1. Economic Development Authority Agenda 1/5/2016

   Documents: EDA1515.PDF

CITY OF POQUOSON

ECONOMIC DEVELOPMENT AUTHORITY

JANUARY 5, 2016

Regular Meeting

ECONOMIC DEVELOPMENT AUTHORITY
Regular Meeting
January 5, 20165 8:30 am
Poquoson City Hall – Council Chambers

A. ROLL CALL

CONSENT AGENDA

B. APPROVAL OF MINUTES
December 1, 2015 – regular meeting

C. REPORT OF THE SECRETARY
a. None

DISCUSSION AGENDA

D. PUBLIC COMMENT

E. NEW BUSINESS
a. Request by Dr. Bruce McEwen Regarding Poquoson Family Medicine Incentive Agreement

F. STAFF ACTIVITIES - verbal
a. Next Meeting – February 2, 2016

I. ADJOURNMENT

POQUOSON ECONOMIC DEVELOPMENT AUTHORITY

Board of Directors Meeting
December 1, 2015, 8:30 a.m.
Poquoson City Hall – Council Chambers Room

PRESENT: Donald F. Booth, Jr., Chairman
Timothy O. Trant, II, Vice Chairman
P. Craig Moore, Treasurer/Director
Henry L. Freeman, Director
Alan E. Meetze, Director
Angela Ward-Costello, Director
Walter E. Apelt, Director

David Callis, Economic Development (ED) Director
Deborah Vest, Community Development Director
Kevin Wyne, Planner
Charity Gavaza, Economic Development (ED) Coordinator
D. Wayne Moore, City Attorney
Mary J. "Evie" Insley, Secretary

Chairman Booth called the meeting to order at approximately 8:30 a.m. in the Council Chambers located at 500 City Hall Avenue. He thanked everyone in attendance and presented a brief history and explained the charge of the Economic Development Authority.

APPROVAL OF THE CONSENT AGENDA

Director Apelt moved, seconded by Director Meetze, to approve the Consent Agenda to include the October 6, 2015 minutes as amended. Recorded vote on the motion:

YES: Directors Moore, Costello, Meetze, Apelt, Trant and Chairman Booth.

NO: None.

PUBLIC COMMENT

Karen Evans Steele, 190 Little Florida Road; Jana Andrews, 7 Martha Court; Alan Moody, 207A Brown's Neck Road; Janice Powell, 306 Powhatan Drive; Susan Legan, 4 Insley Circle; and Kelly Roberts, 547 Poquoson Avenue, Apartment 25A expressed opposition to CRES' request to extend its contract with the Authority to purchase property identified as Tax Map Parcel Numbers 18-01-00-0134, 18-01-00-0117, 18-01-00-0116, 18-01-00-0119, 18-01-00-0094A and 18-01-00-0093A based on the following:

- Insufficient funding received from the developer for "holding of the property";

- The property will be considerably more valuable as new homes begin to be constructed across the street;
- The City needs a "showcase" development at this location;
- Insufficient infrastructure and roads to support the associated increase in traffic resulting from the proposed development;
- The project does away with "old" Poquoson to make "new" Poquoson; and
- Development at this gateway needs more public comment and review.

Concern was also voiced that citizens did not have an opportunity to review the agenda in advance in order to educate themselves on the proposed bond issue and the need to update the City's Comprehensive Plan.

PUBLIC HEARING

RESOLUTION OF THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF POQUOSON, VIRGINIA, REGARDING ITS ISSUANCE OF A REVENUE AND REFUNDING BOND AND THE LOAN OF THE PROCEEDS THEREOF TO BETH SHOLOM HOME OF VIRGINIA

(Vice Chairman Trant recused himself from the meeting during the bond discussion due to a conflict of interest and Director Freeman joined the meeting at this time.)

Chairman Booth opened the public hearing.

Janice Powell requested clarification on the amount of the bond, the amount the EDA would receive from the bond, how it would affect the EDA's ability to support other bonds and the City's liability. Kevin White, Esquire, of Kaufman & Canoles, Bond Counsel for Beth Sholom Home of Virginia in Henrico County, Virginia thanked the Economic Development Authority (EDA) Directors for instituting a public hearing as required by the Bond Act to consider serving as a "conduit issuer" of the Bond. He explained that neither the EDA nor the City have any liability to pay principal, interest or any other amount on the Bond and that the amount shall not exceed $10,000,000 with the EDA being a third party for the sole purpose of providing the tax-exempt bond structure. Mr. White clarified the nature of the transaction, the legal requirements pertaining to the governmental approval process, the limitation of the EDA's liability with respect to the Bond and the Plan of Finance. He answered questions regarding repayment of the bond and explained the EDA's ability to issue new bonds each calendar year. Mark Finkel, President and CEO of Beth Sholom also answered questions and provided a brief history of the Beth Sholom Healthcare Center and the scope of the proposed construction improvements.

There being no other speakers, the public hearing was closed.

Director Meetze moved, seconded by Director Costello, to adopt the following resolution approving the requested bond issuance:

RESOLUTION OF THE ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF POQUOSON, VIRGINIA, REGARDING
ITS ISSUANCE OF A REVENUE AND REFUNDING BOND
AND THE LOAN OF THE PROCEEDS THEREOF
TO BETH SHOLOM HOME OF VIRGINIA

WHEREAS, there has been described to the Economic Development Authority of the City of Poquoson, Virginia (the "Authority"), the plan of Beth Sholom Home of Virginia, a not-for-profit Virginia nonstock corporation ("Beth Sholom"), the principal place of business of which is 1600 John Rolfe Parkway, Henrico, Virginia 23238, for the issuance by the Authority of its Revenue and Refunding Bond in a principal amount not to exceed $10,000,000 (the "Bond"), to assist Beth Sholom in (a) financing the construction and equipping of a renovation project at the Beth Sholom Life Care Community Campus, owned by Beth Sholom and located at 1600 John Rolfe Parkway, Henrico, Virginia 23238, including reconfiguring a portion of the Healthcare Center with rehabilitation, skilled nursing and memory care facilities in the building (the "Healthcare Center") into 30 new assisted living apartments, constructing a new rear entrance to the Healthcare Center, establishing a new rehabilitation gym, and providing expanded administrative office space and related improvements (collectively, the "Project"), (b) currently refunding the Economic Development Authority of Henrico County, Virginia, Nursing Facility First Mortgage Revenue Refunding Bond (Beth Sholom Home of Virginia), Series 2010, (c) funding capitalized interest on the Bond during construction of the Project and for a period not to exceed one year after the date on which the Project is completed, (d) funding any reasonably required reserve fund for the Bond, and (e) financing costs of issuance (collectively, the "Plan of Finance");

WHEREAS, a public hearing with respect to the Authority's issuance of the Bond was properly noticed pursuant to the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2 of the Code of Virginia of 1950, as amended (the "Act"), and the Internal Revenue Code of 1986, as amended (the "Code"), and was held by the Authority on the date hereof prior to the adoption of this Resolution;

WHEREAS, representatives of Beth Sholom have (a) described to the Authority the debt service cost savings to be derived from the issuance of the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code, (b) described the benefits to be derived by residents of the Commonwealth of Virginia from such issuance of the Bond, (c) represented that Beth Sholom is a corporation described in Section 501(c)(3) of the Code which is exempt from federal income taxation pursuant to Section 501(a) of the Code, and (d) requested that the Authority agree to issue the Bond as a conduit issuer under the Act and to loan the proceeds of the Bond to Beth Sholom to assist it in effecting the Plan of Finance;

WHEREAS, Beth Sholom has advised the Authority of its intention to proceed immediately with implementing the Plan of Finance and has provided to the Authority the form of a Bond Purchase and Financing Agreement to be dated on or about December 30, 2015 (the "Financing Agreement"), among the Authority, Beth Sholom and a lender to be determined (the "Lender"), together with the form of the Bond and the form of Beth Sholom's promissory note (the "Note") payable to the Authority and the instrument of assignment thereof from the Authority to the Lender (collectively, the "Authority Documents");

WHEREAS, Section 147(f) of the Code provides that the highest elected governmental officials of the governmental units having jurisdiction over (a) the issuer of the private activity bonds and (b) the area where any facility financed with the proceeds of such bonds is located, shall approve the issuance of such bonds;

WHEREAS, the Authority issues its bonds on behalf of the City of Poquoson, Virginia (the "City"), but the Project is located entirely within Henrico County, Virginia (the "County"); the members of the City Council of the City (the "Council") constitute the highest elected government officials of the City; and the members of the Board of Supervisors of the County (the "Board") constitute the highest elected government officials of the County; and

WHEREAS, the Act provides that the Council shall within sixty (60) calendar days from the public hearing with respect to any private activity bonds either approve or disapprove the issuance of such bonds, and that the issuance of such bonds are subject to the condition that the Board concur with their issuance by the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF POQUOSON, VIRGINIA:

1. It is hereby found and determined that the issuance of the Bond and the use of the proceeds thereof to undertake the Plan of Finance will serve the purposes of the Act.

2. To assist Beth Sholom in the Plan of Finance, the Authority hereby agrees to undertake the issuance of the Bond in a principal amount not to exceed $10,000,000, and hereby designates the Bond as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code for calendar year 2015.

3. The Authority hereby recommends to the Council that it approve the issuance of the Bond as required by the Code and the Act. The Authority hereby directs the Chairman or Vice Chairman of the Authority, either of whom may act, to submit to the Council a fiscal impact statement in the form prescribed by Section 15.2-4907 of the Act, a reasonably detailed summary of the comments expressed at the public hearing held at this meeting as required by Section 15.2-4906 of the Act, and a copy of this Resolution.

4. The Chairman or Vice Chairman, either of whom may act, is hereby authorized and directed to execute and deliver the Authority Documents in substantially the forms presented to the Authority, with such completions, omissions, insertions and changes as may be approved by the Chairman or Vice Chairman upon advice of counsel to the Authority, the execution thereof to constitute conclusive evidence of such approval.

5. The Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute, the Secretary or Assistant Secretary is authorized and directed to affix and attest the seal of the Authority, and either is authorized and directed to deliver the Bond to the Lender upon the terms provided in the Authority Documents; provided, however, that delivery of the Bond shall not occur until the Bond has been approved by the Council and the Board.

6. The officers of the Authority are hereby authorized and directed to execute and deliver all certificates and instruments, including Internal Revenue Service Form 8038, and to take

all such further actions as they may consider necessary or desirable in connection with the issuance of the Bond and the undertaking of the Plan of Finance.

7. The Authority hereby agrees to the recommendation of Beth Sholom that Kaufman & Canoles, a Professional Corporation, be appointed as Bond Counsel and hereby appoints such firm to supervise the proceedings and approve the issuance of the Bond.

8. It having been represented to the Authority that it is necessary for Beth Sholom to proceed immediately with certain expenditures in connection with the Project, the Authority hereby agrees that Beth Sholom may proceed with plans, enter into contracts for acquisition, construction, renovation and equipping, and take such other steps as it may deem appropriate in connection with the Project and, subject to the limitations of the Code and the Treasury Regulations promulgated thereunder, Beth Sholom may be reimbursed from the proceeds of the Bond for all costs so incurred by it. In adopting this Resolution, the Authority is making a declaration of official intent to reimburse expenditures with the proceeds of the Bond pursuant to Section 1.150-2 of the Treasury Regulations.

9. All fees, costs and expenses in connection with the Plan of Finance described herein, including the fees and expenses of the Authority and the fees and expenses of Bond Counsel, counsel for the Authority, counsel for Beth Sholom and counsel for the Lender, shall be paid from the proceeds of the Bond to the extent permitted by law or from funds provided by Beth Sholom. If for any reason the Bond is not issued, it is understood that all such fees and expenses shall be paid by Beth Sholom and that the Authority shall have no responsibility therefor. Beth Sholom shall also pay to the Authority on each anniversary date of the issuance of the Bond an administrative fee equal to one-eighth of one percent (1/8 of 1%) of the then-outstanding principal amount of the Bond.

10. The Bond shall be payable solely from the revenues, receipts and other funds provided by Beth Sholom for payment of the Bond. The Bond shall not be deemed to constitute a debt or a pledge of the faith or credit of the Commonwealth of Virginia or any political subdivision thereof, including the Authority, the City and the County, and neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority, the City and the County, shall be obligated to pay the principal of, premium, if any, or interest on the Bond, or other costs incident thereto, except from the revenues, receipts and other funds provided by Beth Sholom. Neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the City and the County, will be pledged to the payment of the principal of, premium, if any, or interest on the Bond or other costs incident thereto. The Authority has no taxing power. No covenant, condition or agreement contained in the Bond or in any financing instrument executed and delivered in connection with the Bond shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee or agent of the Authority in his or her individual capacity, and neither the directors of the Authority nor any officer or employee thereof executing the Bond or any other financing document or instrument shall be personally liable thereon or subject to any personal liability or accountability by reason of the issuance or execution thereof.

11. The Financing Agreement provides that Beth Sholom shall indemnify and save harmless the Authority, its officers, directors, employees, agents and attorneys from and against all

liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses in any way connected with the Bond.

12. The Authority's role in issuing the Bond shall not constitute an endorsement to any prospective owner of the Bond as to the creditworthiness of Beth Sholom or an approval by the Authority of Beth Sholom, its policies or its management.

13. All other acts of the officers of the Authority which are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bond are hereby ratified, approved and confirmed.

14. This Resolution shall take effect immediately upon its adoption.

* * *

The undersigned hereby certifies that the above Resolution was duly adopted by the directors of the Economic Development Authority of the City of Poquoson, Virginia, at a meeting duly called and held on December 1, 2015, and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof.

Dated: December ___, 2015

_____

Secretary, Economic Development Authority
of the City of Poquoson, Virginia

Recorded vote on this motion:

YES: Directors Moore, Costello, Freeman, Meetze, Apelt and Chairman Booth.

NO: None.

(Vice Chairman Trant returned to the meeting.)

NEW BUSINESS

1. *Governmental E-mail Addresses for Directors*

EDA Secretary, Evie Insley, gave the Directors a new .poquoson-va.gov e-mail address along with the directions for setup.

2. *New City Website and EDA Meetings/Minutes Features*

Charity Gavaza, Economic Development (ED) Coordinator, gave the Directors a brief overview of the City's new website and explained how this technology can be of assistance in keeping the public better informed of the EDA's meeting schedule and archived minutes.

3. *EDA Televised Meeting Request*

Chairman Booth stated that due to citizen's requests for televised coverage of the EDA meetings, he met with the City Manager and learned that this capability is available and that support could be provided should the EDA want its meetings broadcasted live. After a poll of the Directors it was decided that the meetings would be televised beginning with the January 5th meeting.

4. *CRES Modification of Agreement Request*

Mike Culpepper representing CRES-EG stated that they had been listening to public comment and the City's concerns and were proposing a Second Amendment to the Purchase and Sale Agreement to address these concerns. He stated that the initial development proposal included a 41,000 square foot grocery store which they felt adhered to the intent of the City's Comprehensive Plan. He explained that the new contract amendment would:

- Modify the Development Plan to prohibit any retail building measuring greater than 30,000 square feet without the prior consent of the Seller;
- Provide reservations of easements for the benefit of adjacent property owners, to the extent practical;
- Reinstate the Feasibility Period to terminate on midnight February 29, 2016;
- The Permitting Period will proceed until May 31, 2016;
- Necessitate settlement of the sale no later than June 1, 2016;

- Require that $20,000 be deemed fully refundable to Buyer until lapse of the Feasibility period when it becomes nonrefundable, but applicable to the Purchase Price.

Mr. Culpepper expressed his belief that CRES EG was attempting to appease the citizens and the EDA by relinquishing control of their by-right development and accepting the consensus of the Authority.

During the Directors' discussion, it was pointed out that approval of the proposed CRES-EG contract amendment does not equate to a "holding" of the property per se since no other developer has expressed an interest in the subject parcels. It was also emphasized by the Directors that processes/approvals by various City boards/commissions would be required and it was suggested that CRES-EG meet with the Architectural Review Board (ARB) as soon as possible during the site plan review process to ensure that the development provided the appropriate "Gateway" presence.

Director Apelt moved, seconded by Director Freeman, to accept the Second Amendment to Purchase and Sale Agreement. Recorded vote on the motion:

YES: Directors Freeman and Apelt.

NO: Directors Moore Costello, Meetze, and Chairman Booth

The motion failed due to the lack of a majority vote.

Director Meetze moved, seconded by Director Costello to accept the Second Amendment to Purchase and Sale Agreement with the following amendment:

Section 5. Deposit:

Buyer has previously posted Twenty-Five Thousand and 0/100 Dollars ($25,000.00) of Deposits with the Escrow Agent. Of this amount, Ten Thousand and 0/100 Dollars ($10,000.00) shall remain non-refundable (but applicable to the Purchase Price), and the remaining Fifteen Thousand and 0/100 Dollars ($15,000.00) shall be deemed fully refundable to Buyer… Recorded vote on this motion:

YES: Directors Moore, Costello, Freeman, Meetze, Apelt and Chairman Booth.

NO: None.

STAFF ACTIVITIES

David Callis, Economic Development (ED) Director, updated the Directors on the success of the START Peninsula program which was held November 13th through 15, 2015 and encouraged them to continue to support this program.

Mr. Callis then introduced the Holiday Season Marketing Initiative advertisement which would be in the Daily Press and would emphasize "Poquoson Is The Place – Even In The Off Season, We Are In Season". He also reminded the Directors that Poquoson's annual Holiday Parade would be held on Friday, December 4th at 7:00 p.m.

If needed, the next scheduled meeting of the EDA will be January 5, 2016 at 8:30 a.m.

ADJOURNMENT

Chairman Booth then adjourned the meeting at approximately 10:30 a.m.

Chairman	Secretary

TO: EDA Board Members

FROM: Donald Booth, Chairman

DATE: January 5, 2016

RE: Poquoson Family Medicine Incentive Agreement

The EDA, along with the City of Poquoson, signed an incentive agreement with Poquoson Family Medicine on May 14, 2013 offering an incentive for placing a full-time doctor in Poquoson, investing a minimum of funds into facilities and generating a minimum standard of revenue within the first two years of operation.

The first incentive installment was paid within 30 days of completion of facility renovations on December 3, 2013 and the agreement states that in one year from that date, the second installment shall be available if stated criteria had been met.

On October 6, 2015 the City of Poquoson received a letter from Bruce McEwen requesting the incentive payment that was part of the outdated original agreement, despite the late date and explained the justification for this request.

Given the proprietary nature of Poquoson Family Medicine's financial documents, they are not included in this agenda item. However, this information is available for verification by the EDA or its agents as required

Since funds would be provided by the City of Poquoson, not the EDA, the decision before the EDA is whether or not to request an appropriation from City Council.

To: Donald Booth / Poquoson EDA Chairman,

Re: 1st request of earned 2nd disbursement as Per May 14, 2013 agreement between the Poquoson EDA and the Poquoson Chiropractic Clinic DBA Poquoson Family Medicine & Chiropractic Clinic and Dr. Bruce Andrew McEwen DC and **2nd request of appropriate extension of initial agreement.**

The spirit of this agreement was that I, Bruce Andrew McEwen DC, would invest heavily in remodeling my Poquoson based Chiropractic-only business (under my sole ownership since 1997) and through the hiring of medical personnel, bring much desired and needed medical services into the city. *The city through the EDA would then make a minor investment* in my Poquoson business (via 3 separately earned disbursements) *if I made a major investment* in that same Poquoson based business.

According to the spirit of the agreement, my responsibilities were basically **threefold**.

1) I would invest a *minimum* of $100,000 in upgrading and renovating my existing property located at 370-A Wythe Creek Road for the purpose of providing medical services within the city limits of Poquoson.

2) I would hire a properly licensed medical physician or physicians to provide medical services in a full-time capacity.

3) I would manage, support and grow stated medical-practice to a level where it was independently generating at least $150,000 additional revenue per year from those medical services.

In the agreement, three separate disbursements of $25,000 each were eligible for reimbursement provided the criteria were met. The *first payment* was disbursed in late 2013 after nearly $200,000 in renovations were completed **(criteria #1)**. This letter dated in October 2015 is submitted as my formal request to receive my second disbursement which I qualified for this past May of 2015. The following criteria were met as of May 2015.

Criteria #2) Dr. Theresa Ledger DO is a board-certified family medical practitioner and has worked full-time hours for Poquoson Family Medicine five days per week beginning July 7, 2014.

Criteria #3) An independent third-party medical billing company who has exclusively handled all medical billing since PFM began providing medical services in Poquoson (July 7, 2014) has certified that as of May 2015, PFM eclipsed the $150,000 benchmark. (See Appendix A which is a signed and notarized statement provided by the owners of First Choice Medical Billing illustrating the month by month collections for medical services exclusively out of PFM)

Additionally, the EDA should be aware that, consistent with my stated long term vision and plan for providing increasing medical services within our community, PFM has recently expanded once again and hired a pediatrician to provide pediatric services within our great city. In fact, Dr. Carol Steiner MD & board-certified pediatrician with over 20 years' experience, is now treating infants and children at our Wythe Creek road location under Poquoson Pediatrics beginning June 2015.

Let me take a moment to discuss a correctable weakness in our initial agreement that was based on assumptions that were largely uncontrollable and what actions I took to improve upon that weakness and fulfill the true intent and spirit of the agreement.

Initially the plan was to use 2012 federal tax returns to establish the increase in revenue generated by the newly provided medical services. This made a risky assumption to start and then would require internally generated reports to attempt to prove the increase. Specifically, there was an assumption (truthfully more of a hope), that upon completion of the facility renovations in late 2013, that a medical provider could/would start right away in January 2014 thereby coinciding with the new tax year and thus easily show the additional income generated from the medical services. This proved to be unfeasible from the beginning and was then complicated by a secondary factor. First, hiring the right fit medical doctor for our city would prove to be a very lengthy and difficult task. When we finally found the right provider in early 2014, she was required satisfy a lengthy notice of termination period which prevented PFM from officially operating full time until July of 2014. This alone would make the annual tax records very difficult to discern the medical services increase. Secondly, all providers file under the one federal tax ID number (my Poquoson chiropractic clinic tax ID which was established as a Poquoson business back in1997). This would mean that all income generated would show up as coming from a single source (same Fed tax ID) on a federal tax form. We would then be relying on internally generated documents to attempt to show what portion the medical provider actually produced independent of the whole income.

The solution I relied upon solved both problems. The answer was in hiring an independent third-party medical billing company to exclusively conduct the billing for the medical provider while the chiropractic services continued to be done in-house house as before. The third-party agency would then be able to provide monthly income reports (beginning with the ACTUAL day we started providing medical services) exclusive to the medical practice and as appendix A will clearly show, the benchmark of $150K collected exclusively from medical services was eclipsed in May 2015, 10 months after beginning to provide medical services in Poquoson.

I hope it is evident to the EDA that I have fulfilled the spirit and intent of this agreement and have done what I had promised I would attempt to do. Additionally I am hopeful that they are appreciative of our continuing efforts to expand the medical services offered here in Poquoson; there is more to come.

It is now many months after initial qualification and as PFM is ever expanding our services with equipment and personnel, the second disbursement is now very much needed. Thank you for your support and I continue to look forward to improving the quality of life here in Poquoson.

My **second request** is based off the facts I presented above. Initially, our agreement had an ending date of January 2016. As presented above, the provision of medical services did/could not begin until July 2014 making me ineligible for the ***2nd disbursement until July 2015*** and not eligible for the ***3rd and final disbursement until July 2016***. Accordingly, I would ask that the agreement be amended to end in December of 2016 instead of January 2016 so that I may properly earn the 3rd disbursement.

Yours in health,

Dr. Bruce A McEwen DC

Owner, Poquoson Family Medicine & Chiropractic Clinic (and as of June 2015, Poquoson Pediatrics)