

Town Council: Brandon Brockmeier, Ray Burger, Cynthia Holdren, Joy Marino, Sarah Nock and Maphis Oswald
Mayor: Fletcher Fosque | Town Manager: Matt Spuck

Town of Onancock

Economic Development Authority Meeting

December 19, 2023, at 6:00 p.m.

Agenda

1. Call to order and roll call.
2. Approval of meeting minutes:
 - a. November 21, 2023, Minutes.
3. Public Hearings:
 - a. None scheduled.
4. Public Presentation:
 - a. None scheduled.
5. Authority Action:
 - a. None scheduled.
6. Authority discussion:
 - a. Bylaws
7. Public Comment
8. Town Manager's Report:
 - a. Existing projects update
 - i. No OEDA projects
 - b. New opportunities
 - i. None pursued.
9. Board member comments
10. Adjourn

Town of Onancock
Economic Development Authority Meeting
November 21, 2023 6:00pm

1. Call to Order and Roll Call

Katie Schwab, Chairperson, called the meeting to order at 6:02pm. EDA members present were Jake Dillon, Bill Chandler, Rosemary Paparo, Joy Marino and Stephen Johnsen. Jeff Vernimb joined remotely at 6:15pm. Matt Spuck, Town Manager, was also present.

2. Approval of Meeting Minutes:

Steve Johnsen made a motion to approve October 17, 2023 minutes. Jake Dillon seconded. Minutes were unanimously approved.

Motion to Amend Agenda:

Joy Marino made a motion to add Board discussion of FOIA/COIA training to the agenda. Rosemary Paparo seconded. Decision was made to invite Michelle Gowdy, Virginia Municipal League, to Onancock Town Hall to present training to EDA, Town Council, and all Town Committees.

3. Public Hearings:

None scheduled.

4. Public Presentations:

None scheduled.

5. Authority Action:

None scheduled.

6. Authority Discussion:

Bylaws Discussion, Questions and Concerns: All will be referred to Town Attorney, Eric Gregory:

- Does it make sense to have a synopsis of VA code? How much is malleable? Should the whole VA code be adopted with brief bylaws having powers and duties spelled out? The powers and duties are spelled out in the Code of State of Virginia. Decision was made to ask Eric Gregory of Heft, Wiley and Gore, Town Attorney. Questions will be

compiled and EDA will receive a response from Mr. Gregory directly by being cc on emails.

- Can EDA use powers to finance/refinance water infrastructure? Refer to Mr. Gregory. Mr. Spuck, Town Manager, indicated it could be part of an Economic Development Initiative to increase capacity.
- Would members of an Industrial Advisory Committee be members of this Board or outside appointees?
- Do we as a Body envision we independently seek grants? In the code we should.
- Forgive loans if deemed to further economic development? Mr. Gregory can answer. Does the Board need Town Council approval in advance or is the EDA autonomous? How autonomous is the EDA? The word “may” is key. Mr. Spuck recommended financials go through the Town Council.
- Clarification suggested as to housing. State law provision EDA can’t operate but can fund or develop.
- Is EDA a separate political subdivision? Need interpretation from Attorney.
- A treasurer or secretary/treasurer needs appointment to Board of Directors. TM serves for Town Council in this roll and would be an Ex Officio and not a voting member of Board. Mr. Spuck was unanimously elected Treasurer.
- Clarification to change Wednesday meetings to Tuesdays at 6pm.
- Agenda format – remote attendance. Bylaws state must be an Onancock resident or resident of adjoining locality. What is the number of meetings allowed to be attended remotely? Will be referred to Mr. Gregory.
- Question raised as to public comments at beginning, or end of meeting, or both. Suggestion was made to try agenda as stated, with public comments at end of meeting, then review in 6 -12 months. Bylaws are difficult to change but changing shall to may will allow changes. Agreed comments will be at the end of the meeting.
- A quorum must be present. Question for Mr. Gregory. Must the quorum be physically assembled? Is a remote attendee part of quorum?
- Question as to members not be allowed to miss three straight meetings will be referred to Attorney.
- No more than two members can meet to discuss EDA business.
- Does the EDA vote then Town Council votes to approve?

- Powers granted may issue notes or obligations for authorized purposes. 2/3s majority vote needed?
- Liability clarity needed. Separate insurance for coverage for EDA. VERSA added liability and defense is covered. Clarification needed on defense costs.
- Rents, fee and other charges – Mr. Spuck indicated EDA will transfer money back to town after consulting with lawyer and CPA. Concern raised as EDA has no funds to operate. Suggestion made town should give EDA working capital to use, for example, legal fees. EDA must have legal representation. Mr. Spuck feels town will pay for it as legal fees are not broken out. EDA is a separate entity needing its own set of books and will be audited separately. Eric Gregory interpretation needed.
- Flagged – purchasing property inside or outside of town and may pay reasonable broker fee.

Action Item: Matt Spuck will follow up all concerns and questions with Town Attorney.

b. Performance Agreement – Lilliston Matt Spuck: Not a final document. All four documents to develop with three being ok. The Performance Agreement has experienced a back pedal with question of whether the signers want to do this. Structure of partnership has changed. Ann Kyle and Jesse, General Contractor, are majority holders of PSP, LLC. Three previous members stepped away and with that went their cash. Anne Kyle and Jessie must come up with \$800,000 in equity or cash match to get \$1,000,000. Their question is what if they didn't take it and do the bottom floor. Then when they sell a house do an apartment upstairs. Not in the town's best interest.

Previous developers were able to show how the equity and purchase price along with their cash in could benefit with this loan and get it done and help the town. Real questions and problems with timeline of Performance Agreement and liability studies. The project is a year in and requires 18 months to finish. The developers asked their attorney to give a redline that works for them. Also sent to DHCD asking for latitude. DHCD will review and let us know. Question asked can funding be cut off by taking too long? As long as funds are expended by 2026, the project will meet federal guidelines.

Previous owners saw a return on investment that satisfied them. DHCD came back with strike outs. If relief is granted on timing and quarterly reporting, the project can move forward. Question asked: Can architect might possibly generate reports? The architect DBF might be willing to help. When DHCD responds, Matt will meet with developers.

7. Public Comment: none

8. Town Manager's Report:

- a. Existing projects update – included earlier
- b. New opportunities – none pursued

9. Board Member Comments:

Janet Fosque, resident, when asked, stated 20 Market Street application for IRF funding will be received by end of January. A concern was raised if the second application will impact availability of funding. What happens if 40 Market Street does not proceed? If so the Town Manager will ask for 40 Market Street funds to be transferred to 20 Market Street. Developers want wiggle room for timing and reimbursed for prior expenses. Both projects are fundamental to the Town moving forward. Stephen Johnsen shared insurance information with Town Manager. 40 Market Street investors changed hands 4-5 months ago. IRF was awarded February 1, 2023.

40 Market Street has a grant with favorable loan terms of 2.5%. Current rate is 6-7%. A compromise of terms has to be beneficial to both parties.

10. Adjourn:

EDA Member Marino moved to adjourn the meeting. EDA member Dillon seconded. The motion passed with a 6-0 vote.

RE: OEDA Bylaws

Eric Gregory <Eric@heftywiley.com>

Tue 12/12/2023 4:08 PM

To: Matt Spuck <matt.spuck@onancock.com>

Cc: OEDA <oeda@onancock.com>

 2 attachments (116 KB)

OEDA Bylaws - Draft v.1 12-12-2023.docx; OEDA Bylaws group edits 111623.docx;

Matt,

The OEDA Bylaws (DRAFT) are attached. This version (OEDA Bylaws – Draft v.1 12-12-2023) is based on Bylaws from other EDAs we represent. The primary purpose of the bylaws is to govern the body's internal workings and governance. They do not need to restate the statutory authority of the body and that is inadvisable because it could change and it can also be redundant and confusing. So, I recommend using this version rather than the group edits version (also attached). The draft I recommend also excludes a lot of information that is not necessary (exemption from taxes, etc. – that would not be affected by bylaws at any rate; but, just so you know, EDAs are exempt from taxation like other governmental bodies).

See my responses to your other items below in [BLUE](#).

I hope this is helpful. This should get the EDA started on the right track. We can always amend the bylaws as needed.

Eric

Eric A. Gregory
Hefty Wiley & Gore, P.C.
100 West Franklin Street, Suite 300
Richmond, VA 23220
Office: (804) 780-3143
Mobile: (804) 306-2072
E-mail: eric@heftywiley.com
Web: www.heftywiley.com

HEFTY WILEY & GORE, P.C.
ATTORNEYS AT LAW

THIS E-MAIL AND ANY ATTACHMENTS HERETO ARE CONFIDENTIAL, NOT FOR REDISTRIBUTION, AND MAY NOT BE RELEASED UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT WITHOUT PRIOR WRITTEN AUTHORIZATION. This e-mail and any attachments may contain confidential and/or protected legal information, communications protected by the attorney/client privilege, items or information protected by the attorney work product doctrine, information related to pending litigation or prepared in anticipation of litigation, and/or confidential settlement negotiations. The receipt of such information or items by any unauthorized person does not constitute a waiver of those privileges.

From: Matt Spuck <matt.spuck@onancock.com>

Sent: Tuesday, December 12, 2023 10:44 AM

To: Eric Gregory <Eric@heftywiley.com>

Cc: OEDA <oeda@onancock.com>

Subject: Re: OEDA Bylaws

Hi Eric,

I sent this email a couple of weeks ago in hopes that you would have time to respond by today. I am sending the Authority their meeting packet today.

Will I be able to include a response top any of their questions or bylaws?

Many thanks,

Matt



Matt Spuck
Town Manager

t: [757-787-3363](tel:757-787-3363)

e: matt.spuck@onancock.com | w: www.onancock.com

a: 15 North Street, Onancock, 23417

From: Matt Spuck <matt.spuck@onancock.com>

Sent: Wednesday, November 22, 2023 10:37 AM

To: Eric Gregory <Eric@heftywiley.com>

Cc: OEDA <oeda@onancock.com>

Subject: OEDA Bylaws

Hi Eric,

OEDA (Onancock Economic Development Authority) met last night for its normally scheduled meeting.

The primary agenda item was to move closer to finalizing the bylaws. I have attached the red-line version the Authority reviewed.

The process we have followed to develop the bylaws thus far has been I used Municode to grab the bylaws for Fredericksburg's EDA. Then a member of OEDA secured the bylaws for King Williams County. I merged the 2. We then created a Google Doc to have the group review. For those not familiar with GD, I gathered and feathered in manual comments. The version before you is the resulting document.

As thoughtfully prepared as this was, none of us is a lawyer with a specialty in this area and we have questions.

- Rather than restating the VA Code regarding EDA, would it make more sense to reference it and state that we make every reasonable effort to follow the State Code in all Authority matters? I imagine there are many components of the state code that would not apply to us. Will we need to change our ordinance every time the state changes its code if we recite in in our bylaws? **As noted above, this is why I recommend against including statutory provisions in the bylaws. It is unnecessary and problematic for the reason you state, and it also makes the bylaws longer than necessary and rather unwieldy.**
- We understand that we are a separate legal subdivision (15.2-4900). What does that mean in matters like voting on motions that impact finances without the Town Council? My advice was to make it standard practice, even part of the bylaws, to secure TC approval before any grant is applied for, loan made, or any other matter that affects new assets or liabilities for OEDA. OEDA will have its own set of books, bank accounts, etc.

Do we need our own lawyer, or will you serve both the Town and the Authority? I can serve as the lawyer for the OEDA – we do that for a number of our locality clients. The OEDA is a separate legal entity with its own statutory authority but the way that the TC holds oversight authority is its authority to appoint members and to grant (or withhold) funds. It is important that the OEDA and the TC to be on the same page but OEDA action is not subject to approval by the TC. The TC can check the OEDA's actions by the powers noted above. And, in some cases, TC's approval may be necessary (if issuing debt on moral authority, for instance).

- Remote participation and residency requirements. We have a board member whose primary residence is in Florida. According to 2.2-3708.3 he may participate remotely because his home is more than 60 miles from the meeting location. If we have 100% attendance, but we have 4 members attending remotely (from different places) we cannot hold a meeting, correct? Is it true that we simply need to spell out in the bylaws that non-Onancock residents may service on the OEDA, if appointed by the Town Council? OEDA Board members must be residents of the town or Accomack County. A member residing in Florida would not qualify for appointment. I recommend remote participation policies be adopted by separate policy rather than in bylaws. That way, they are more easily changed or amended (simply majority vote at any meeting) as may be necessary in response to statutory changes.
- Attendance. Is there a FOIA-mandated attendance requirement, or is that something addressed through bylaws? No and no. There is nothing in the state code mandating attendance at meetings or any sort of minimum attendance rule. You might consider imposing a minimum attendance rule or if they fail to appear for 3 consecutive meetings, they shall no longer qualify for office or something like that.
- There are specific questions about what types of programs we can fund versus what we can operate (LMI Housing, for example), is there a concise list that might help us target grants that will fall within our purview? See the statutory authority for what the OEDA is authorized to do.

I know there are more questions, but this should get us started.

I hope that you and your team can take what we gave you, consider the above questions, and track changes through the document so that we have a legally reviewed and endorsed set of bylaws by the 12th of December.

Is that a reasonable request?

Many thanks,

Matt



Matt Spuck
Town Manager

t: [757-787-3363](tel:757-787-3363)

e: matt.spuck@onancock.com | w: www.onancock.com

a: 15 North Street, Onancock, 23417

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE
TOWN OF ONANCOCK, VIRGINIA**

BYLAWS

ARTICLE I - The Authority

Section 1. Name of the Authority.

The name of the Authority shall be the "Economic Development Authority of the Town of Onancock, Virginia".

Section 2. Purpose of the Authority.

The Economic Development Authority of the Town of Onancock, Virginia shall fulfill all purposes and intents of the Code of Virginia, as expressed in Chapter 49, Industrial Development and Revenue Bond Act §15.2-4900, *et seq.*, as amended.

Section 3. Records of the Authority.

All of the books and records of the Authority shall be kept at the office designated herein except as otherwise required by resolution of the Authority, or as the business of the Authority may require. The minutes of the Authority shall be open and available for inspection by the public during normal business hours.

ARTICLE II - Board of Directors

Section 1. Directors.

The Economic Development Authority of the Town of Onancock, Virginia shall be governed by a Board of Directors composed of seven directors appointed by the Town Council of the Town of Onancock, Virginia, and all powers and duties of the Authority shall be exercised and performed by the Board of Directors. The Town Council shall appoint the Directors for staggered, four-year terms, except appointments to fill vacancies, which shall be for the unexpired terms. All terms shall be deemed to commence on the date of the initial appointment to the Authority. Each Director shall, before entering upon his or her duties, take and subscribe to the oath prescribed by state law and shall serve until their successors are appointed and qualified.

Section 2. Director Qualifications.

The directors shall, at the time of their appointment and thereafter, be residents of Onancock or Accomack County. Directors shall not be employed by the City during their term of office. When a director ceases to be a resident of Onancock or Accomack County, the director's office shall be vacant, and a new director may be appointed by the Town Council for the remainder of the term.

Section 3. Conflicts of Interest Requirements.

Directors must receive training on the State and Local Government Conflicts of Interest Act, and such training shall be repeated every two years. New directors must receive the training within two months of their appointment. Directors must file the Statement of Economic Interest annually by January 31st. New directors must file the Statement of Economic Interest on or before their first day of office.

Section 4. Freedom of Information Act Requirements.

Directors must complete training on the Freedom of Information Act every two years. New Directors must complete such training within two months of taking office. The Economic Development Director is the Authority's Freedom of Information Act Officer.

ARTICLE III - Officers

Section 1. Officers.

The Officers of the Authority shall be a Chair, a Vice Chair, a Secretary, and a Treasurer.

Section 2. Elections.

The Chair, Vice Chair, Secretary, and Treasurer shall be elected by the Directors at their first meeting and the Chair and Vice Chair must be selected from among the Board of Directors. Thereafter, the Chair and Vice Chair shall be elected by the directors for terms of two consecutive years at their January meeting. Each officer shall hold office until his/her successor shall have been duly elected and qualified for office.

Section 3. Vacancies.

Should any office become vacant, the Board of Directors shall elect a successor at any regular or special meeting, provided advance notice of the election to fill such vacancy is given to the members of the Board of Directors at least two (2) days before such meeting. The term of office for an officer elected to fill a vacancy shall run until the next regular election.

Section 4. Chair.

The Chair shall preside at all meetings of the Authority, call special meetings; and call special elections. Except as otherwise authorized by resolution of the Board of Directors of the Authority, only the Chair needs to sign all contracts, bonds, deeds, and other instruments made and authorized by the Board to bind the Authority legally and effectively. The Chair shall have equal vote with the other directors. The Chair shall perform all other duties incidental to his/her office or that are properly required by the Board of Directors.

Section 5. Vice Chair.

In the absence of the Chair or in the event of his/her inability or refusal to act or carry out his or her duties, the Vice Chair shall perform and exercise the duties and functions of the Chair; and in case of the resignation or death of the Chair, the Vice Chair shall perform the duties of the Chair until a new Chair shall be elected.

Section 6. Secretary.

The Secretary will prepare and disseminate all agendas and minutes of regular and special meetings and shall administer and manage all non-financial records and correspondence on behalf of the Authority.

Section 7. Treasurer.

The Treasurer shall be responsible for the keeping of suitable records of all financial transactions of the Authority. The Treasurer shall be responsible for the record-keeping of all bills received by the Authority and shall oversee their payment either by the Town or by the Authority. The Treasurer shall sign all orders and checks for the payment of money and shall pay out and disburse such monies under the direction of the Authority. The Treasurer shall have charge and custody of all funds that may be received directly by the Authority and be responsible for their investment and deposit in the name of the Authority when authorized by the Board and in such bank or banks that the Authority may select, and in general, he/she shall perform all other duties incidental to the office of Treasurer and such other duties as may be properly prescribed from time to time by the Board of Directors of the Authority.

The Treasurer shall keep regular books of account, showing receipts and expenditures, shall render to the Authority at every meeting, or more often when requested, an account of the transactions and the financial condition of the Authority.

ARTICLE IV - Meetings

Section 1. Meetings and Notices.

Regular meetings of the Board of Directors shall be held bi-monthly on the third (3rd) Wednesday at 5:30 P.M. unless otherwise notified. The Board shall designate a time and place for the meeting to take place, which shall be open and accessible to the public. The Board of Directors' annual meeting shall be at the regular meeting in January of each year.

Special meetings of the Board of Directors may be called by the Chair or a majority of the Board of Directors. A notice specifying the time and place of any special meeting shall be given to each director of the Authority at least three (3) business days before such meeting by personally delivering such notice or by mailing or emailing such notice. Such notice shall be posted on the Town website and placed in a prominent public location at which notices are regularly posted. The presence of any Director at a special meeting shall be deemed as an acknowledgment of the timely receipt of notice thereof or a waiver of any such notice requirement. Special meetings may be held without notice if all of the Directors are present or those not present sign a written waiver of notice before or after the meeting.

Notice, reasonable under the circumstance, of special or emergency meetings, shall be given to the public and the media contemporaneously with the notice provided to the Board of Directors. All meetings shall be open to the public.

Section 2. Quorum.

A quorum at any meeting of the Board of Directors shall consist of four (4) members of the Board of Directors.

Section 3. Agenda.

The agenda will be prepared by the Secretary, in consultation with the Chair. The agenda shall be distributed to the directors by the close of business on the Friday before the meeting. A complete copy of all agenda materials shall be available to the public at the same time as it is distributed to the directors.

Section 4. Order of Business.

At all meetings of the Authority, the following order of business shall be observed, as far as is consistent with the purpose of the meeting:

- A. Roll Call
- B. Approval of or Amendments to the Agenda
- C. Approval of Minutes
- D. Reports
- E. Unfinished Business
- F. New Business
- G. Public Comment
- H. Closed Session, as needed
- I. Adjournment

Section 5. Voting.

Each Director has one vote. All votes shall be by roll call and shall be reflected as such in the meeting minutes. Votes by proxy are not permitted.

Section 6. Public Comment.

The speaker, when recognized by the Chair, shall state his or her full name and place of residence before proceeding. The speaker will have three minutes to address the Directors.

Section 7. Parliamentary Procedure.

The current edition of Roberts' Rules of Order shall be the general guide in all questions of parliamentary procedure. The attorney for the Authority shall serve as the parliamentarian.

ARTICLE V - Fiscal Year

The fiscal year of the Authority shall be from July 1 until June 30, inclusive.

ARTICLE VI - Audit

The Authority shall keep suitable records of all financial transactions and shall arrange to have the same audited annually, to the extent required by law.

Article VII - Amendments

These Bylaws may be amended, added to, altered, or repealed in whole or in part, by a majority vote of at least four (4) of the Directors of the Authority at a regular or a special meeting, provided notice of any such action is given to all directors at least one (1) week in advance of the meeting at which such action is on the agenda. Such notice shall be in writing, including electronically, and in accordance with Article IV, Section 1 of these Bylaws.

Adopted December _____, 2023.