the required infrastructure. KSI, the developer for the project, has extensive experience in large developments including both residential and commercial projects.

The petitioners represent that CDA financing is preferable to other means of financing from a public interest perspective because it would accelerate the delivery of needed infrastructure and do so at reduced costs. Completion of proposed road improvements will also provide the necessary access to quality develop the Cherry Hill peninsula including a VRE station and a hotel and conference center. Staff analysis finds this argument sound.

b) Proposal's weaknesses

As expressed before, the improvements to be funded by the CDA create a significant assessment burden to some of the eventual 2,500 residential property owners within the CDA. While we believe the project will succeed in spite of this, it is a factor worth noting.

c) Determination

The Cherry Hill CDA complies with this guideline.

7. **Petitioner to Pay County Costs** – This guideline requires the Petitioner to pay the County's review costs.

a) Proposal's strengths

Upon completion of staff review, the petitioners will be billed.

b) Proposal's weaknesses

None identified.

c) Determination

The Cherry Hill CDA, as proposed, complies with this guideline.

8. **Remaining CDA Guidelines** – The remaining CDA guidelines, including drafting and evaluating of a Memorandum of Understanding, will be addressed in Phase two of the evaluation of the petition, assuming the Board authorizes creation of the Cherry Hill CDA, but prior to the issuance of bonds.

OTHER ISSUES

1. **Residential Assessments** – Staff had initially proposed requiring the CDA assessments on residential property owners be prepaid up front at the settlement table.

This approach would remove the County from the administrative task of collecting and remitting the assessment to the CDA for the life of the bond issue and would have obviated the need for ongoing disclosures and inevitable inquiries by subsequent homeowners as to the nature of the assessment. Commercial properties would have the choice of prepaying their assessment in its entirety or paying it via semi-annual assessments levied by the County on behalf of the CDA. Applying differing requirements, as was initially proposed, creates two separate classes of property owners and, as such, would disqualify the CDA bonds from being tax exempt. Consequently, Staff and the Petitioners have agreed to drop the prepayment requirement for residential property owners and to grant all property owners (residential and commercial) the option of prepayment. It is expected that most property owners will choose to pay semi-annual assessments.

2. **CDA Financing of Proffered Improvements** – The Petitioners complied with Staff’s request that proffered improvements not be financed by the CDA, but that CDA financed improvements be in addition to required proffers. The Petitioners’ amended CDA proposal reduced the scope of the CDA financed improvements and the attendant assessment cost to the property owners. In doing so, however, the Petitioners were advised by counsel that the amended list of improvements would not satisfy the statutory requirement of adjacency with regard to the parcels within the CDA.

To resolve this issue, the Petitioners have proposed including, as an improvement, a segment of road that is a proffer. Including the road segment will restore adjacency. To preserve the precept that proffers not be financed by CDA funds, an offset in the amount required to fund the road segment will be made. The details and form of the offset will be set forth in the MOU. The complete list of proposed improvements is shown in Exhibit P-B to the petition and includes the road segment proffer (Wayside Drive items).