

1. 6-27-16 Council Agenda Summary

Documents: [6-27-16 COUNCIL AGENDA.PDF](#)

1.I. Brick Kiln Development

Documents: [BRICKKILNWKSES.PDF](#)

1.II. ED Marketing Opportunity

Documents: [ED UPDATE2.PDF](#)

1.II.i. 6-23-16 Minutes

Documents: [5-23-16 MINUTES.PDF](#)

1.II.i.1. Fountains CUP Amendment

Documents: [FOUNTAINS CUP AMENDMENT.PDF](#)

1.II.i.1.1. Workforce Development & Library Adv Bd

Documents: [LIBRARY ADV BD2.PDF](#)

1.II.i.1.2. Purchasing Manual

Documents: [PURCHASING MANUAL MEMO.PDF](#)

1.II.i.1.3. Actual Purchasing Manual

Documents: [PURCHASING MANUAL 022016.PDF](#)

1.II.i.1.4. Purchasing Manual Quick Ref

Documents: [PURCHASING QUICK REF 022016.PDF](#)

1.II.i.1.5. P&R Board

Documents: [PR BD.PDF](#)

1.II.i.1.6. FOIA Officer

Documents: [FOIA OFFICER.PDF](#)

**POQUOSON CITY COUNCIL
MEETING OF
MONDAY, JUNE 27, 2016
7:00 P.M.
REGULAR SESSION**

6:00 p.m. Work Session

- Health Dept. presentation Zika Virus
- Brick Kiln Development

A. MEETING CALLED TO ORDER

B. INVOCATION AND PLEDGE OF ALLEGIANCE

C. SPECIAL PRESENTATIONS

- Mayor Hunt – Bay Star Home – Amanda Philbeck

Certificates of Appreciation

- City Manager – Introduction of Interns – Will Ziglar (EDA)
Kyle Cherry (Administration)
- Jimmy Sanderson, Davenport & Company – Bond Rating and Refunding Results
- Charity Gavaza – Marketing Opportunity

D. AUDIENCE FOR VISITORS

E. APPROVAL OF THE MINUTES

1. Regular Meeting – May 23, 2016

F. PUBLIC HEARINGS

1. Fountains of Poquoson Modification of Conditional Use Permit
 - (a) Public Hearing
 - (b) Consideration by Council

G. NEW BUSINESS

1. Resolution Making Appointments to the Workforce Development Consortium and Library Advisory Board
2. Resolution Adopting the Purchasing Manual and Appendix
3. Resolution Approving the Addition of a Student Representative to the Parks & Recreation Advisory Board
4. Resolution Designating FOIA Officer(s)

H. COMMENTS OF THE CITY MANAGER

I. COUNCIL DIRECTIVES

J. CLOSED SESSION

Closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia (1950), as amended to discuss personnel matters; i.e.. School Board Candidate Interviews

K. RECONVENEMENT - Certification

L. ADJOURNMENT



CITY OF POQUOSON

PLANNING DEPARTMENT

500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996
(757) 868-3040 TELEPHONE (757) 868-3105 FAX

June 27, 2016

To: The Honorable City Council

Through: City Manager

From: Kevin M. Wyne, Planner

Subject: **Conditional Use Permit For A Mini-Storage Warehouse Facility In A Residential District- Tax Parcel No. 27-1-18**

Presented for your work session discussion is a request from Mr. Frank Crandol, on behalf of Brick Kiln, LLC, property owner, to establish and operate a mini-storage warehouse facility with a separate professional office building on approximately 5.9 acres located on Wythe Creek Road near Woodhaven Drive, further identified as Tax Parcel No. 27-1-18. The property is zoned R-1, Single Family Residential and commercial operations within residential districts are not permitted as by-right uses.

The Planning Commission held a public hearing on this item at their Monday, June 20, 2016 meeting and have recommended denial by a vote of 6-1.

A public hearing on this item is scheduled for your Monday, July 25, 2016 meeting.

This application was advertised for public hearing by legal notice appearing in the Daily Press on June 3 and June 10, 2016. Adjacent property owners were notified by letters mailed on June 1, 2016.

KMW

BRICK KILN LLC DEVELOPMENT

Brick Kiln LLC has been in the process of developing its property located on the west side of Wythe Creek Road, to the north of Woodhaven Drive and to the south of Poquoson Baptist Church. The first phase of Engineering work (raising elevation of property) should be complete by the spring or early summer of 2016.

The current Zoning for this property is R-1, single family housing. Brick Kiln LLC has been asked to consider the future development of this property into a Professional facility. This will require applying to the City of Poquoson for the proper permitting while retaining the current R-1 zoning.

As we all know Wythe Creek Road is in the process of being improved by widening in the very near future. With the ongoing widening, an R-1 single family development will add a significant amount of traffic entering Wythe Creek Road in a fairly congested area.

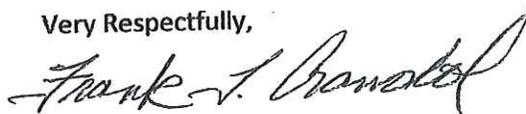
With the current ongoing development within the City of Poquoson, there is a shortage of storage facilities. Storage World located to the north which is about 10 years old, is filled to capacity and has a waiting list. Brick Kiln LLC is considering building a storage facility similar to Storage World as depicted on the attached sheets. Storage Facilities of this type develop very low traffic flow and low noise. The facility is secure, and does not allow any afterhours accessibility. With the design layout of Storage World, large trucks cannot access the storage area. As to storage spaces, most are rented on long term basis and are very seldom accessed monthly and large percentage are only accessed twice, once to store and once to remove. The Wythe Creek Road business frontage of this property, will have a building containing various professional businesses such as insurance, physicians, lawyer, etc. and of course the office to the storage facility similar to elevation study 1, 2 or 3 as depicted on attached sheet.

Brick Kiln LLC has always considered the development of this property as to what would be best for the City. We will be applying for a permit change in the near future. We hope that you will take a strong look at Storage World with its business frontage. This facility will not be a group of storage buildings on the side of Wythe Creek Road.

After Brick Kiln LLC has applied for the permitting change, there will be public hearings as to the approval. As neighbors I encourage each of you to consider the advantage of this development. Letters from adjacent property owners are greatly appreciated by the City staff, boards and council. Letters seem to have more impact with the city than casual or emotional conversations at city meetings.

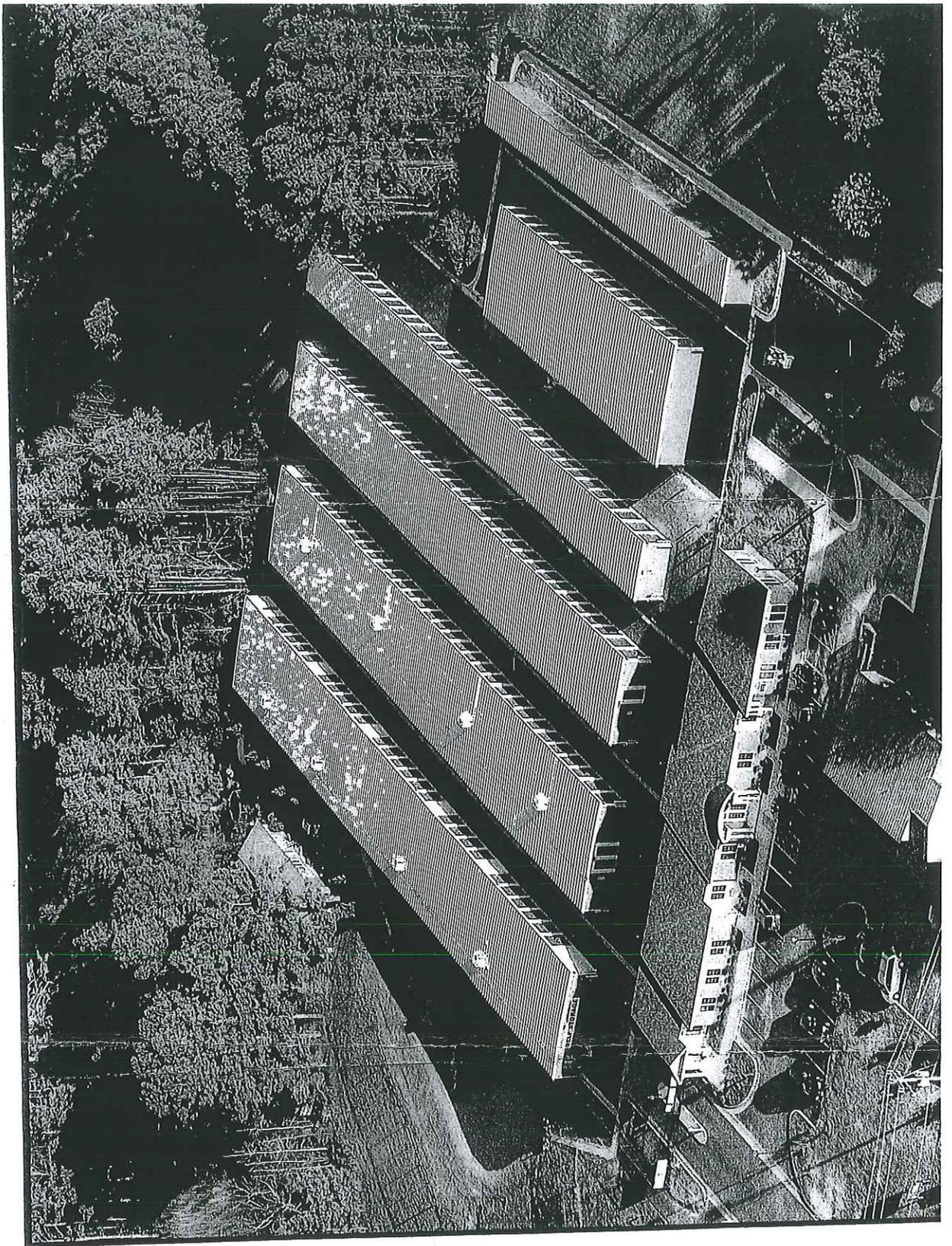
I hope that this is a favorable change for each of you to consider. Brick Kiln LLC has always kept the value of its neighbors as an important factor while developing this property.

Very Respectfully,

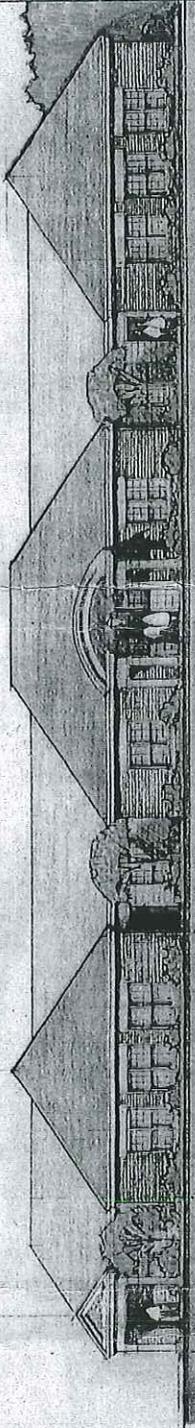


Frank T. Crandall

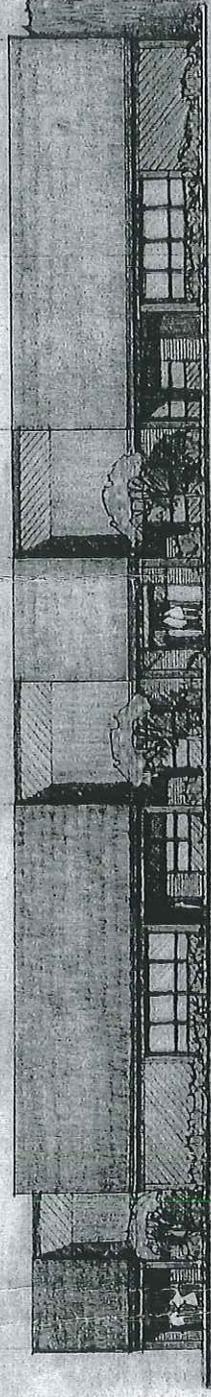
Brick Kiln LLC.



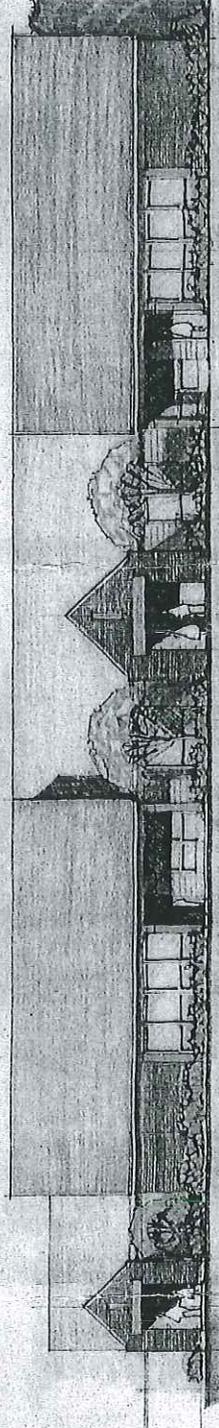
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ELEVATION STUDY #1



ELEVATION STUDY #2



ELEVATION STUDY #3



CITY OF POQUOSON

PLANNING DEPARTMENT

500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996
(757) 868-3040 TELEPHONE (757) 868-3105 FAX

MEMORANDUM

Date: June 20, 2016

To: The Honorable Chairwoman and Members of the Planning Commission

From: Kevin M. Wyne, Planner

Subject: Conditional Use Permit For A Mini-Storage Warehouse Facility In A Residential District- Tax Parcel No. 27-1-18

Introduction

The City has received a request from Mr. Frank Crandol, on behalf of Brick Kiln, LLC, property owner, to establish and operate a mini-storage warehouse facility with a separate professional office building on approximately 5.9 acres located on Wythe Creek Road near Woodhaven Drive, further identified as Tax Parcel No. 27-1-18. The property is zoned R-1, Single Family Residential and commercial operations within residential districts are not permitted as by-right uses.

Public Notice

This application was advertised for public hearing by legal notice appearing in the Daily Press on June 3 and June 10, 2016. Adjacent property owners were notified by letters mailed on June 1, 2016.

Applicant's Proposal

The applicant is proposing to use the property for the purpose of constructing up to 800 storage units (as outlined in discussions with the applicant), similar to the existing facility on Wythe Creek Road (Storage World Poquoson). The property has been cleared over the years and is not developed. According to the plans provided by the developer/property owner, the development will consist of six (6) separate buildings containing a variable number of storage units with miscellaneous office space at the front of the property. It is important to note that the applicant has provided elevations and pictures of the existing Poquoson Storage World complex as an example of his proposal, which he intends to use in guiding the development of site specific plans for his proposal. The applicant anticipates approximately 3.95 acres of the 5.9 acre site being developed. In conversations with the applicant it has been indicated that initial plans call for approximately 200 storage units with plans to eventually reach approximately 800 units.

Site Character

The site consists of one (1) parcel owned by Brick Kiln, LLC, identified as Tax Parcel No. 27-1-18. The property is served by Wythe Creek Road, where the lot has 415' of frontage. The lot is largely rectangular, aside from an area at its west which juts out into a triangular shape. The parcel consists of 5.9 acres and measures approximately 415' wide and 855' in length at its longest, 610' at its shortest. The property has been cleared over the last several years and elevated to approximately 9' above sea level. The densest remaining vegetation lay at the property's northern and western boundaries. Additionally, some dense vegetation is located at the property's southern boundary; however, it is sparse in certain locations. The use will clearly be visible from Wythe Creek Road. A stream is located near the western boundary of the property and, as a result, some tidal wetland areas and a Chesapeake Bay Resource Protection Area buffer are present on the property.

Surrounding Land Uses

The property is surrounded by the R-1, Single Family Residential district in all directions. Within approximately 300' of the perimeter of the property lay approximately 23 single family dwellings. To the property's immediate south lay the small, 10 lot New Bridge subdivision on Woodhaven Drive. The property, while surrounded by the R-1 district, is located near several other zoning districts due to its Wythe Creek Road location. Specifically, the property is approximately 225' north of the B-1, Office/Professional district, approximately 1,200' feet south of the R-3, Multi-Family Residential district (The Villas) and approximately 2,000 feet south of the B-2, Business/Commercial district (Storage World Poquoson). In addition to the uses described above, a portion of the parcel is located adjacent (to the south) to the Poquoson Baptist Church property.

Zoning

The property is zoned R-1, Single Family Residential. Uses permitted in this district without a conditional use permit include single family residential structures and accessory buildings used in conjunction with those structures, playgrounds and parks of a non-commercial nature as well as public utilities. Schools and churches are permitted within this district with a Conditional Use Permit. Commercial uses such as the mini-storage warehouse in question that generate activities inconsistent with the purpose of the City's single family residential districts are not specifically permitted in this district.

Land use requests of this nature generally necessitate the need for a developer to apply for a rezoning. In this case a request to rezone the property from R-1, Single Family Residential district to B-2, Business/Commercial district would allow for the developer to then petition City Council for a Conditional Use Permit to operate a mini-storage warehouse facility in the B-2 district. However, as our Zoning Ordinance is structured, it allows a property owner to request a Conditional Use Permit from City Council, with a recommendation from the Planning Commission, for any use that is not specifically permitted for within the parcel's specified zoning district. As is the case, mini-storage warehouse facilities are not a specifically permitted use within the R-1 district, thus the property owner is requesting a use permit to allow for the construction of such facility.

Conditional Use Permits allow for a very specific use to occur on a property, while a rezoning to B-2 would allow for any commercial use permitted within the B-2 district by-right to operate on the property. In a pre-application meeting, the applicant was presented with two (2) avenues for his proposal which included the rezoning route and the Conditional Use Permit option. During that discussion with the applicant it was noted that he has no desire to operate any additional commercial uses on the property and wishes to solely

operate a self-service storage facility, thus he is only requesting a Conditional Use Permit application for a mini-storage warehouse with a professional office structure, not a rezoning.

Traffic

The development would have direct access off of Wythe Creek Road, and as such, all City and Virginia Department of Transportation (VDOT) ingress/egress standards must be adhered to. Uses of this nature do not generate large amounts of traffic. In accordance with the Institute of Transportation Engineers (ITE) Trip Generation Manual, 9th Edition, mini-warehouses are anticipated to generate .26 vehicular trips during PM Peak Hour per 1,000 square feet of space. Using Storage World Poquoson as an example (57,000 square feet of storage space), at full build out (approximately 800 units), the storage unit use could be expected to generate approximately 15 trips during the PM Peak Hour (4:45pm to 5:45pm). Additionally, utilizing the ITE Manual and using the existing office space at Storage World Poquoson (7,000 square feet) the professional office space could be expected to generate roughly 3.49 PM Peak Hour (the hour in which the highest amount of trips are anticipated) trips per 1,000 square feet, or approximately 24 PM Peak Hour trips overall. With an estimated combined 39 PM Peak Hour trips the use is not expected to reduce the level of service in the area on Wythe Creek Road.

A widening of Wythe Creek Road, from its current two (2) lanes to a proposed three (3) lane configuration has been approved for the area the property fronts. The widening project is still in the planning and engineering phases, however, construction is imminent. As a result any ingress/egress constructed by the developer may need to be replaced as a result of the widening project. The applicant is aware of this and any definitive impacts have yet to be determined.

Environmental

The developer's submitted survey of the property indicates the presence of some tidal wetlands at the rear of the property due to the location of a tidal stream that abuts the property at its western boundary. The plans do not call for disturbance of these wetlands; however, if the plans change and require disturbance of these areas the developer would be required to submit a request for a wetlands permit to the City's Wetlands Board. They would review and hold a public hearing to consider the proposed impacts and render a decision as to whether or not the impact is justifiable and can be sufficiently mitigated.

In addition to the wetlands located on the property, due to presence of the tidal stream detailed above, the property is subject to the Chesapeake Bay Preservation Act's 100' Resource Protection Area (RPA) buffer. Specifically, any development within 100' of the stream would require review and consideration by the City's Environmental Development Plan Review Committee and/or the City's Board of Zoning Appeals to determine whether the proposal is consistent with the requirements outlined in the Commonwealth's Chesapeake Bay Preservation Act. The submitted plan does not indicate any development within the RPA at this time.

Architectural Review Board

The proposed commercial development would be located within 300' of Wythe Creek Road between Yorktown Road and the Hampton City limits, making it a part of the City's Architectural Review District. As such, any proposed commercial development to be located on the site must be reviewed by the City's Architectural Review Board. The purpose of the Architectural Review Board is to determine the aesthetic appropriateness of commercial development within the limits of the review district by reviewing the exterior

appearance of development proposals. During their review, close attention will be paid to proposed materials, colors, signage, building scale and mass, site lighting and landscape features.

Relationship to the Comprehensive Plan/Staff Findings

The property is designated for use as Low Density Residential as defined in the City's Comprehensive Plan. A detailed description of the purpose and intent of the Low Density Residential land use designation is outlined as follows:

This category is for single-family residential areas in Poquoson that are intended to have a maximum of one and a half (1.5) to two (2) dwelling units per acre, as prescribed by the three current land use zoning districts: R-S, R-1, and R-2. Low Density Residential is the base layer of zoning for the City and is proposed for all parts of the City not designated for commercial, conservation, public use or medium to high density residential development.

As stated in the "Zoning" section above, the applicant does not wish to utilize the property for any other commercial use other than a mini-storage warehouse and professional office space and thus is not requesting a rezoning of the property from R-1 to B-2. A review of a rezoning application would allow the City's legislative (City Council) and quasi-legislative (Planning Commission) bodies to consider and determine whether the property is appropriate for a variety of commercial uses, to include mini-storage warehouse facilities. Prior to the review of a rezoning application, the applicant would make an application to the City requesting that its land use designation be amended to reflect its proposed rezoning request. This process would allow the City Council to determine, with a recommendation from the Planning Commission, the suitability of commercial use on the property and establish the parcel for commercial use in the City's Comprehensive Plan Land Use Map. As is the case, approval of the applicant's request for a Conditional Use Permit to specifically establish a mini-storage warehouse within a low density residential land use district would be inconsistent with the City's Comprehensive Plan Land Use Map.

Historically, Conditional Use Permits within the City are requested primarily for three (3) reasons: (1) To allow legislative review of previously established legal non-conforming (grandfathered) commercial uses to continue to operate in residentially zoned areas; (2) To allow for legislative review of more intense, potentially highly impactful or unique uses not clearly permitted for within existing commercial districts; or (3) To allow legislative review over unique and potentially impactful uses that are anticipated to operate on a property temporarily. This proposal is unique in that it does not fit into one (1) of the traditional categories above. The issuance of this use permit would allow for the construction and maintenance of a commercial facility within a low density residential district. While traffic impacts are anticipated to be minimal, the lack of a consistent existing natural vegetated buffer would allow for potential noise and light trespass that may negatively impact the neighboring properties, specifically those immediately located within the New Bridge subdivision on Woodhaven Drive. Additionally, mini-storage warehouse facilities notoriously utilize metal siding for construction which is not as aesthetically pleasing as other, preferred construction materials. These are impacts that could be mitigated or lessened with the appropriate conditions; however, it is important to note that the issuance of this use permit would allow for the permanent development and operation of a commercial use on undeveloped land designated for use as low density residential within the City's Comprehensive Plan Land Use Map which is a consistent development pattern within the immediate area. If the Planning Commission recommends approval of the request to City Council, staff recommends that approval be subject to the following conditions:

1. Hours of operation shall be limited to 7:00am-8:00pm.
2. In accordance with the City's Site Plan Ordinance, all on-site lighting shall be shielded in a manner that minimizes the impact on adjacent properties.

3. All existing vegetation on the northern and southern boundaries of the property shall remain undisturbed and/or replaced with similar vegetation if removed for any reason.
4. A 25' landscape buffer shall be required the full length of the developed area on the southern and northern boundaries. The existing vegetation shall be utilized and all gaps in the existing vegetation shall be filled using evergreen vegetation, of at least six (6) feet in height at the time of planting. This buffer shall be maintained in perpetuity in good condition.
5. As a part of the site plan submittal process, the developer shall depict a fence, the full length of the developed area on the southern and northern boundaries of the property. The fence must stand at least six (6) feet in height and consist of a solid material so that the development is adequately shielded from neighboring properties. Additionally, a fence meeting these conditions must be reviewed and approved by the Architectural Review Board prior to construction. The fence must be constructed prior to the issuance of any Certificate of Occupancy for the development and must be maintained in good condition.
6. In addition to the required buffer area, the use shall meet all required setbacks of the underlying Zoning District.
7. The façade of all structures facing Wythe Creek Road shall consist of brick or like masonry construction materials.
8. The operation shall obtain all required local, state and federal permits.
9. Upon the discontinuance of such use for a contiguous period of two (2) years or more, the Conditional Use Permit shall become null and void.
10. If at any time the operation is in violation of any local, state or federal regulations, including the conditions set forth in this use permit, the City reserves the right to revoke the permit.
11. If construction on the project has not begun within five (5) years of the issuance of this permit, the Conditional Use Permit shall become null and void.
12. Registered and licensed recreational vehicles and non-commercial trailers may be stored on the property, provided they are located behind the professional office structure.
13. All trash receptacles shall be screened from adjacent property owners and shall not be visible from Wythe Creek Road. Receptacles shall not be placed in any required landscape buffers or required setbacks.

Attachments



City Poquoson
500 City Hall Avenue
Poquoson, Virginia 23662
(757) 868-3040

APPLICATION FOR A
CONDITIONAL USE
PERMIT

To the Planning Commission/City Council
of the City of Poquoson:

I/We, BRICK KILN LLC

the undersigned owner(s) of the described property:

5.8778 ACRES LOCATED WEST OF WYTHE CREEK ROAD,
SOUTH BY WOODHAVEN DRIVE, WEST BY YORK COUNTY AND
NORTH BY POQUOSON BAPTIST CHURCH AND JAYNES

hereby apply for a conditional use permit for the following reasons:

TO CONSTRUCT A STORAGE FACILITY AS
DISCRIED AND DEPICTED ON THE
FOLLOWING PAGES

27-01-00-0018

(CONTINUED)

I HEREBY AUTHORIZE CITY REPRESENTATIVES TO HAVE ACCESS TO THE PROPERTY DURING REASONABLE HOURS.

SIGNATURE OF PROPERTY OWNER(S):

X Frank T. Crandol

X _____

NAME: FRANK T. CRANDOL

ADDRESS: 41 WOODLAND ROAD
POQUOSON, VA. 23662

TELEPHONE: (757) 846-7347

SIGNATURE OF PERSON REPRESENTING APPLICATION:
(IF OTHER THAN OWNER)

X _____

NAME: _____

ADDRESS: _____

TELEPHONE: _____

INCLUDE WITH THIS APPLICATION:

1. A \$500 FEE TO COVER ADVERTISING COST. MAKE CHECK PAYABLE TO "CITY OF POQUOSON".
2. A SURVEYED PLAT OF THE PROPERTY.

CITY OF POQUOSON
PAID
MAR 31 2016

Revised 1/11/10
TREASURER #3

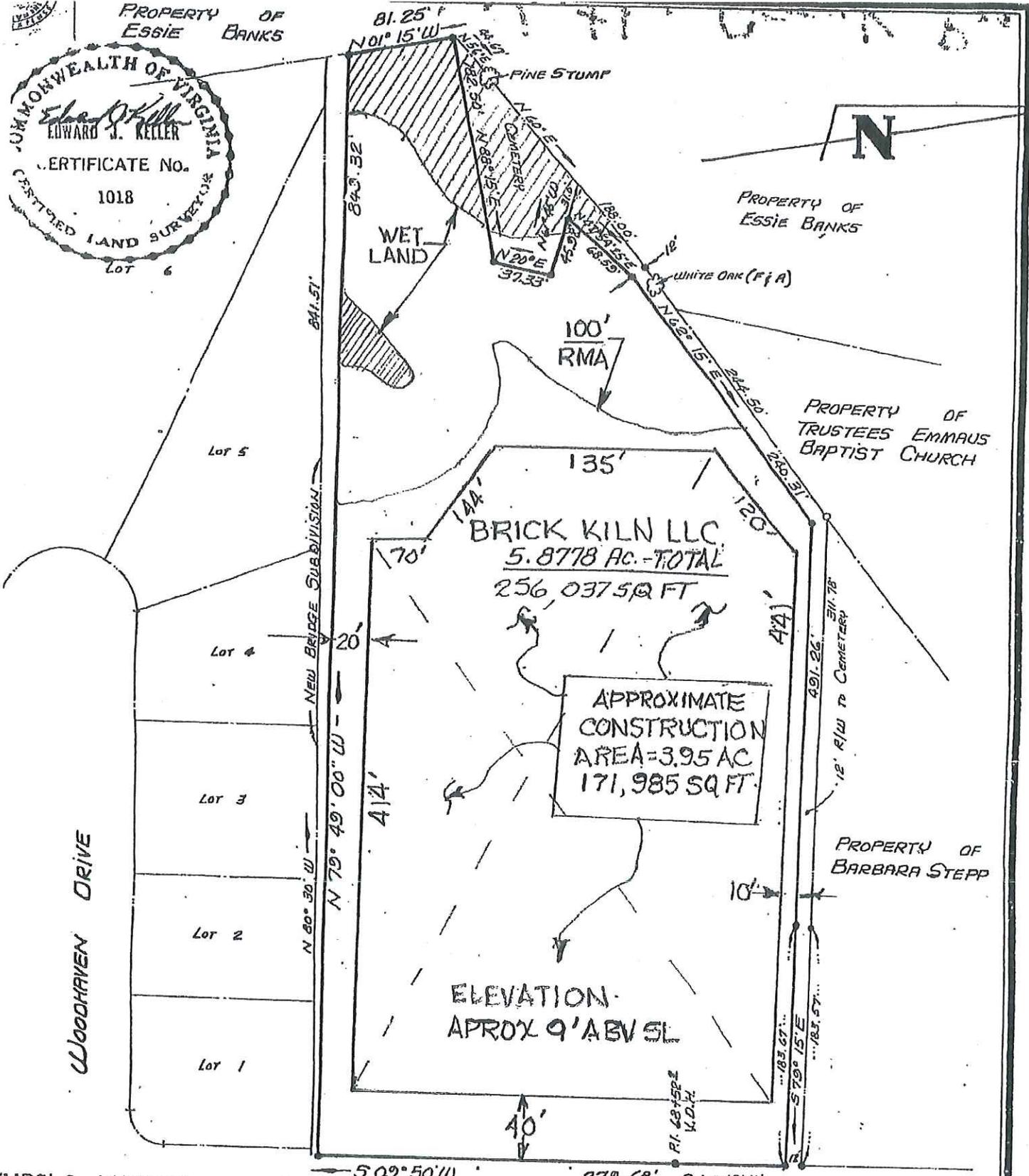
BRICK KILN LLC Storage Facility Development

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With the current single and multi-family ongoing development within the City of Poquoson, there is a shortage of storage facilities. Storage World located to the north which is about 10 years old, is filled to capacity and has a waiting list. Brick Kiln LLC is considering building a storage facility similar to Storage World as depicted on the attached sheets. Storage facilities of this type develop very low traffic flow and low noise. The facility is secure, and does not allow any afterhours accessibility. With the design layout of Storage World, large trucks cannot access the storage area. As to storage spaces, most are rented on long term basis and are very seldom accessed monthly and a large percentage are only accessed twice, once to store and once to remove. The Wythe Creek Road business frontage of this property, will have a building containing various professional businesses such as insurance, physicians, lawyers, etc. and of course the office to the storage facility similar to the elevation study and aerial view as depicted on the attached sheets.



PROPERTY OF
ESSIE BANKS

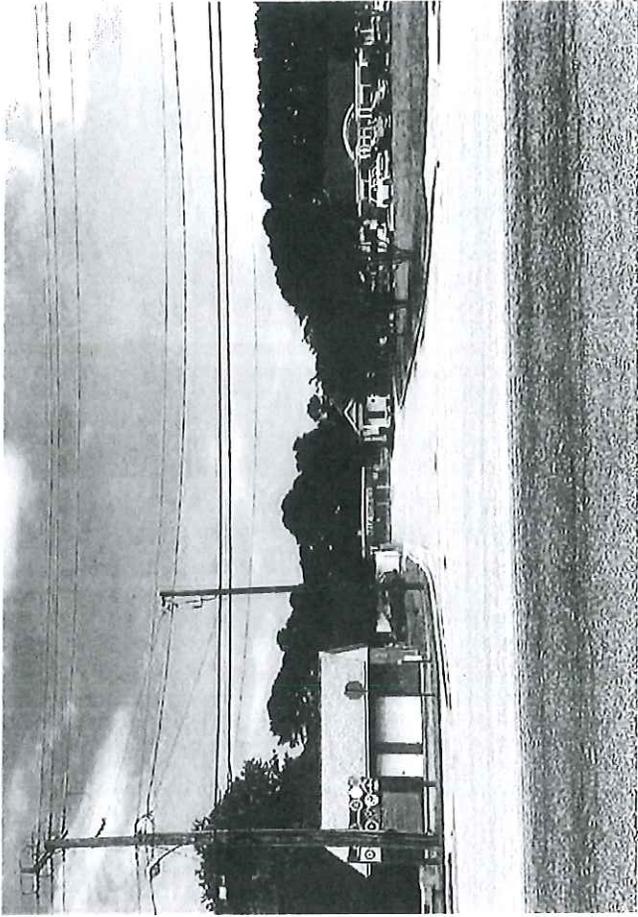


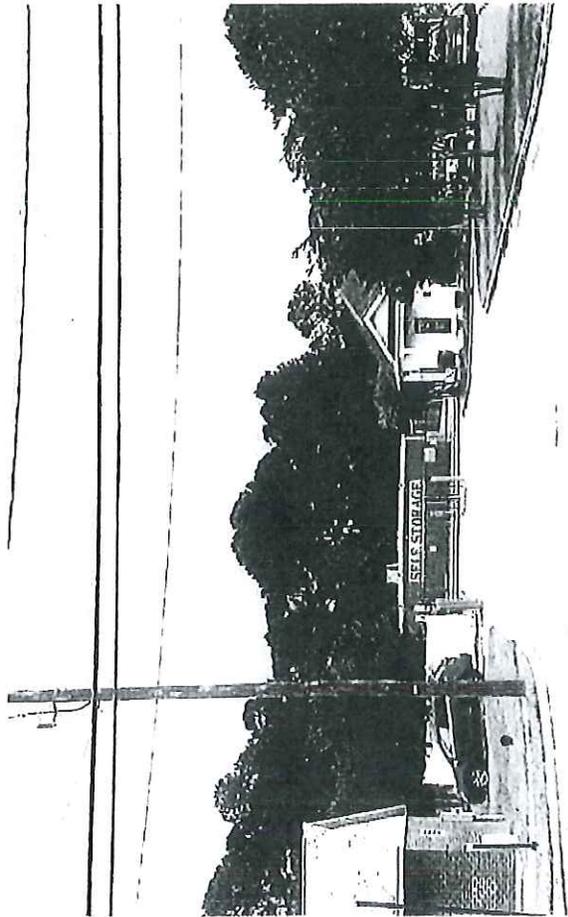
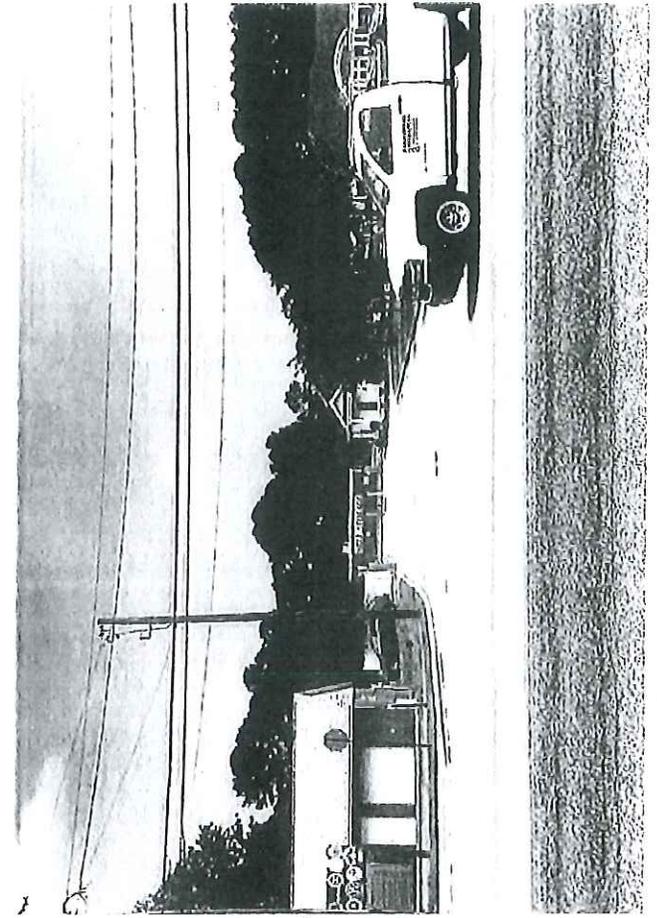
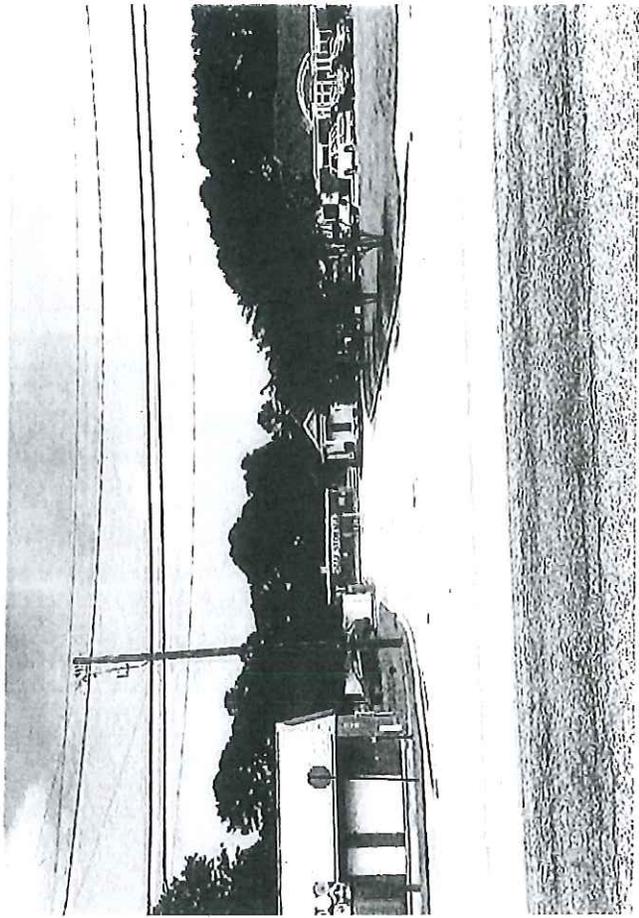
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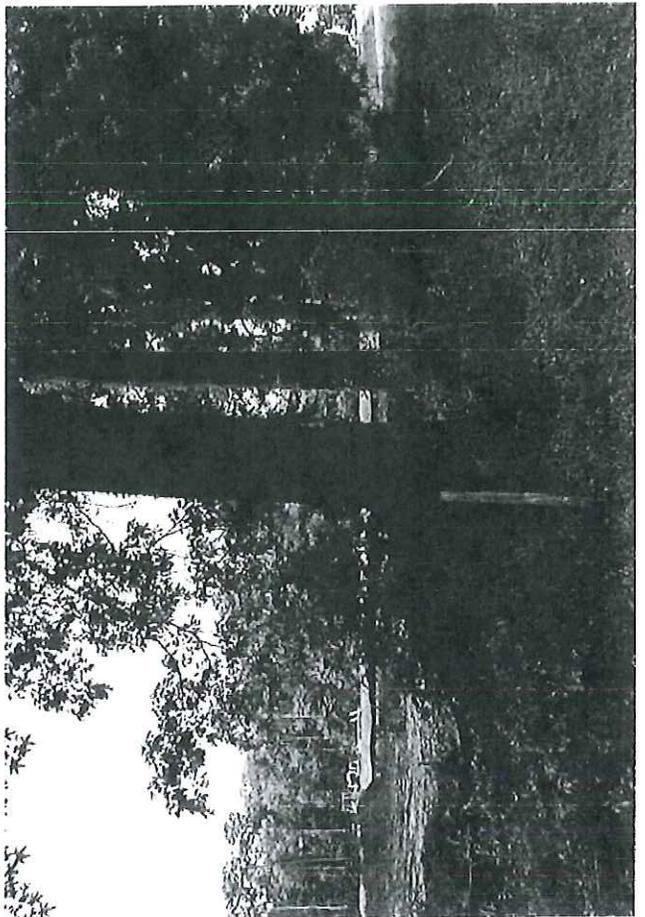
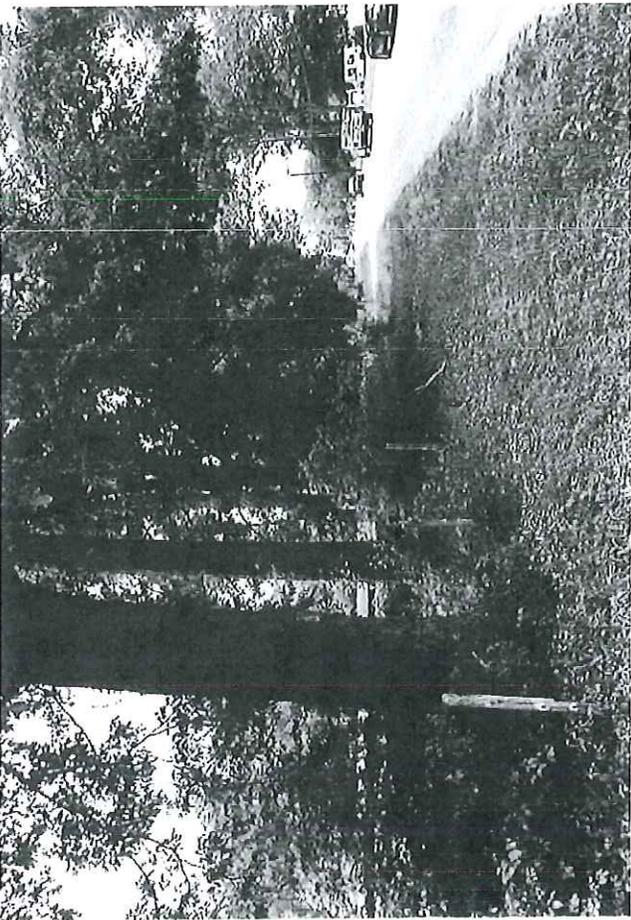
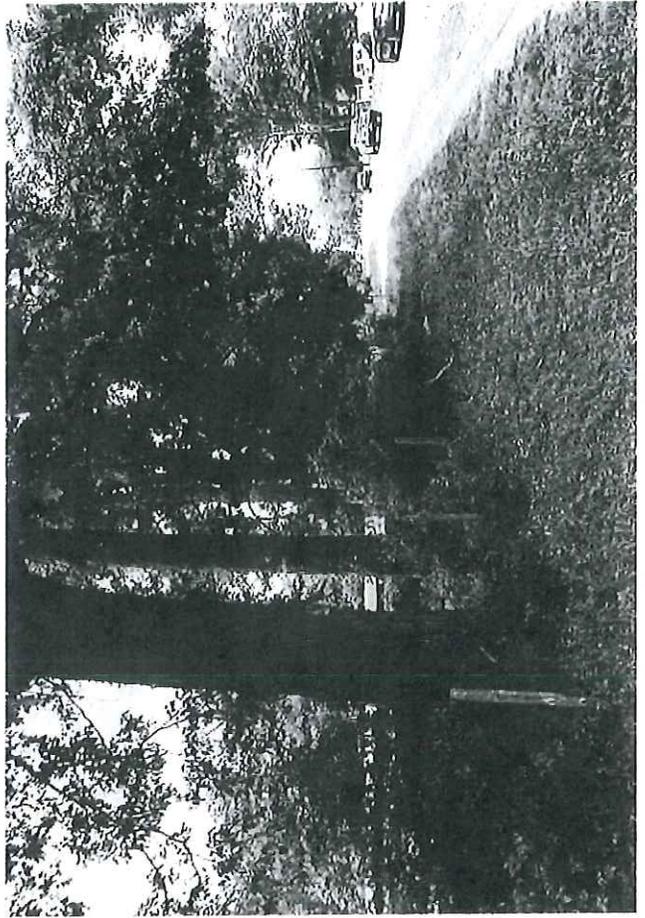
WYTHE CREEK ROAD (60' R/W)

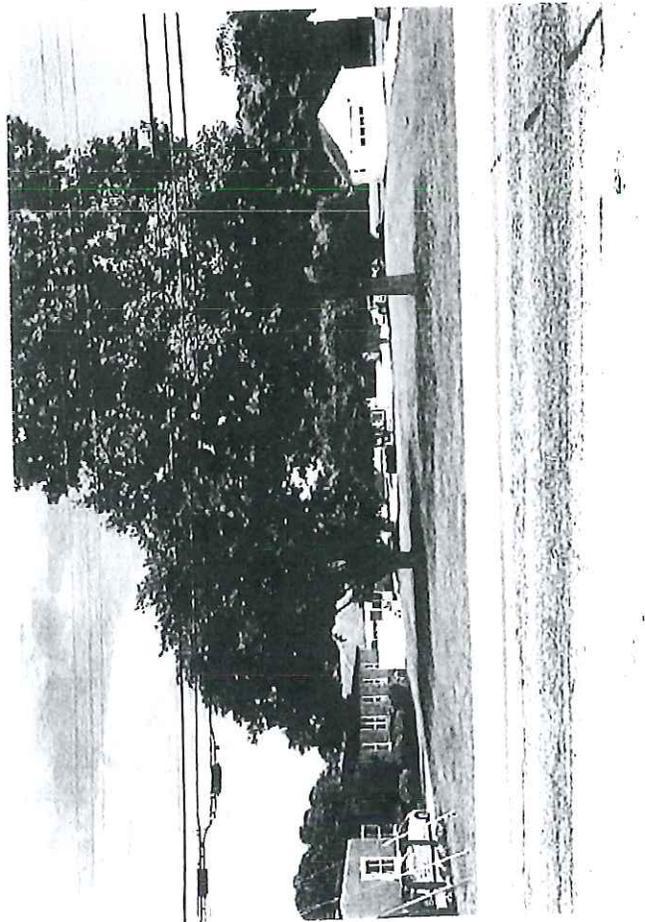
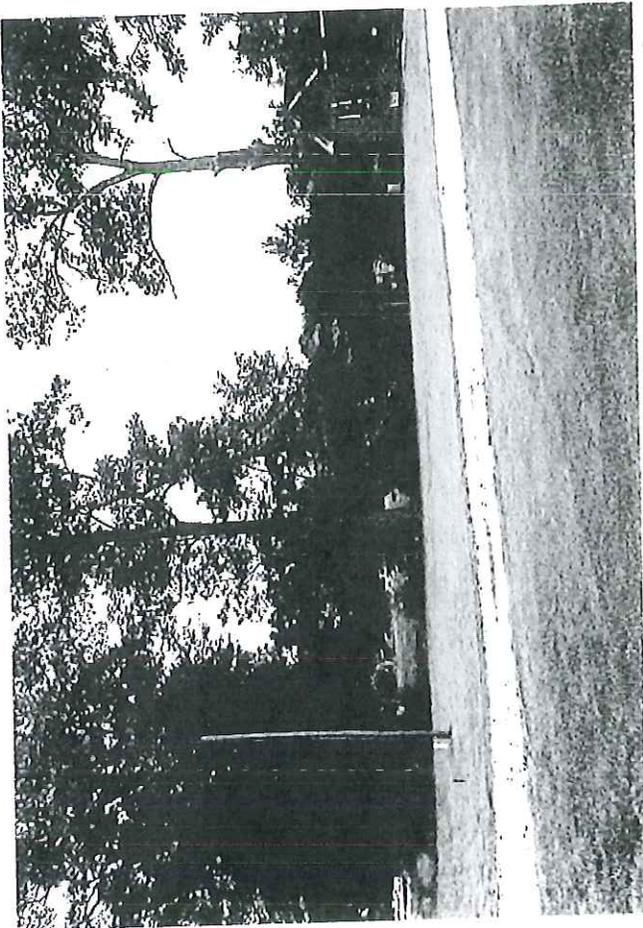
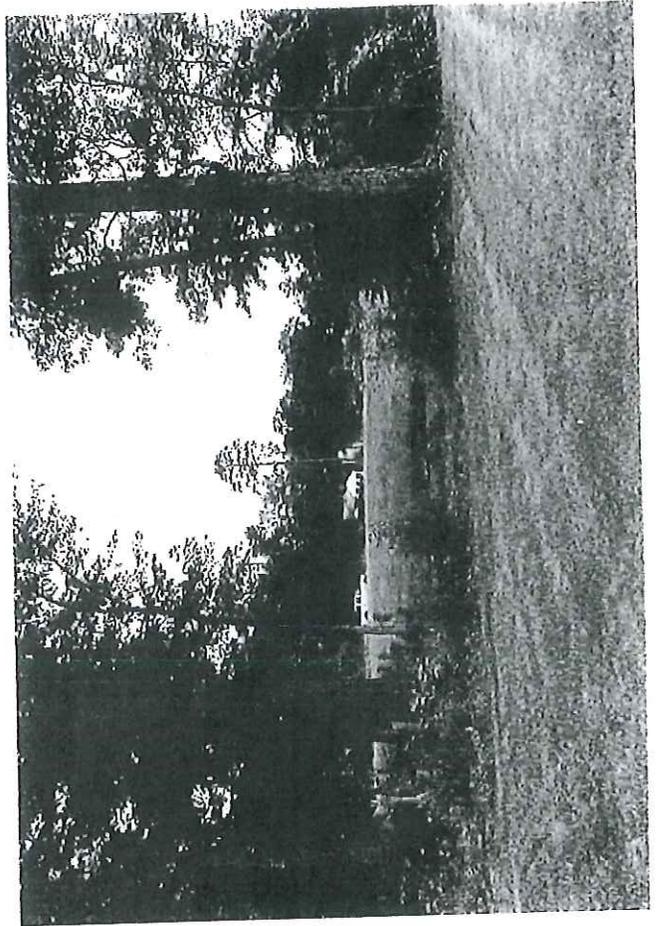
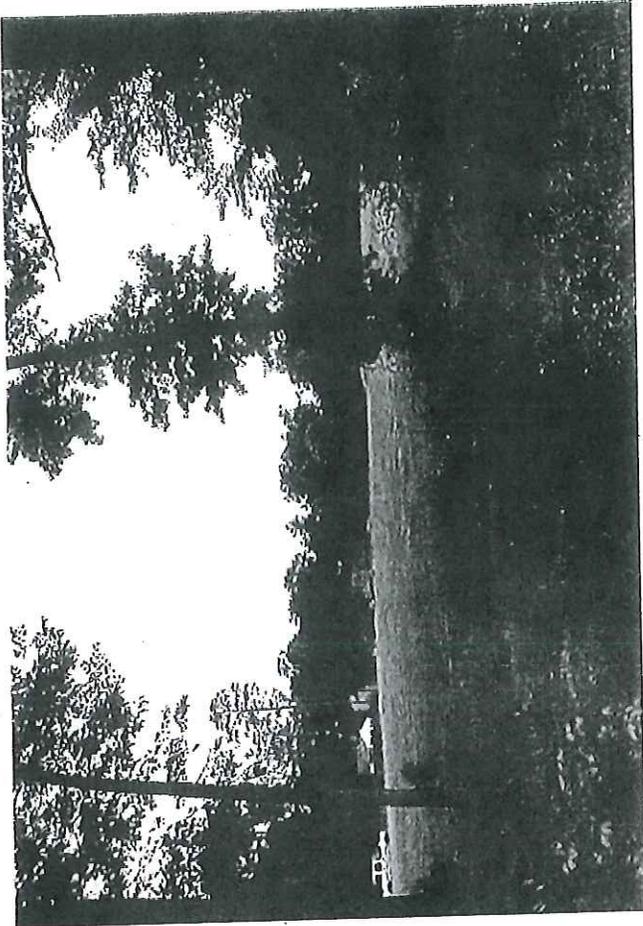
JOB LOCATION # WYTHE CREEK ROAD

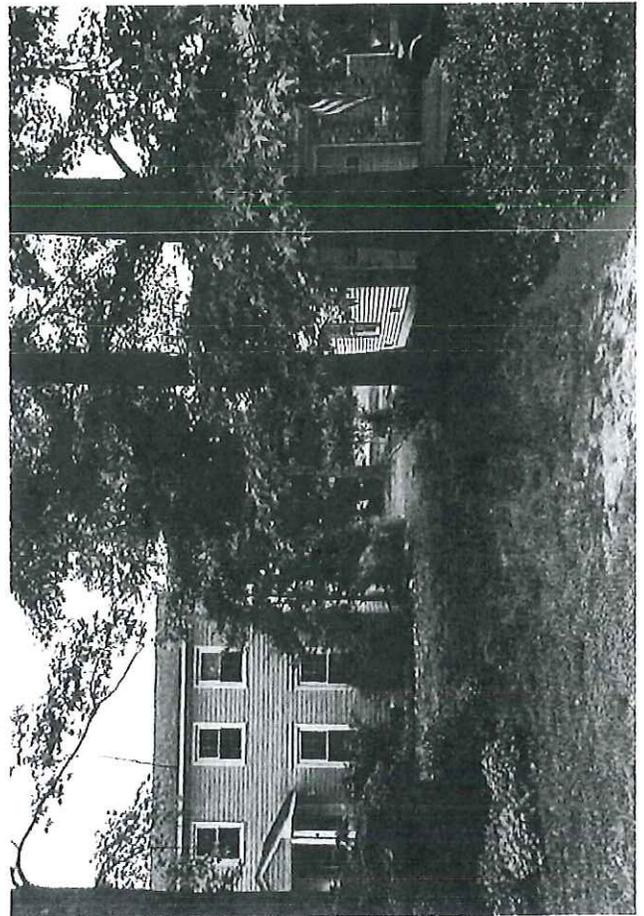
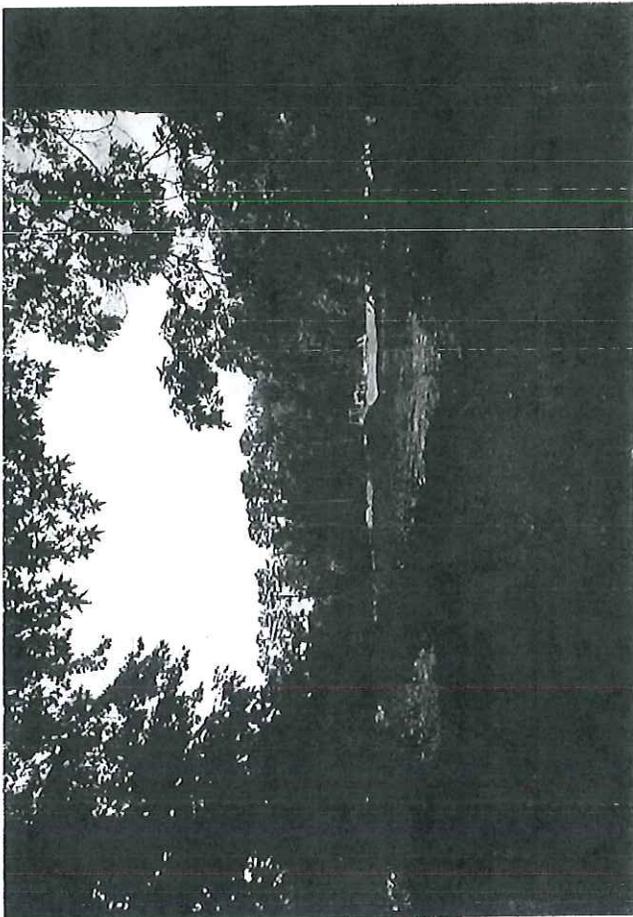
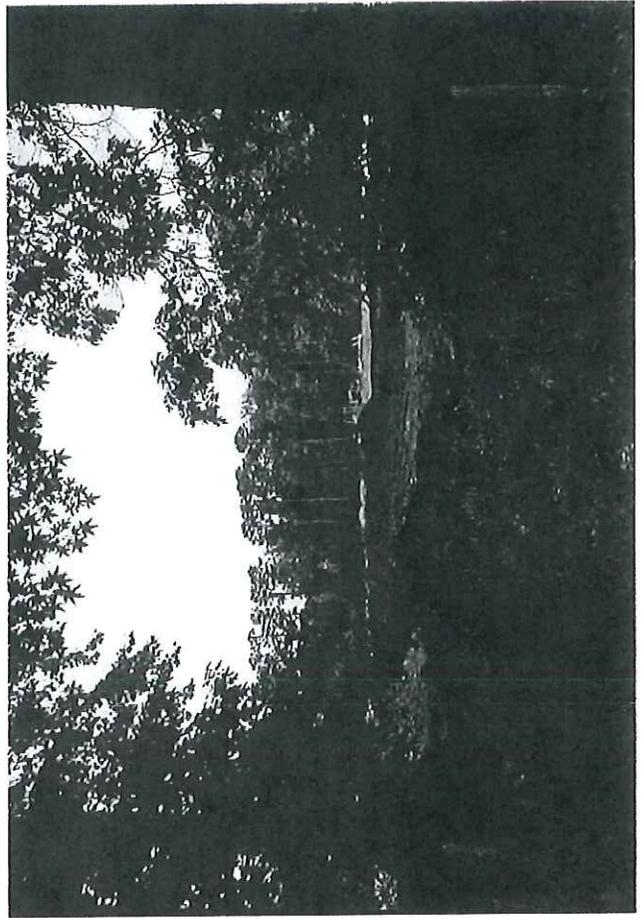
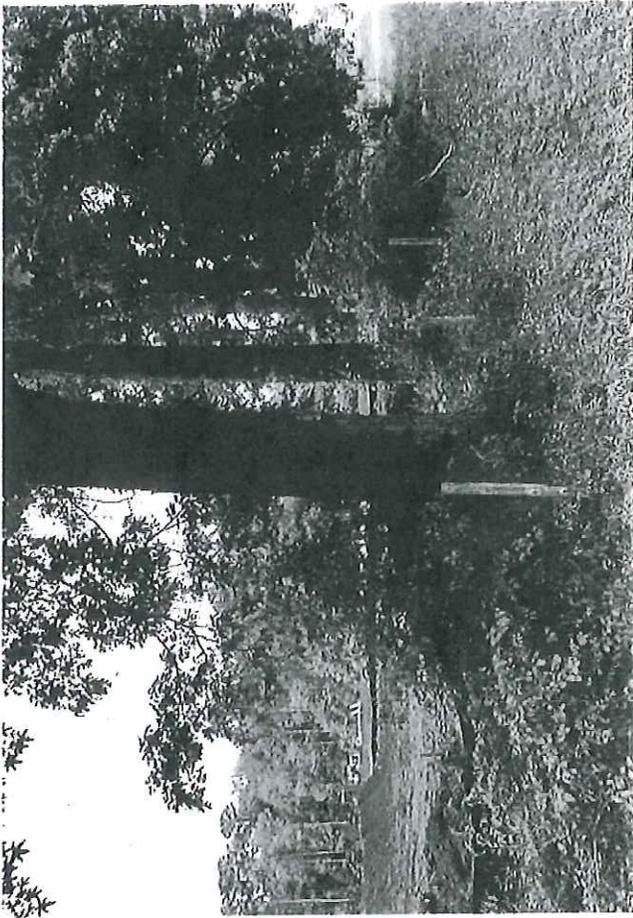
Edward J. Keller
 BEING CERTIFIED THAT THE SURVEY...

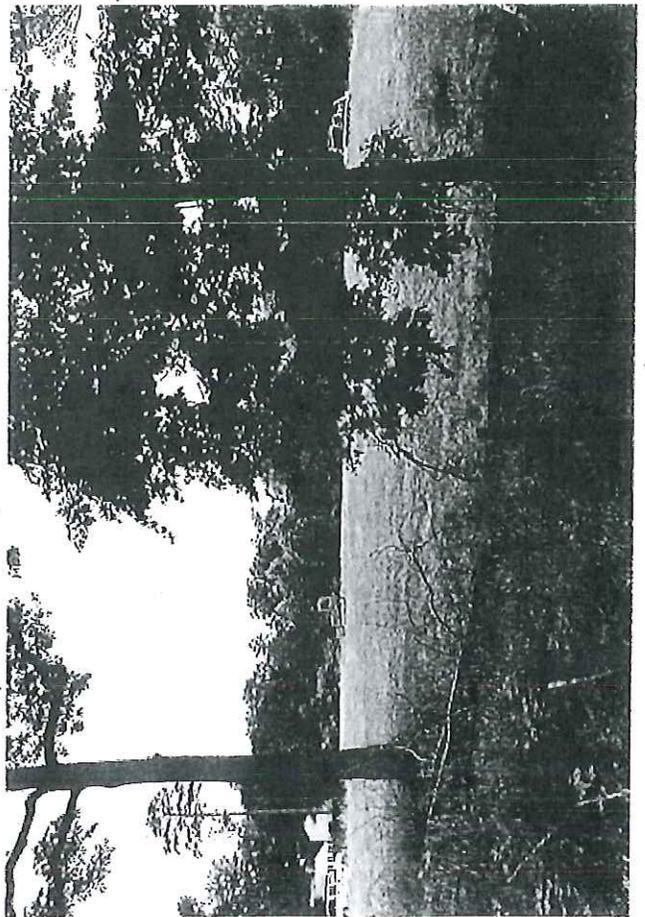
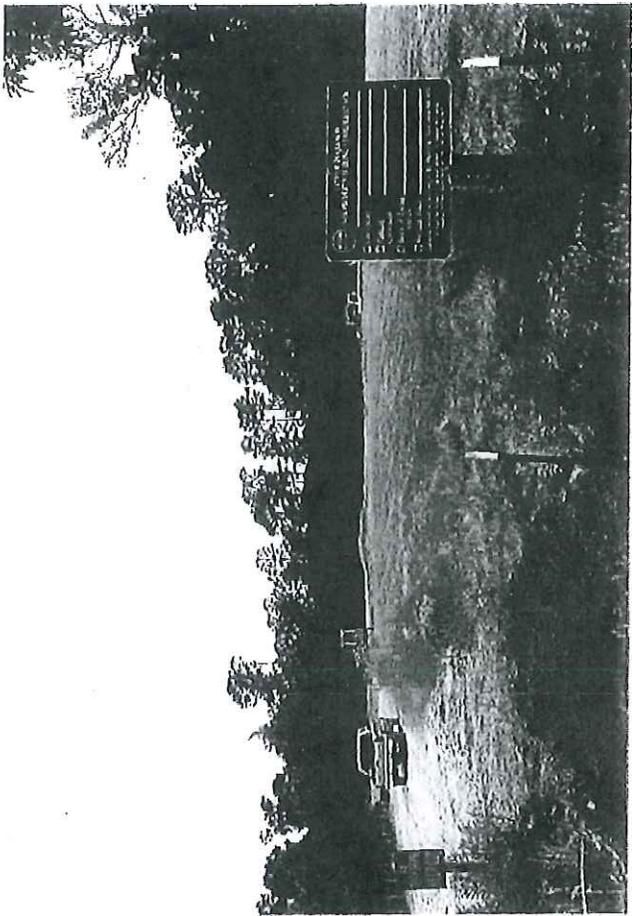


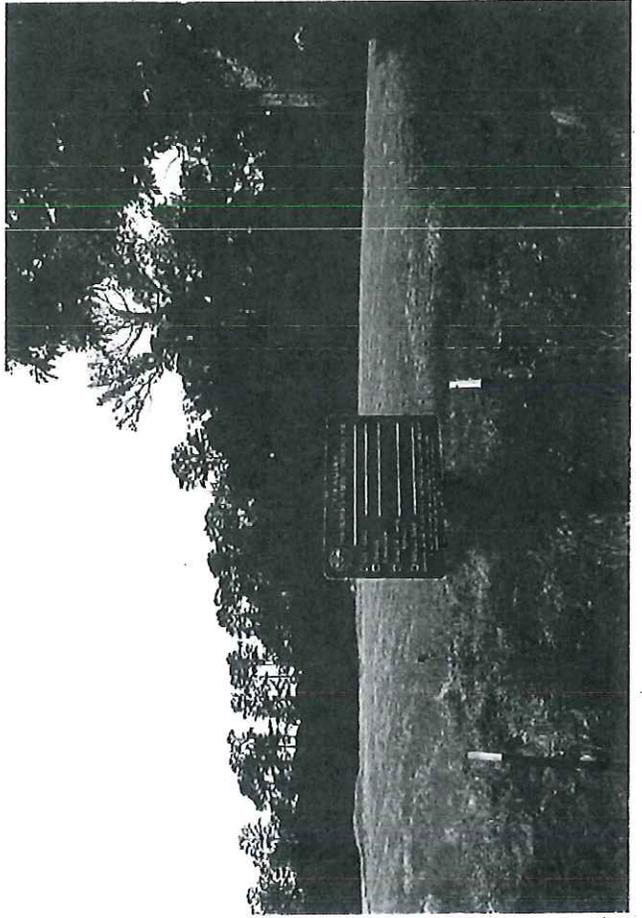
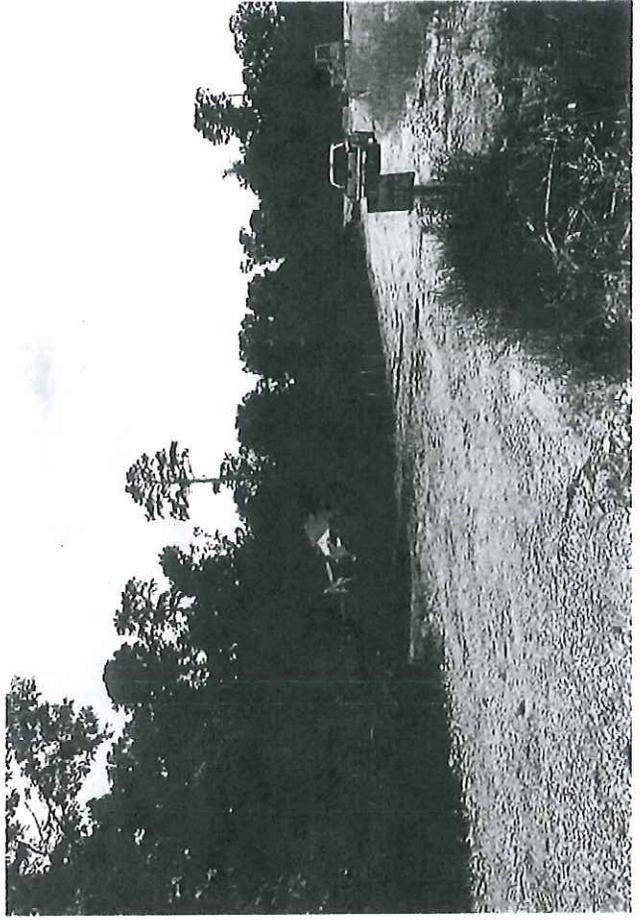
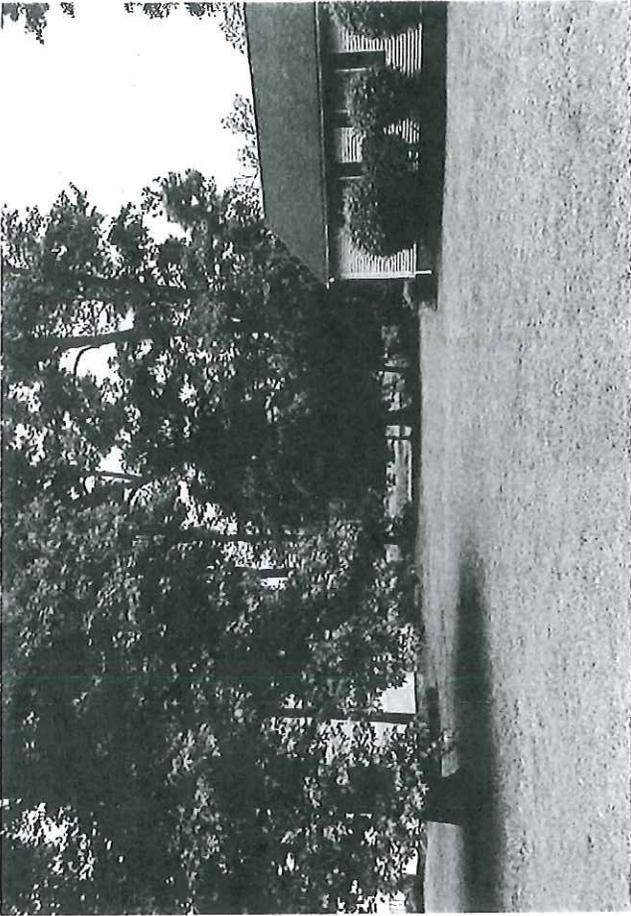


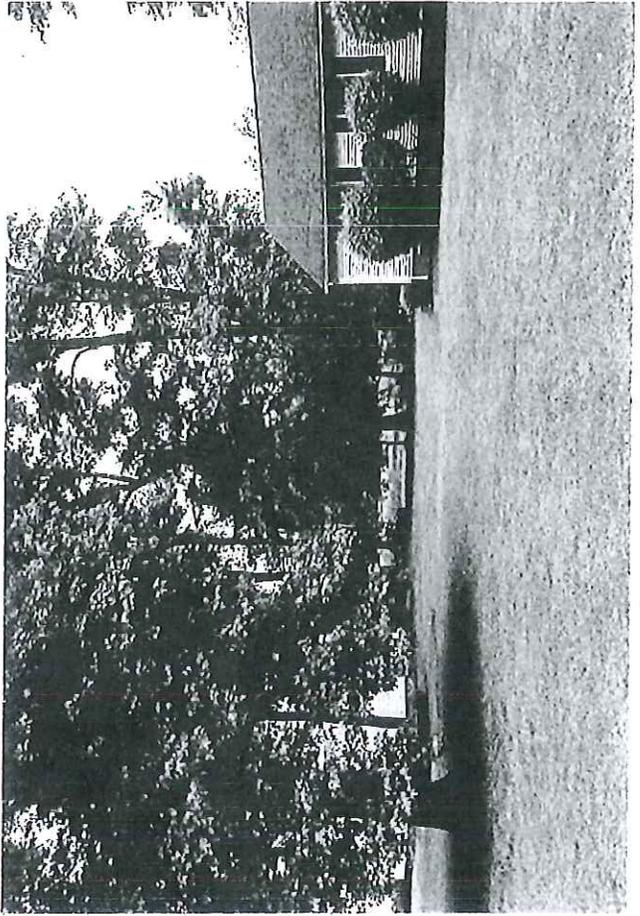
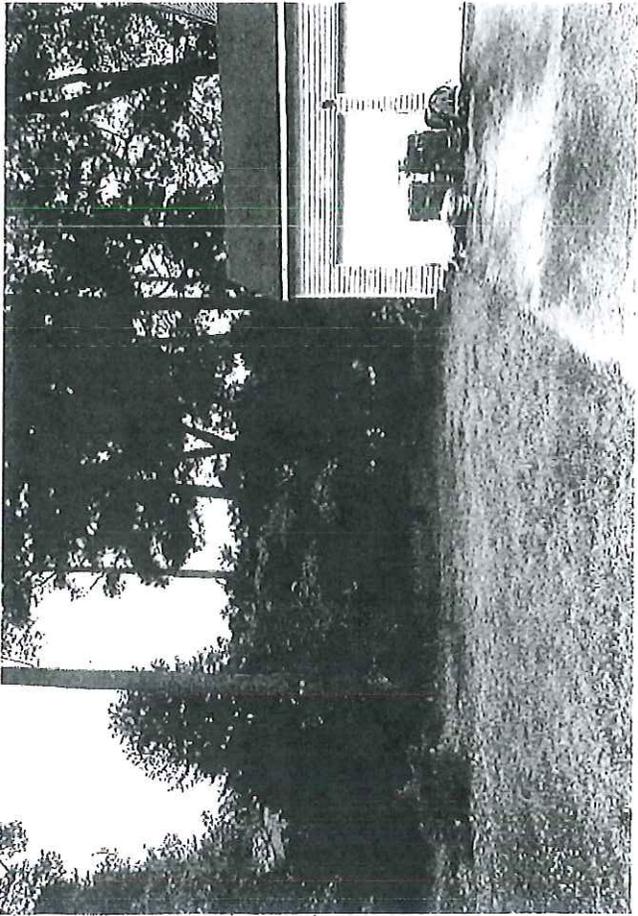
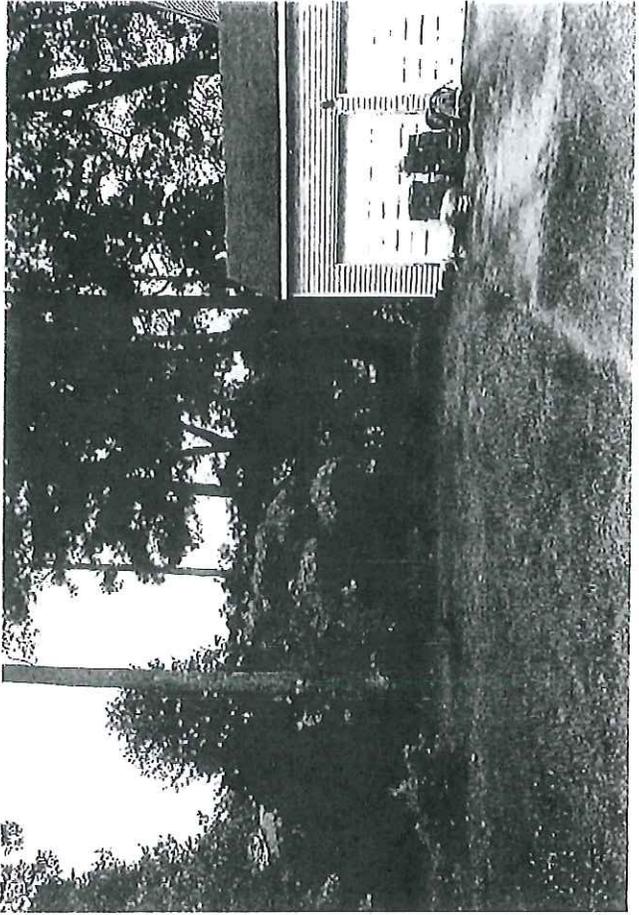
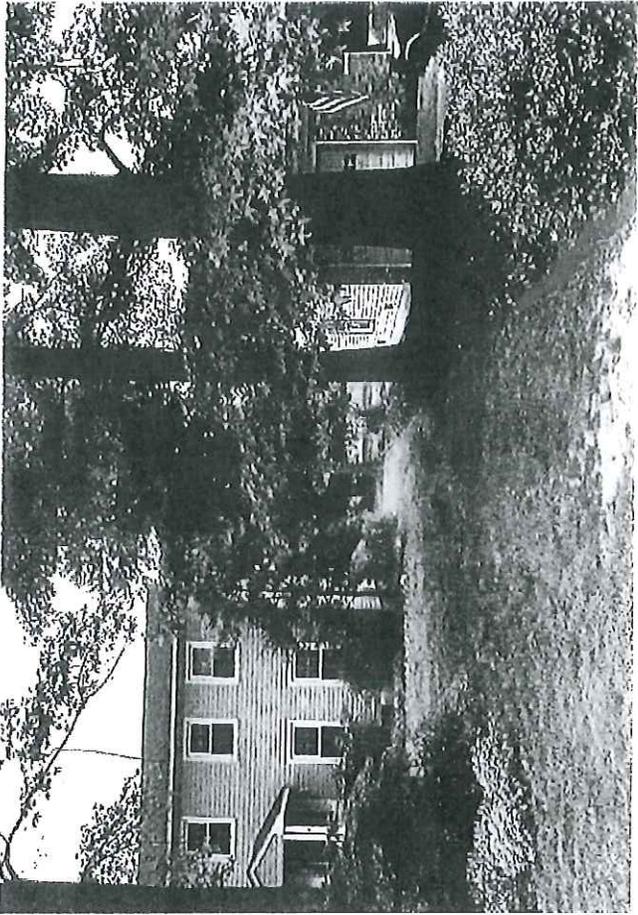


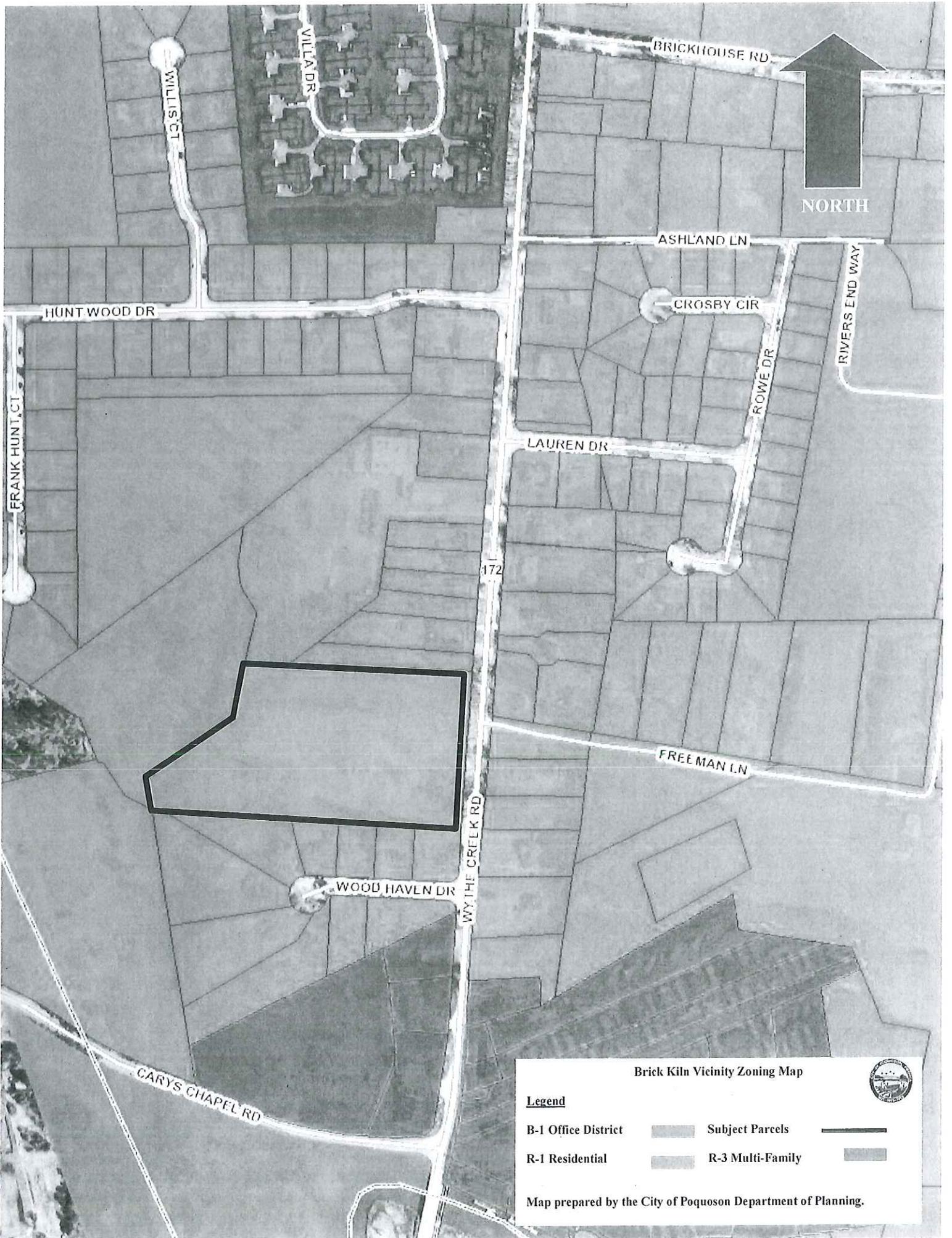












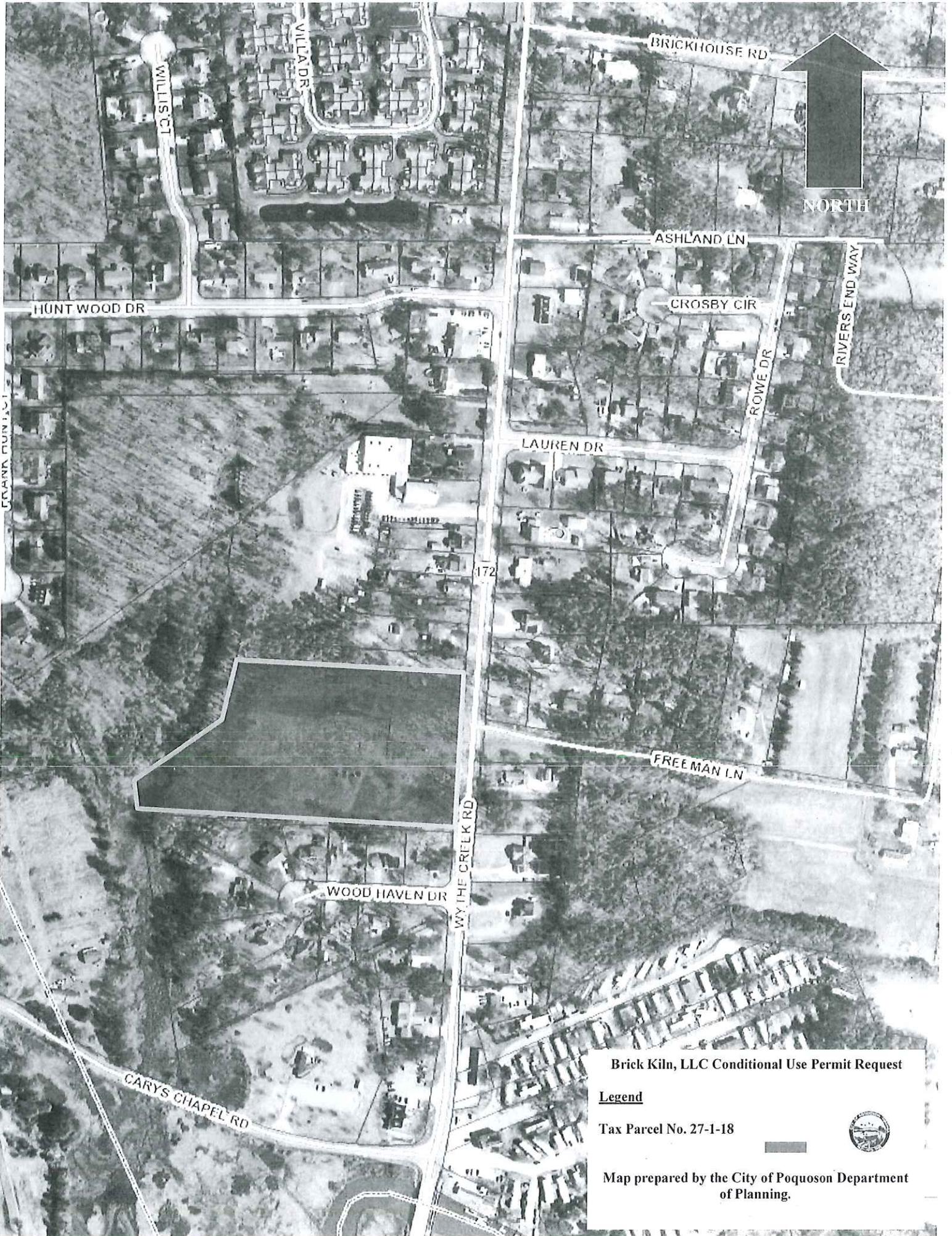
Brick Kiln Vicinity Zoning Map



Legend

- B-1 Office District Subject Parcels
- R-1 Residential R-3 Multi-Family

Map prepared by the City of Poquoson Department of Planning.



Brick Kiln, LLC Conditional Use Permit Request

Legend

Tax Parcel No. 27-1-18



Map prepared by the City of Poquoson Department of Planning.



CITY OF POQUOSON

Office of Economic Development
830 Poquoson Avenue, Poquoson, VA 23662

757 868 5314

MEMORANDUM

June 27, 2016

TO: City Council

FROM: Charity Gavaza, Economic Development Coordinator

THROUGH: City Manager

SUBJECT: 2016 Economic Development Update

The City of Poquoson Economic Development Office is pleased to report that despite a slow start in 2015, it appears that the upcoming year holds promise for new business growth. The attached Power Point is provided for City Council's review to highlight new opportunities.

During the presentation, the Economic Development Office will also update City Council on the following:

- Ribbon Cuttings and new business
- VTC Loveworks program
- Update on "Poquoson is the Place" Marketing campaign
- EnjoyVA.com - Mobile Phone Resource App
- Introduce Student Intern Will Ziglar

**ECONOMIC DEVELOPMENT
CITY OF POQUOSON**



2015-2016





New store selling comic books, anime and MAGIC events.

494-B Wythe Creek Rd
upstairs

Owners:

James Rabb

Kyle Kuchinsky

Theresa Bradby



Poquoson Secret Lair

Everyone MUST see the transformation of this beautiful spa from it's former self. Pamper yourself & visit. Wedding preparation groups and birthday parties welcomed.

Owners:

Casie & Jerry Bates

404 Wythe Creek Road

www.labellasalonanddayspa.com



LaBella Salon & Day Spa

Other New Poquoson Businesses



Open – no Ribbon Cutting

- Verizon
- Bull Island BBQ (New Owner-Julianne Wezensky)
- Progressive Industrial (Jerry Bates) & new busn in center
- PN Nail Spa

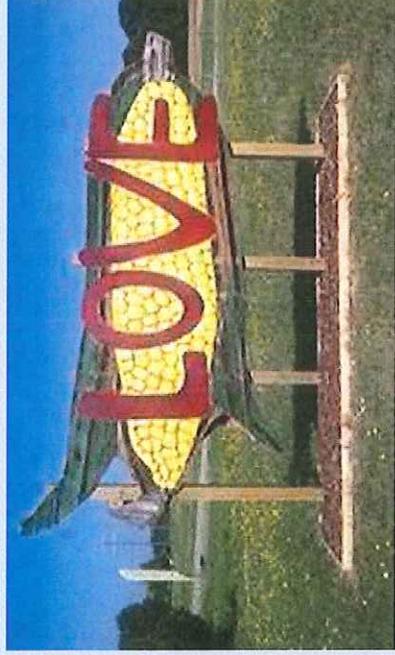
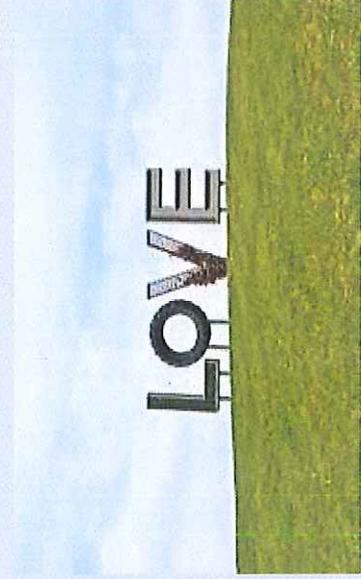
Coming Soon

- Tag Time– Brad Drummond
- Fountains of Poquoson – several new businesses
- Crab Cake House – Tabatha Mayhew-Sellers
- At least 4 other exciting new businesses are actively speaking with the city about their plans including new businesses to fill in KenTacoHut and Briar Patch spaces.

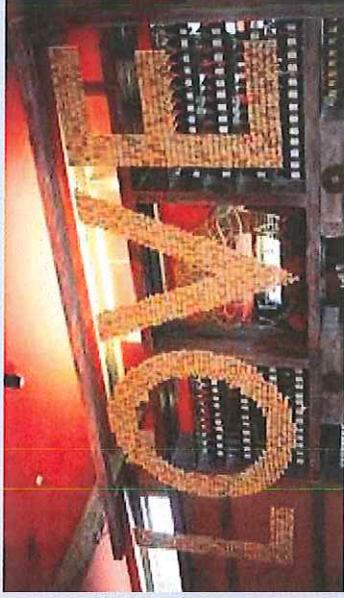
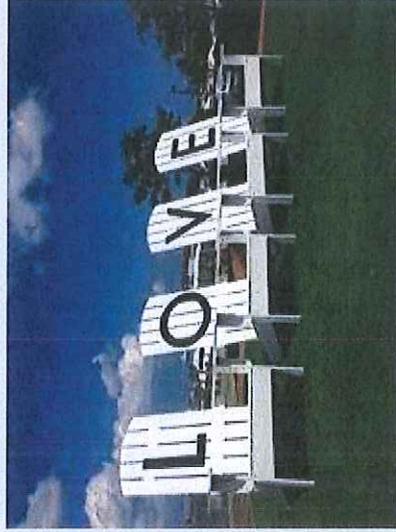
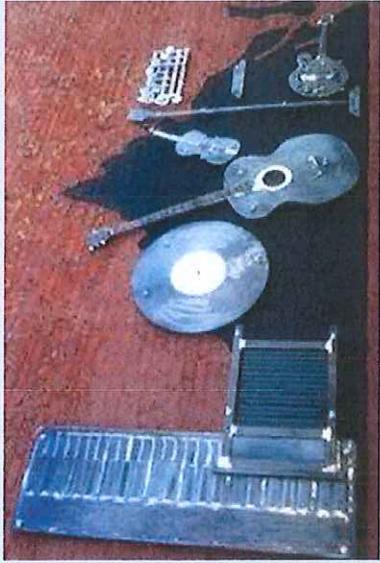
Virginia Highway Welcome Center LOVE sign



LOVEWORKS-Virginia Tourism Corp.



Regional Loveworks Projects across Virginia



VIRGINIA TOURISM CORPORATION



LOVEWORKS GRANT

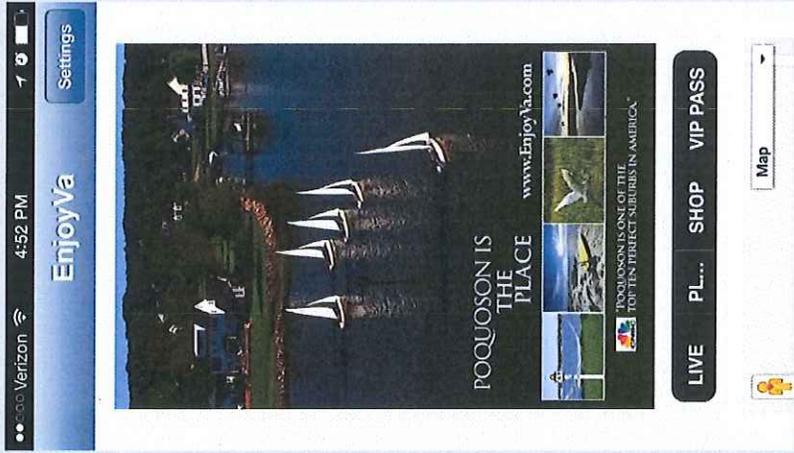
- \$1,500 reimbursable with approved application
- must be **permanent** in highly-visible, well-trafficked areas (indoor or outdoor) that experiences high visitation and can be easily and **SAFELY** photographed and shared on social media.
- promote or incorporate local/regional themes, materials or items that are unique selling points for the destination (i.e. seashells for beaches, murals for historic downtowns, canoe paddles for outdoor adventure, etc.)
- applicant assumes all responsibility for maintenance and upkeep of the LOVEwork and agrees to secure any necessary permits or permissions for constructions/creations
- should remain in place for a minimum of a year after its placement.

ENJOYVA APP



APP as it looks on cell phone.

APP is only as good as # people using it and businesses supporting it.



- APP developed by city and is FREE to all Poquoson businesses
- Opportunity to offer coupons/specials on APP
- Encourage EVERYONE to download the APP

ENJOYVA



- **EVERYONE** in the audience and viewing this on television please take a moment to download the APP from your APP store on your mobile devices

ENJOYVA

- Efforts to promote the APP include information provided at Seafood Festival, newsletters, business cards and ClingOn window stickers at Poquoson businesses.

Jan Rollins, Owner of Surf's Up restaurant, supports the APP by placing a promotion and affixing the cling-on to her window to encourage her customers to download and use the APP. Tu Ritter, PBA and Charity Gavaza, ED, visited all the businesses to promote the APP.

Look for these bright signs all over Poquoson.



Cling-On promotion for every retail business in Poquoson. Promote & Participate – the APP.

Will Ziglar
Student Intern
Economic Development



RISING SENIOR AT HAMPDEN SYDNEY

MAJOR: ECONOMICS

MINOR: PUBLIC SERVICE

LOCAL POQUOSON FAMILY

GRADUATE POQUOSON HS

Xtra (WXGM) Radio – 99.1 FM



- Radio Promotion with 99.1 Xtra
 - 36 - 30 second ads for City of Poquoson
 - 36 - 30 second ads with each Poquoson retail/storefront business that supplied a promotion for the APP receiving one
 - Late June through Mid July

Poquoson Entrepreneurs Wanted - HELP!



There are a number of opportunities for entrepreneurs to make their business dreams a reality or take their home-based business to the next level. Poquoson ED is seeking to locate individuals and small companies set to grow in Poquoson. We are asking City Council and all citizens of Poquoson to please let us know if you are aware of any individuals/business start ups and provide information to the ED office for follow-up.

START Peninsula



The screenshot displays the START Peninsula website interface. At the top, a navigation menu includes links for ABOUT, GET INVOLVED, DOWNLOADS, SPONSORS, SCHEDULE, WINNERS, and CONTACT. A prominent yellow banner encourages users to "Register now! Attend this event" and "Sponsor info Sponsor this event". The main content area features three photographs of individuals, likely speakers or attendees, with blue dotted arrows pointing to them. A large, handwritten-style text overlay reads "Get Ready for Start! Peninsula 5.0!". The browser's address bar shows the URL: [https://www.google.com/url?url=https://startpeninsula.com/&sa=t&ct=js&e=resources&ved=0ahUjEzjImOH8vN4UKOSNRz1DhsQFgg&hl=de&sur=hp%3A%2F%2Fstartpeninsula.com/&uag=AFQjChJGdPeQrR7H-MISj4uHlGpVuVQ&v=12521236.d.aWw](https://www.google.com/url?url=https://startpeninsula.com/&sa=t&ct=js&e=resources&ved=0ahUjEzjImOH8vN4UKOSNRz1DhsQFgg&hl=de&sur=hp%3A%2F%2Fstartpeninsula.com%2F&uag=AFQjChJGdPeQrR7H-MISj4uHlGpVuVQ&v=12521236.d.aWw). The system tray at the bottom indicates the time is 10:58 AM on 6/22/2016.

Mayor and City Council



Thank you for your continued support.

Looking forward to 2016-2017!

**MINUTES OF THE CITY COUNCIL MEETING
MAY 23, 2016, 7:00 P.M.
REGULAR SESSION**

PRESENT: The Honorable W. Eugene Hunt, Jr., Mayor
The Honorable Carey L. Freeman, Vice Mayor
The Honorable Traci-Dale Crawford
The Honorable Herbert R. Green, Jr.
The Honorable Raymond D. Vernall
The Honorable Henry W. Ayer III

J. Randall Wheeler, City Manager
Judy F. Wiggins, Assistant City Manager/City Clerk
D. Wayne Moore, City Attorney

ABSENT: The Honorable Charles M. Southall III

MEETING CALLED TO ORDER:

Mayor Hunt called the meeting to order at approximately 7:00 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE:

Mayor Hunt rendered the invocation and led the audience in the Pledge of Allegiance.

AMENDMENT TO THE AGENDA:

Councilman Green moved, seconded by Vice Mayor Freeman, to amend the agenda by placing New Business item #1, Resolution Approving Traffic Improvements on Bunting Lane and Terrace Drive/S. Terrace Drive, directly after Audience for Visitors. Recorded vote on the motion:

YES: Councilmembers Crawford, Ayer, Freeman, Vernall, Green and Mayor Hunt.

NO: None.

AUDIENCE FOR VISITORS:

Mrs. Crissie Stone, 42 Bunting Lane; Mrs. Debbie Bunting, 5 Poplar Road; Ms. Jessica Adams, 16 Langley Street; Mr. Jesse Wood, 151 Church Road; Dr. James Tinsley, 37 Bunting Lane; Mrs. Pam Andriliunas, 40 Bunting Lane; Ms. Terry Gooding, 77 Bunting Lane; and Mrs. Diane Holloway, 73 Lodge Road, offered the following comments on the proposed Bunting Lane traffic calming measures:

- That they do not support the stop signs; however, other options should be considered;
- That the road is unsafe for pedestrians;
- That the proposed 3-way stop would be a traffic hazard especially for those who reside in the vicinity of the Bunting Lane and Floyd Avenue intersection;
- That a more vigilant police presence in this area would deter speeders;
- That property owners on connecting roadways should have been notified of the opportunity to comment on the proposal under Audience for Visitors this evening;
- That action should be postponed until everyone is properly notified;
- That speeders are the exception on this roadway rather than the rule;
- That the proposed stop signs will be another obstacle to traffic similar to trash and recycling bins;
- That a traffic study on Bunting Lane should be performed before improvements are initiated;
- That whatever action is taken to slow traffic on Bunting Lane should also be implemented on other streets in the City with similar problems;
- That speed bumps would be a better solution; however, the proposed stop signs are better than nothing;
- That additional stop signs are the cheapest means to slow traffic, but not the best option;
- That new 25 mph signs, higher fines for speeders, use of electronic speed identification equipment and increased police enforcement would be a better deterrent than a 3-way stop; and
- That the proposed stop signs would make evacuation of the eastern end of the City difficult and time consuming.

Mr. Robert Wheless, 26 Bunting Lane, stated that he supports the proposed 3-way stop.

Mr. Darrell Freeman, 14 Terrace Drive, stated that he recently circulated a petition, to which the majority of people living along S. Terrace and Terrace Drives signed, seeking traffic safety improvements for these streets/intersection.

Ms. Jana Andrews, 7 Martha Court, asked that the Planning Commission meetings be rebroadcast prior to Council meetings so that citizens become well informed on issues that will shortly be considered by Council.

Since no one else spoke, the Audience for Visitors was closed.

NEW BUSINESS:

1. RESOLUTION APPROVING TRAFFIC IMPROVEMENTS ON TERRACE DRIVE/S. TERRACE DRIVE AND BUNTING LANE

The City Manager, J. Randall Wheeler, stated that in response to expressed concerns over speeding on Bunting Lane and the High School traffic cutting through Terrace Drive,

traffic improvements were proposed to address these concerns. Specifically, he stated that additional stop signs at the Floyd Avenue/Bunting Lane intersection and solid yellow lines on S. Terrace Drive with a stop bar and an additional stop sign at the S. Terrace/Terrace Drive intersection were being proposed. He reminded Council that at their last meeting, following a brief discussion on possible traffic improvements for these two areas, it was agreed that a decision would not be made until input/comments could be garnered from the property owners along these specific streets. At the Mayor's request he stated that letters were mailed to each property owner along Bunting Lane, Terrace Drive and S. Terrace Drive seeking their input via email or in person at this meeting under Audience for Visitors. In conclusion he stated that all written comments had been provided to City Council prior to the meeting.

During Council's discussion, it was agreed that staff should perform a traffic study on Bunting Lane and that all affected property owners, i.e. Church Road, Lodge Road, etc., in the vicinity should be notified that this issue would be reconsidered at a future meeting.

Having no opposition expressed to the proposed improvements to be made on Terrace/S. Terrace Drive, Councilman Green moved, seconded by Councilman Ayer, to adopt the resolution approving the proposed improvements as presented. Recorded vote on the motion:

YES: Councilmembers Freeman, Vernall, Green, Ayer, Crawford and Mayor Hunt.

NO: None.

Councilman Green moved, seconded by Councilwoman Crawford, to postpone the proposed traffic improvements to Bunting Lane in response to the opposition expressed by residents on Bunting Lane and in the immediate vicinity. Staff was asked to notify all residents living in the immediate vicinity of Bunting Lane of the proposed changes and seek their input. Recorded vote on the motion:

YES: Councilmembers Ayer, Crawford, Green, Freeman, Vernall and Mayor Hunt.

NO: None.

Mayor Hunt expressed appreciation for the citizen input and apologized that all residents in the affected area had not been properly notified of the meeting. He agreed that there is a speeding problem on Bunting Lane and asked Police Chief, Cliff Bowen to increase Police presence in this area until this matter was addressed.

APPROVAL OF THE MINUTES:

Councilman Green moved, seconded by Vice Mayor Freeman, to adopt the minutes of the regular session held May 9, 2016 as submitted. Recorded vote on the motion:

YES: Councilmembers Freeman, Vernall, Green, Ayer, Crawford and Mayor Hunt.

NO: None.

PUBLIC HEARINGS:

1. RESOLUTION APPROVING A MODIFICATION TO AN EXISTING CONDITIONAL USE PERMIT TO OPERATE A PET SANCTUARY AT 181 MESSICK ROAD, TAX MAP PARCEL NO. 32-01-00-0044

Kevin Wyne, Planner, stated that the Poquoson Animal Welfare Sanctuary (PAWS) is seeking to modify its existing Conditional Use Permit by increasing the monthly average of cats on-site from 50 to 100. He pointed out that the Planning Commission, at its May 16, 2016 meeting, recommended approval of the request by a vote of 6-0.

Mayor Hunt opened the public hearing.

Ms. Tracy Burnett, PAWS Co-Manager, spoke in favor of the modification of the Conditional Use Permit to increase the number of cats that could be kept on-site from 50 to 100. She explained that an incident had occurred at one of the City's existing feral cat colonies which necessitated the increase in this number. She informed Council that since their inception PAWS had neutered over 700 cats and that they are hopeful that all feral cats in the City would be neutered within the next 5 years. She pointed out that because of their efforts, very few cats are taken to the Regional Animal Shelter thus saving the City money.

Since no one else spoke, the public hearing was closed.

During Council's discussion it was clarified that the request to increase the number of cats was specifically related to the elimination of the habitat of one of the City's cat colonies.

A resolution approving the requested Conditional Use Permit amendment was presented for Council's consideration and Councilman Green moved, seconded by Councilman Ayer, that it be adopted. Recorded vote on the motion:

YES: Councilmembers Ayer, Crawford, Green, Freeman, Vernall and Mayor Hunt.

NO: None.

2. RESOLUTION APPROVING A MODIFICATION TO AN EXISTING CONDITIONAL USE PERMIT FOR THE CHRISTIAN OUTREACH CENTER LOCATED AT 828 YORKTOWN ROAD, POQUOSON TAX MAP PARCEL NO. 18-01-00-0145

City Planner, Kevin Wyne explained that the applicant and property owner, Emmaus Baptist Church, was requesting an amendment to its existing Conditional Use

Permit specifically to increase the size of its Christian Outreach Center by 2,400 square feet. He pointed out that the Planning Commission, at its May 16, 2016 meeting, recommended approval of the request by a vote of 6-0.

Mayor Hunt opened the public hearing. Since no one came forward, the public hearing was closed.

A resolution approving the amendment to the existing Conditional Use Permit for the Christian Outreach Center was presented for consideration and Councilman Green moved, seconded by Councilman Vernall, that it be adopted. Recorded vote on the motion:

YES: Councilmembers Freeman, Vernall, Green, Ayer, Crawford and Mayor Hunt.

NO: None.

**3. RESOLUTION APPROVING VARIANCES TO THE CITY'S
SUBDIVISION ORDINANCE AS IT RELATES TO THE
PRELIMINARY PLAN SUBMITTAL FOR A PROPOSED
SUBDIVISION OF PROPERTY LOCATED AT THE INTERSECTION
OF BAYVIEW DRIVE AND HUNTS NECK ROAD, TAX MAP NO. 05-
01-00-0004**

The Director of Community Development, Deborah Vest, stated that the property owners, Wayne and Shirley Haugen, and Davis & Associates, P.C., agent, were seeking variances to the City's Subdivision Ordinance requirements in order to subdivide 8 acres into 9 single-family lots. She pointed out, however, that the City Attorney has ruled that compliance with Section 5-2 of the Subdivision Ordinance is not required for this type of development and that compliance to Section 10-5 will be determined by the Newport News Waterworks during the site plan review process. She reminded Council that a true hardship must be proven pursuant to State Code criteria before a variance can be approved. She specifically pointed out that financial concerns are not identified as a hardship. In conclusion, she stated that the Planning Commission, by a vote of 6 to 0, recommended denial of the requested subdivision variances.

Mayor Hunt opened the public hearing.

Mr. Donald Davis, agent for the property owners, stated that the Haugens wish to build a single family home for themselves on one of the proposed parcels and another home for their son on a second parcel, leaving 7 parcels to be sold and/or developed. He pointed out that the property could be developed as an Open Space Development; that the parcel has considerable road frontage; that the proposed subdivision would not change the character of the neighborhood; that purchasers of the parcels would be responsible for construction of the sidewalk in front of their specific lot; and that adding curb and guttering would increase the impervious surface of the development. He stated that the primary variances being requested are from the curb and gutter requirement and the street improvements since the area is essentially built-out. In conclusion, Mr. Davis stated that the Haugens had requested a postponement on their application until this meeting to

allow time for a neighborhood meeting which was held on site at the conclusion of which everyone present expressed support for the request.

Mrs. Jana Andrews, 7 Martha Court, expressed concern that approval of the request would set a dangerous precedent, whereby other developers would also want variances in order to save money on required improvements. She added that financial concerns are not a legitimate hardship and that the developer does have the option to develop 3 lots or a 5-lot family subdivision without adherence to the aforementioned requirements if they so choose.

Mary Clemmons, representing the Poquoson Historic Research Commission, expressed concern since the subject property was once the site of a 17th century plantation and because a cemetery was also located on the property.

Mr. Leonard Poniatowski, 23 Bayview Drive, stressed that the Haugens have not proven a true hardship and that he is concerned about the runoff from this development that could detrimentally impact his property. Lastly, he stated that approval of the request would set a serious precedence.

Since no one spoke, the public hearing was closed.

The City Attorney, D. Wayne Moore, reminded Council and read aloud Section 11-2 of the City Code which specifies when it is acceptable for Council to grant variances from the Subdivision Ordinance.

During Council's discussion, concern was expressed that multiple driveways accessing the narrow roadways in the specified area was dangerous; that approval of the variances would set a serious precedent; that sidewalks installed by individual property owners was not acceptable; and that loss of revenue for the developer was not a valid consideration.

A resolution denying the requested variances was presented for Council's consideration and Councilman Green moved, seconded by Councilman Vernall, that it be adopted.
Recorded vote on the motion:

YES: Councilmembers Ayer, Crawford, Green, Freeman, Vernall and Mayor Hunt.

NO: None.

4. SALE OF CITY-OWNED PROPERTY AT 826 POQUOSON AVENUE

The City Manager reminded Council that in April 2015 they authorized the purchase of the home and property located at 826 Poquoson Avenue for \$290,961 which included all City-paid closing costs. He explained that the parcel, measuring 2.21 acres, had been subdivided into 2 lots with the home site measuring .781 acre and the City retaining permanent ownership of the balance of the property. Following improvements to the home and landscaping it was placed on the market in April 2016 with an asking price of \$323,900. In conclusion, he stated that an offer was received from Jackie and Dabney Gills, Sr., on behalf of their son and daughter-in-law, both of which are Poquoson Police

Officers, in the amount of \$320,000 which, after payment of City closing costs, the real estate commission and a .5% contingency for repairs the City would receive \$302,665.

Mayor Hunt opened the public hearing; however, since no one spoke it was closed.

A resolution ratifying and approving the sale of City-owned property at 826 Poquoson Avenue was presented for consideration and Councilman Green moved, seconded by Councilman Ayer, that it be adopted. Recorded vote on the motion:

YES: Councilmembers Green, Vernall, Ayer, Crawford, Freeman and Mayor Hunt.

NO: None.

UNFINISHED BUSINESS:

1. RESOLUTION MAKING APPOINTMENTS TO THE SCHOOL BOARD

A resolution making appointments to the School Board was presented for Council's consideration.

Councilman Green moved, seconded by Vice Mayor Freeman, to reappoint Anne L. Rollins from the Western Precinct and to appoint Jennifer Mosteller from the Eastern Precinct to the School Board and to adopt the resolution with their names inserted. Recorded vote on the motion:

YES: Councilmembers Crawford, Ayer, Freeman, Vernall, Green and Mayor Hunt.

NO: None.

NEW BUSINESS: (Continued)

2. RESOLUTION APPROVING ADDITIONAL COMPENSATION FOR THE CITY MANAGER AND CITY ATTORNEY

Mayor Hunt reminded Council that at the last meeting a closed session was held to consider additional compensation for the City Attorney and the City Manager based upon their respective performance reviews. He added that it was the unanimous consensus of Council at that time that both were worthy of additional compensation.

A resolution amending the compensation paid to the City Attorney by increasing his hourly rate to \$350 and to the City Manager by increasing his salary 3% effective July 1, 2016 to be applied to his deferred compensation was presented for Council's consideration and Councilman Green moved, seconded by Councilman Vernall, that it be adopted. Recorded vote on the motion:

YES: Councilmembers Crawford, Ayer, Freeman, Vernall, Green and Mayor Hunt.

NO: None.

3. ORDINANCE MAKING ADDITIONAL APPROPRIATIONS AND TRANSFERS FOR FY 2016

An ordinance making various appropriations for FY 2016 was presented for Council's consideration and briefly explained by the City's Finance Director, Theresa Owens. She pointed out that the majority of the transactions are attributed to donations and grants awarded to the City.

Councilman Green moved, seconded by Councilman Vernall, to dispense with the second reading of the ordinance and to adopt it on first reading to be effective immediately. Recorded vote on the motion:

YES: Councilmembers Green, Vernall, Ayer, Crawford, Freeman and Mayor Hunt.

NO: None.

4. RESOLUTION MAKING AN APPOINTMENT TO THE LIBRARY ADVISORY BOARD

A resolution making an appointment to the Library Advisory Board was presented for Council's consideration.

Councilman Green moved, seconded by Vice Mayor Freeman, to postpone this appointment until the next meeting. Recorded vote on the motion:

YES: Councilmembers Freeman, Vernall, Green, Ayer, Crawford and Mayor Hunt.

NO: None.

COMMENTS OF THE CITY MANAGER:

The City Manager introduced the City's new Graduate Management Assistant, Dannan O'Connell. Mayor Hunt, on behalf of Council, welcomed Mr. O'Connell to the City.

COUNCIL DIRECTIVES:

Councilman Vernall announced that the City's new airboat had arrived and he thanked Fire Lieutenant Joe Breeden for obtaining the 100% grant which was used to purchase this vessel.

Councilman Green reminded everyone that the Foodbank distribution would occur on Tuesday, May 24, 2016 from 10 a.m. to 1 p.m. with the members of the Poquoson Kiwanis Club assisting. He stated that the number of Board Bank applications is

dwindling and that Council should consider an amended policy for filling the board/commission positions, i.e. number of representatives from each precinct, all others being at-large appointments, etc.

Councilwoman Crawford thanked those who had attended the meeting and addressed the Bunting Lane traffic issue. She encouraged everyone to sign up for Nextdoor.com, a free private social neighborhood network, which is sponsored by local police.

Vice Mayor Freeman asked when Council meetings are placed on YouTube and linked to the City website to which the Finance Director responded that staff tries to do this the day immediately following the meeting.

Mayor Hunt stated that he, the City Manager and the Finance Director recently traveled to New York seeking a higher credit rating and that the results of the visit should be forthcoming shortly.

ADJOURNMENT:

There being no further business, Councilman Green moved, seconded by Councilman Ayer, to adjourn the meeting. Recorded vote on the motion:

YES: Councilmembers Green, Vernall, Ayer, Crawford, Freeman and Mayor Hunt.

NO: None.

The meeting was adjourned at approximately 10:03 p.m.



CITY OF POQUOSON

PLANNING DEPARTMENT

500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996
(757) 868-3040 TELEPHONE (757) 868-3105 FAX

June 27, 2016

To: The Honorable City Council

Through: City Manager

From: Kevin M. Wyne, Planner

Subject: **Amendment to a Conditional Use Permit for the Allowance of Residential on the Third Floor of a Mixed Use Building in the Village Commercial District- Tax Parcel No. 27-10-4**

Presented for a public hearing and your consideration is a request from Fountains of Poquoson, LLC, applicant and property owner, to amend their existing conditional use permit, issued on May 14, 2012, for an extension to allow for additional construction time. The applicant has not specified how much additional time is needed to finish the project as proposed. The project is located at 200 Fountains Lane (off of Alphas Street) and is further identified as Tax Map Parcel No. 27-10-4. The property is zoned VC, Village Commercial district and the initial Conditional Use Permit was needed to allow for a third floor of residential for the three (3) mixed use buildings proposed for the site. As of this report, the first building is near completion; two (2) more like buildings are proposed.

The Planning Commission held a public hearing on this item at their Monday, June 20, 2016 meeting and has recommended their approval by a vote of 7-0. The Planning Commission has recommended an extension that will expire on June 27, 2019.

This application was advertised for public hearing by legal notice appearing in the Daily Press on June 3 and June 10, 2016. Adjacent property owners were notified by letters mailed on June 1, 2016.

KMW

RESOLUTION NO. _____

A RESOLUTION APPROVING A MODIFICATION OF AN EXISTING CONDITIONAL USE PERMIT FOR THE MIXED USED DEVELOPMENT LOCATED AT 200 FOUNTAINS LANE, POQUOSON TAX MAP PARCEL NO. 27-10-00-0004

WHEREAS, a request was submitted by the Fountains of Poquoson, LLC, applicant and property owner, for an amendment to its existing Conditional Use Permit to extend the deadline for full construction/operational completion of the mixed use development on property located at 200 Fountains Lane, Tax Map Parcel No. 27-10-00-0004, Zoned VC (Village Commercial); and

WHEREAS, public hearings to receive public comments and review the request were held before the Planning Commission on June 20, 2016 and before City Council on June 27, 2016; and

WHEREAS, the request was carefully and thoroughly considered.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Poquoson, Virginia:

Section 1: That the request of the Fountains of Poquoson, LLC, applicant and property owner, for an amendment to its existing Conditional Use Permit to extend the deadline for full construction/operational completion of the mixed use development on property located at 200 Fountains Lane, Tax Map Parcel No. 27-10-00-0004 is hereby approved with the following amendment to Condition #4 of the original permit:

4. If the project is not constructed and fully operational ~~within five (5) years~~ by June 27, 2019 ~~of the issuance of this permit~~, the Conditional Use Permit shall become null and void.

Section 2: That this resolution shall be in effect on and after its adoption.

ADOPTED: _____

TESTE: _____

City Clerk

RESOLUTION NO. _____

A RESOLUTION DENYING A MODIFICATION OF AN EXISTING CONDITIONAL USE PERMIT FOR THE MIXED USED DEVELOPMENT LOCATED AT 200 FOUNTAINS LANE, POQUOSON TAX MAP PARCEL NO. 27-10-00-0004

WHEREAS, a request was submitted by the Fountains of Poquoson, LLC, applicant and property owner, for an amendment to its existing Conditional Use Permit to extend the deadline for full construction/operational completion of the mixed use development on property located at 200 Fountains Lane, Tax Map Parcel No. 27-10-00-0004, Zoned VC (Village Commercial); and

WHEREAS, public hearings to receive public comments and review the request were held before the Planning Commission on June 20, 2016 and before City Council on June 27, 2016; and

WHEREAS, the request was carefully and thoroughly reviewed.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Poquoson, Virginia:

Section 1: That the request of the Fountains of Poquoson, LLC, applicant and property owner, for an amendment to its existing Conditional Use Permit to extend the deadline for full construction/operational completion of the mixed use development on property located at 200 Fountains Lane, Tax Map Parcel No. 27-10-00-0004 is hereby denied.

Section 2: That this resolution shall be in effect on and after its adoption.

ADOPTED: _____

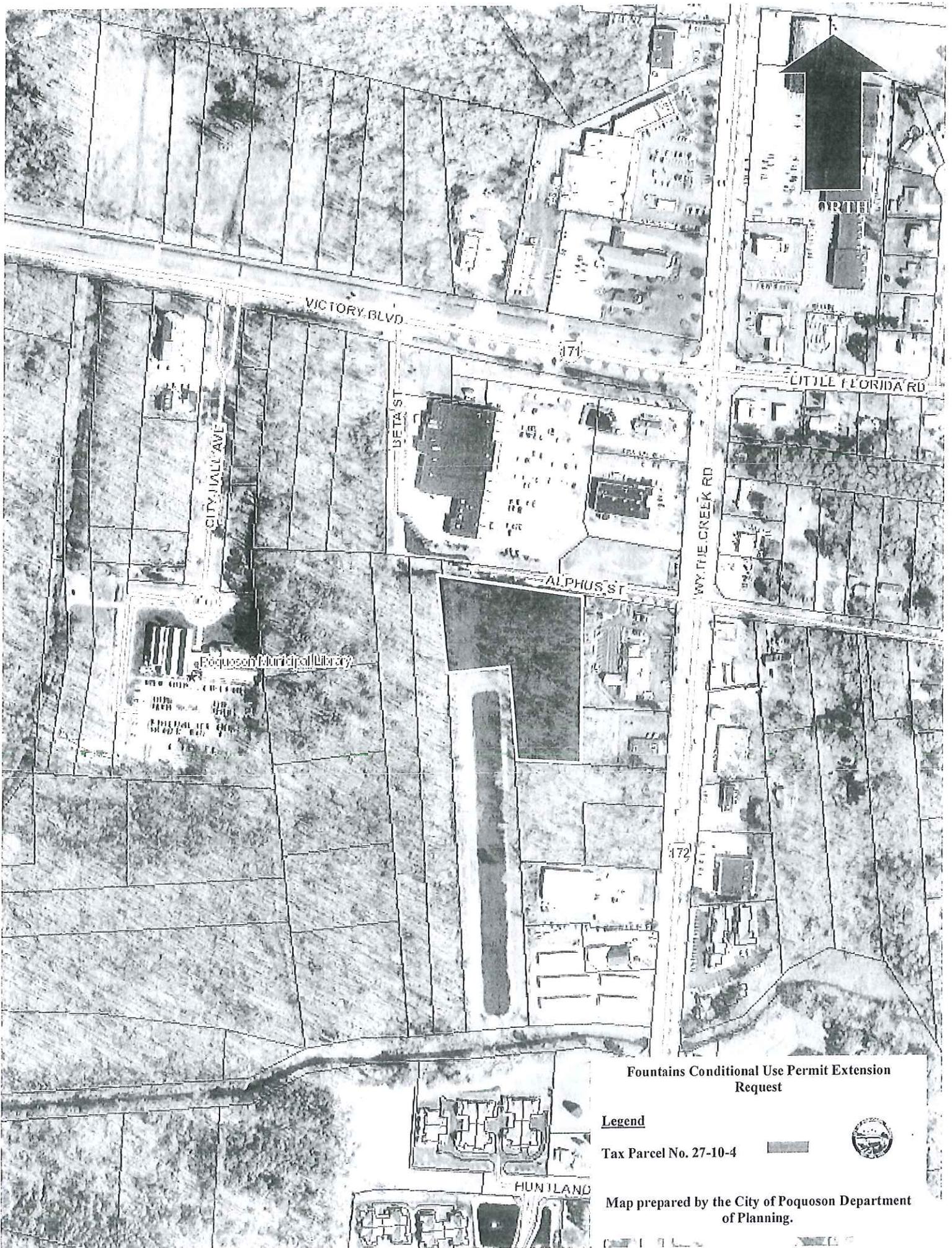
TESTE: _____

City Clerk

Fountains of Poquoson
Zoning Map

- Parcels by Lot
- R-S Single Family Residence
- R-1 Single Family Residence
- R-2 Single Family Residence
- R-3 Multi-Family Residence
- E-1 Office / Professional
- E-2 Business / Commercial
- General Commercial
- Village Commercial
- Research and Development
- Conservation





Fountains Conditional Use Permit Extension Request

Legend

Tax Parcel No. 27-10-4



Map prepared by the City of Poquoson Department of Planning.

RESOLUTION NO. 3780**A RESOLUTION APPROVING A CONDITIONAL USE PERMIT TO ALLOW RESIDENTIAL DWELLINGS ABOVE THE SECOND FLOOR IN THE VILLAGE COMMERCIAL DISTRICT ON PROPERTIES SPECIFICALLY IDENTIFIED AS TAX MAP PARCEL NOS. 27-(10)-4, 27-(10)-4A & A PORTION OF 27-(10)-3**

WHEREAS, a request was submitted by Robert Moses, contract purchaser and G. Curtis Dailey, Sandra Graham and John Graham, property owners, for a Conditional Use Permit in order to allow residential dwellings above the second floor in the Village Commercial District on properties specifically identified as Tax Map Parcel Nos. 27-(10)-4, 27-(10)-4A and a portion of 27-(10)-3; and

WHEREAS, a public hearing to receive public comments and review the request was held before the Planning Commission on April 16, 2012 and the request was reviewed by City Council in a work session held on April 23, 2012 and a public hearing on May 14, 2012; and

WHEREAS, careful and thorough consideration was given the request.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Poquoson, Virginia:

Section 1: That the request of Robert Moses, contract purchaser and G. Curtis Dailey, Sandra Graham and John Graham, property owners, for a Conditional Use Permit to allow residential dwellings above the second floor on properties specifically identified as Tax Map Parcel Nos. 27-(10)-4, 27-(10)-4A and a portion of 27-(10)-3 is hereby approved with the following conditions:

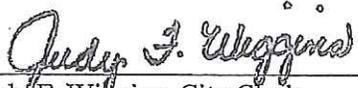
1. Approval of the Architectural Review Board shall be required on all buildings, including the residential component, prior to site plan approval.
2. All utilities are required to be placed underground.
3. Exterior recreational, display or storage areas are prohibited.
4. If the project is not constructed and fully operational within five (5) years of the issuance of this permit, the Conditional Use Permit shall become null and void.
5. This Conditional Use Permit is for the establishment of residential uses on the third floor. If at any time a portion of the third floor of each of the proposed structures is not utilized for residential purposes, the Conditional Use Permit shall be null and void.
6. The development shall not yield any more than 12 dwelling units per acre.
7. Any development of the subject parcels that occurs in conjunction with any development of the parcel immediately adjacent to the west shall require a shared entrance off of Alphas Street.

- 8. All large, shared trash containers shall not be visible from public right-of-ways and shall be screened in accordance with City Site Plan and Zoning Ordinance requirements.
- 9. The development shall utilize the regional storm water management pond owned by the City's Economic Development Authority and provide for pond aeration through the use of fountains as determined by the City Engineer.
- 10. If at any time traffic impacts, resulting from said development, create demand that exceeds the capabilities of the existing transportation network, the developer shall, at his/her expense, have a Traffic Impact Assessment conducted by a licensed transportation engineer and shall provide mitigation in accordance with the findings of said study.

Section 2: That this resolution shall be in effect on and after its adoption.

ATTESTE:

ADOPTED: May 14, 2012



 Judy F. Wiggins, City Clerk



 W. Eugene Hunt, Jr., Mayor

The foregoing resolution was adopted by the affirmative roll call vote of a majority of the members in attendance, the ayes and nays recorded in the minutes of the meeting as shown below:

Councilman Green	YES	Councilman Vernall	YES
Councilman Kreiger	YES	Councilwoman Crawford	YES
Mayor Hunt	YES		



CITY OF POQUOSON

Office of the City Manager
J. Randall Wheeler

500 City Hall Avenue, Poquoson, Virginia 23662-1996
(757)868-3000 Fax (757)868-3101

June 27, 2016

To: City Council
From: City Manager
Subject: **Resolution Making Appointments to the Workforce Development Consortium and the Library Advisory Board**

Presented for your consideration is a resolution making appointments to the Workforce Development Consortium and the Library Advisory Board. The appointment to the Workforce Development Consortium expires each year.

Mr. George Curtis recently submitted his resignation from the Library Advisory Board; therefore a replacement to fill his unexpired term needs to be appointed. For some unknown reason, the current expiration date is in August, however, all other terms expire in January. It is recommended that the date of expiration for this appointee be extended to January 31, 2017.

JFW

RESOLUTION NO. _____

**RESOLUTION MAKING APPOINTMENTS TO THE
WORKFORCE DEVELOPMENT CONSORTIUM
AND THE LIBRARY ADVISORY BOARD**

BE IT RESOLVED by the Council of the City of Poquoson, Virginia:

Section 1: That the following person be and the same hereby is appointed to the Workforce Development Consortium for the term indicated;

Name

Term Expires

June 30, 2017

Section 2: That the resignation of George F. Curtis from the Library Advisory Board is hereby accepted with regret and the following person is hereby appointed to fill his unexpired term which shall be extended to January 31, 2017 to coincide with all other appointments to the Board.

Name

Term Expires

Central

January 31, 2017

Section 3: That this resolution shall be in effect on and after its adoption.

ADOPTED: _____

TESTE: _____

City Clerk



CITY OF POQUOSON

FINANCE DEPARTMENT

500 CITY HALL AVENUE, POQUOSON, VIRGINIA 23662-1996

June 27, 2016

TO: City Council
FROM: Theresa Owens, Finance Director
THROUGH: Randy Wheeler, City Manager
SUBJECT: Purchasing Manual Revision

The blacklined revision to the City's adopted purchasing manual was sent to each Council member in early June. The City adopted the manual in May 1999 and it has been revised four times since. The last revision was adopted effective July 2007. Since that time the state has made various provisions to the Virginia Public Procurement Act and various standard operating procedures needed to be revised or expanded. With the help of the summer intern from last year and the yearlong process of editing and reviewing, we have worked through the revision of the manual. It has been reviewed by Finance, another locality's purchasing department's director, the City Manager and the City Attorney.

The state allows for each locality to specify their own dollar limits and process for obtaining quotes and making small purchases. The most notable change in the manual is the limits of authority for purchasing goods and services. The current purchasing procedures manual has those limits at \$30,000 for goods and nonprofessional services and \$20,000 for professional services. The revised purchasing manual has those limits set at \$50,000 for all goods, professional and nonprofessional services, with all contracts greater than \$100,000 needing approval from City Council.

The state requires localities to prepare a formal solicitation for all goods and nonprofessional services for any purchase greater than \$100,000 and for professional services that limit is \$60,000.

Attached for consideration is a resolution adopting the revised manual.

RESOLUTION NO. _____

**RESOLUTION ADOPTING REVISIONS TO THE CITY OF POQUOSON'S
PURCHASING PROCEDURES MANUAL**

WHEREAS, the City of Poquoson adopted a Purchasing Procedures Manual (Manual) May 1999; and

WHEREAS, the Manual has been revised four times, the latest being July 2007; and

WHEREAS, the State of Virginia has made various changes to the Virginia Public Procurement Act; and

WHEREAS, the Virginia Public Procurement Act allows each locality to specify their own dollar limits and processes for making small purchases; and

WHEREAS, staff recommends increasing the current limits for small purchases to be closer to the state maximum limits.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Poquoson, Virginia:

Section 1: That the revisions to the City of Poquoson's Purchasing Procedures Manual are approved.

Section 2: That this resolution shall be in effect as of July 1, 2016.

ADOPTED: _____

TESTE: _____

City Clerk

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL



May 1999

Revised 10/2000, 07/2001, 10/2001, 07/2007,

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL
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CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

ARTICLE 1: GENERAL PROVISIONS

101. Purchasing System Goals

This ~~p~~Purchasing Manual has been prepared for use by employees of the City of Poquoson who, in the course of their duties, must procure goods and services by the expenditure of public funds. Its purpose is to emphasize quality, value, and integrity in the procurement of goods and services, to maximize the purchasing value of public funds in procurement, to allow for delegation of purchasing authority wherever possible and prudent, to exercise positive fiscal control over public expenditures, and to promote administrative efficiency.

The procedures have been designed to meet the following objectives:

- a. Emphasize quality, value and integrity in all procurements.
- b. Provide financial control over expenditures related to the procurement of supplies, materials, contractual services, and capital outlay items.
- c. Delegate purchasing authority when possible and prudent.
- d. Promote administrative efficiency.
- e. Comply with the requirements of the **Virginia Public Procurement Act (VPPA)**.

102. Application of this Manual

The provisions of this Manual apply to contracts for the procurement of goods; services, insurance, and construction entered into by the City involving every expenditure for public purchasing from **nongovernmental sources**. When the procurement involves the expenditure of Federal assistance or contract funds, to the extent authorized by City Council, the procurement shall be conducted in accordance with any applicable mandatory Federal law or regulation which is not reflected in this Manual. Nothing in this Manual shall prevent the City from complying with the terms and conditions of any grant, gift or bequest, which are otherwise consistent with law. For all items not specifically detailed, all *required* sections of the **VPPA, Sec. 2.2-43, of the Code of Virginia (1950), as amended** shall be adhered.

103. Cooperative Procurement Agreements

Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. **State Law Reference: Sec. 2.2-4304, Code of Virginia (1950), as amended.**

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

104. Ethics

Dealing with ethics in public contracting is hereinafter incorporated by reference into this Manual and appears as "Appendix C". All persons with responsibility for making procurement transactions pursuant to this Manual shall first refer to "Appendix C". **State Law Reference: See ~~2.2-4367, Code of Virginia (1950), as amended. Chapter 43; Article 3 Ethics in Public Contracting Code of Virginia~~**

105. General Policies

Persons with responsibility for procurement transactions shall:

- a. Strive to maintain strong and enduring relationships with vendors of proven ability to meet the needs of the City. To accomplish these purchasing activities shall, within the limitations and guidelines of this Manual, be handled so that vendors will value the City's business and make every effort to fulfill its requirements on the basis of quality, service, and price;
- b. Strive to foster constructive competition by constantly seeking new bidders, obtaining multiple bids on most items purchased, and developing more than one active source of supply for various products and services;
- c. Identify small, ~~or~~ minority or women owned businesses and encourage them to compete for City business;
- e. Develop specifications in a manner so as to encourage competitive bidding whenever possible. In cases where a specification recommended by the person having responsibility for the procurement transaction may discourage competitive bidding, that person shall justify the need for the restrictive specification and shall obtain approval of the City Manager before including such specification in the bid request.

106. Public Access to Procurement Information

All inquires and requests for information regarding procurements shall be directed to the Director of Finance.

Except as provided herein, all proceedings, records, contracts, and other public records relating to procurement transactions shall be open to the inspection of any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the City shall not be open to public inspection. Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal records within a reasonable time in the event that the City decides not to accept any of the bids and to reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke protection prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. **State Law Reference: Sec. 2.2-4342, Code of Virginia (1950), as amended.**

In the case of prequalification for construction contractors, see **Article 3, Section 308 B of this Manual State Law Reference: Sec.2.2-4317, Code of Virginia (1950) as amended.**

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

ARTICLE 2: AUTHORITY TO MAKE PURCHASES

201. City Manager; Appropriated Funds

The City Manager shall act as the chief contracting officer for the City of Poquoson and shall provide leadership in all purchasing and contracting activities of the City.

NO PURCHASES SHALL BE PAID FOR EXCEPT FROM FUNDS APPROPRIATED BY CITY COUNCIL.

202. Oversight Duties

The Director of Finance shall be principal public purchasing official, and shall be subject to the City Manager's direction and control. The Director of Finance shall be responsible for the procurement of goods and services, insurance and construction in accordance with this Manual, except where this Manual vests authority for making certain of these purchases in other persons.

The Assistant City Manager shall be responsible for the management and disposal of ~~supplies~~ surplus property, except where this Manual vests such authority for certain supplies in other persons.

A. In accordance with this Manual, subject to the supervision of the City Manager, and where this Manual does not vest responsibility for such purchase in any other person, the Director of Finance shall purchase or supervise the purchasing of goods, services, insurance and construction needed by the City; provided, however, that no contract for such construction shall be advertised for bid, nor shall such contract be met until all plans, specifications and documents have been reviewed and approved by the City Manager;

B. The Director of Finance shall have the ~~power~~ responsibility and duty to:

(1) Purchase or contract for all goods, services, insurance and construction required by using departments, except:

a) Where this Manual vests the ~~power~~ responsibility and duty to make such a purchase with a Department Head or other City Official; and,

b) That none of the following contracts shall be issued unless expressly approved and authorized by City Council;

1) Any contract for goods or services of ~~\$30,000~~ \$100,000 or more, except for recurring expenditures such as salaries, utilities, and school and library payments;

2) Any contract employing a City Manager or City Attorney;

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

- 3) Any contract in excess of ~~\$20,000~~ \$100,000 for professional services as defined in **Article 3, Section 303 B of this Manual**;
 - 4) Any contract for the sale or lease of five years or more of real property or any rights or interests therein;
 - 5) Any contract for the acquisition or lease of five years or more of real property or any rights or interests therein; provided that contracts for acquisition of real property or interests therein of ~~\$25,000~~ \$100,000 or less need not be approved by City Council;
 - 6) Any other specific contract for which City Council reserves unto itself final approval.
 - 7) Any contract which the City Manager deems appropriate to be presented to the City Council.
- (2) Ensure preparation and enforcement of standard specifications for all those procurements made through him/her and for which specifications are required;
- (3) Ensure the inspection of all deliveries of goods, services or construction purchased through him/her to determine their conformance with the order or contract, and where there is any failure to comply with the terms of the order whether because the wrong goods were delivered, by reason of damage, or for any other reason, inform the vendor in a timely manner of any and all deficiencies in the delivery and seek to have such remedied;
- (4) Act to procure for the City the highest quality in goods, services, insurance and construction at the least expense to the City;
- (5) Endeavor to obtain full and open competition as possible on all purchases and sales;
- (6) Secure for the City the benefits of research done in the fields of purchasing by other governmental jurisdictions, national societies, national trade associations, and private business and organizations;
- (7) Prepare and adopt standard purchase nomenclature for the using departments and for goods;

With the approval of the City Manager, the Director of Finance may delegate any of his/her own authority to purchase certain goods, services or construction items to other City officials, if such delegation is deemed necessary for the effective procurement of those items.

C. In accordance with this Manual, ~~subject to~~ the Assistant City Manager shall sell, trade, or otherwise dispose of surplus goods belonging to the City.

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

203. Heads of Departments

A. The head of each department shall be responsible for the procurement of the following goods and services for their respective department:

- (1) ~~These~~ Office supplies, and other miscellaneous items;
- (2) ~~These~~ Goods, services, and construction which have application specifically to a particular department.

B. The head of each department shall have the ~~power~~ responsibility and duty to:

- (1) Prepare, adopt and maintain a vendor's file containing catalogs, descriptions of commodities, prices, and discounts;
- (2) Maintain a current file of sources of goods, services, and construction to be known as a "bidders' list" to which vendors can request to be included;
- (3) Declare vendors who have been debarred pursuant to **Article 8 of this Manual**, ineligible to receive business from the City for a stated period of time;

C. Any procurement made pursuant to this section shall be made in full compliance with this Manual.

D. **Subsections (2), (3), (4), (5), and (6), of Section 202 of this Manual** are made applicable to all persons who have responsibility for procurement transactions.

E. Each department head shall, at all stages of a procurement transaction for which they have responsibility; ensure compliance all applicable standard operating procedures set forth in **Appendix B of this Manual**.

F. With the approval of the City Manager, the head of any department may delegate any of his/her own authority to purchase certain goods or services to a specific ~~employee~~ position in their department, if such delegation is deemed necessary for the effective procurement of those items.

204. Finance Department

The Finance Department shall have the authority and duty to:

A. Make timely payment of vendor invoices, taking advantage of discounts offered when to the City's advantage;

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

B. Provide the City Manager and department heads with relevant fiscal and transaction status information, including account numbers, annual budget with backup details on approved capital outlay expenditures, and monthly status of account reports.

205. Unauthorized Purchases

No person on behalf of the City shall purchase or contract for any goods, services, insurance or construction except as authorized by and in full compliance with this Manual and any purchase order or contract made contrary to the provisions hereof is not approved and the City shall not be bound thereby.

Failure to comply with the requirements of this Manual shall be cause for disciplinary action.

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

ARTICLE 3: PROCUREMENT METHODS AND SOURCE SELECTION

Except for certain procurements which meet the small purchase exceptions or other exceptions set out in **Articles 5 and 6 of this Manual**, procurement of goods and services shall comply with the following procedures:

301. Use of Competitive Sealed Bidding

All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, unless otherwise provided in this Manual. The City Manager may from time to time authorize deviations from procedures set out herein as to purchases under his control, but only so long as such deviations are in full compliance with applicable law. The City Manager's authorization shall be in writing, in advance, and shall state the reason for the deviation and shall specify the law, which applies.

302. Competitive Sealed Bidding Defined

Competitive sealed bidding is a method of contractor selection, which includes the following elements:

A. Issuance of a written Invitation to Bid containing or incorporating by references the specifications and contractual terms and conditions applicable to the procurement. Unless the City Council or the City Manager as its agent has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

B. Public notice of the Invitation to Bid at least ten days prior to the date set for receipt of bids by posting in a designated public area, ~~or~~ *and* publication in a newspaper of general circulation, ~~or both~~. In addition, bids may be solicited directly from potential contractors. In the case of Virginia State Aid projects as described in **Section 307 308 of this Manual**, any additional solicitations shall include businesses selected from a list made available by the Virginia Department of Minority Business Enterprise. **State Law Reference: Sec. 2.2-4301, subdivisions 1 and 2 under the definition of "competitive sealed bidding," Code of Virginia (1950) as amended.**

CITY OF POQUOSON PURCHASE PROCEDURES MANUAL

303. Use of Competitive Negotiation for Professional Services

A. Professional Services, the costs of which are expected to exceed ~~\$30,000~~ \$50,000, shall be procured by competitive negotiation, also known as Request for Proposals.

B. "Professional Services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional Services" shall also include the services of an economist procured by the State Corporation Commission. **State Law Reference: Sec. 2.2-4301, Code of Virginia (1950) as amended.**

C. Competitive negotiation for professional services shall proceed as follows: The City Manager *or designee* shall select an evaluation committee of at least three members, one of which shall come from the requesting department. The committee shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. *In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror.* The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the committee may ~~discuss~~ *request* nonbinding estimates of total project costs, including, but not limited to, life cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion with the offerors, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to that point, the ~~City Manager~~ *committee* shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most ~~meritorious~~ *advantageous*.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. *Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, the City may award contracts to more than one offeror.* Should City Council or the City Manager as its agent, determine ~~by resolution~~ in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. **State Law Reference: Sec. 2.2-4302.12, Code of Virginia(1950) as amended .**

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303.1 Architectural and Professional Engineering Term Contracting

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by the City, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the City. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed. No one contract shall be in excess of \$100,000 and the sum of all projects performed in a one-year contract term shall not exceed \$500,000 except as authorized in accordance with 2.2-4302.2(B) of the Code of Virginia.

304. Use of Competitive Negotiation for Other than Professional Services

A. If the City Manager determines, *in advance and the basis for this determination in writing*, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, non-professional services, or insurance may be procured by competitive negotiation. Competitive negotiation of other than professional services shall be made in accordance with ~~State Law Reference: Sec. 2-2-4303, Code of Virginia~~ **Section 305 of this Manual (1950), as amended.**

B. Competitive negotiation may also be used in the following types of construction contracts, subject to the determinations set forth in Section A above having first been made:

(1) the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than five hundred thousand dollars (\$500,000);

(2) the construction of highways and any draining, dredging, excavation, grading or similar work, ~~including utility work~~, upon real property.

(3) *on a fixed price design-build basis or construction management basis found in Section 306 of this manual.*

C. For any single project, for (i) architectural or professional engineering services relating to construction projects, or (ii) job order contracting, the project fee shall not exceed \$100,000.

D. For the purposes of subsections B and C, any unused amount from the first contract term shall not be carried forward to the additional term.

E. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased or long term project may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the competition of the earlier phase is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing the nature of the work is such that the best interests of the public body require awarding the contract.

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EXCEPT as provided in B (1) and (2) above, all construction contracts which do not meet an exception set out in **Article 5 of this Manual** shall be procured by competitive bid.

State Law Reference: Sec. 2.2-4303, Code of Virginia.

305. Competitive Negotiation Defined

Competitive negotiation is a method of contractor selection, which includes the following elements:

A. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

B. Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting in a public area ~~normally~~ used for posting of public notices ~~and or by~~ publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed. ~~or both, so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request.~~ In addition, proposals may be solicited directly from potential contractors.

C. The City Manager *or designee* shall select an evaluation committee of at least three members, one of which shall come from the requesting department. The committee shall select two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall be conducted with each of the selected offerors. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each selected offeror, the purchasing agent or other party handling the procurement shall select the offeror which in his or her opinion, has made the best proposal, and shall award the contract to that offeror. Should the City Manager *or designee* determine in writing and at his/her sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration are, a contract may be negotiated and awarded to that offeror.

State Law Reference: Sec. 2.2-4302.12, subdivisions 1, 2 and 3, and ~~2 under the definition of "competitive negotiation,"~~ Code of Virginia (1950) as amended.

306. Design-Build

A. While the competitive sealed bid process remains the preferred method of construction procurement, the City may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided that the City complies with the requirements of this section and has implemented procedures consistent with the procedures adopted by the Virginia Secretary of Administration for utilizing design-build or construction management contracts.

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Prior to making a determination as to the use of design-build or construction management for a specific construction project, the City shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the City regarding the use of design-build or construction management for that project and who shall assist with the preparation of the Request for Proposal and the evaluation of such proposals.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the City shall:

1. Issue a written Request for Proposal including and defining the criteria of the construction project in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural mechanical (HVAC) and electrical systems, special telecommunications, and other requirements as determined appropriate. The Request for Proposal will also specify the factors that will be used in evaluating the proposal (including price, if applicable.) The bids will be negotiated and awarded in the manner provided in **Section 305C of this Manual.**

2. Document in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the City by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. Award to a fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal. **State Law Reference: Sec. 2.2-4308, Code of Virginia.**

307. Pre-Bid or Pre-Proposal Conferences

For complex equipment, supplies, or repair, the City may conduct pre-bid or pre-proposal conferences with prospective bidders after the preparation of draft specifications. Such conferences detect unclear provisions and widen competition by removing unnecessarily restrictive language. The person responsible for the procurement transaction may call such conferences.

308. Competitive Bidding on State-Aid Projects

No contract for the construction of any building or for an addition to or improvement of an existing building by the City for which state funds of ~~\$30,000~~ \$50,000 or more, either by appropriation, grant-in-aid, or loan are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided in this Manual. The procedure for the advertising for bids or for proposals shall conform to the provisions of this Manual. **State Law Reference: Sec. 2.2-4305, Code of Virginia (1950) as amended.**

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3098. Prequalification of Bidders and Offerors

4. The Department Head may prequalify bidders prior to the solicitation of bids or proposals by requiring prospective bidders to submit any information deemed appropriate, including, but not limited to, samples, financial reports, and references, *provided that any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process. Such prequalification procedures shall be subject to State Law Reference: Sec. 2.2-3317, Code of Virginia.* Any prospective bidder who has not been suspended or debarred under this Manual must have the opportunity to prequalify.

B. *Prequalification for construction contractors will comply with the following prequalification process:*

- 1. The form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of **Sec. 2.2-4342, Code of Virginia.***
- 2. Advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished*
- 3. At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the City shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.*

The Department Head may refuse to prequalify any prospective contractor *if the Department head finds one of the following*, provided that written reasons for refusing to pre-qualify are made a part of the record in each case:

- (1) The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*
- (2) The contractor does not have appropriate experience to perform the construction project in question;*

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- (3) The contractor or any officer, director or owner thereof has had judgments entered against him/her within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
- (4) The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the City without good cause. If the City has not contracted with a contractor in any prior construction contracts, the City may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The City may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
- (5) The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) **Article 6 Sec. 2.2-4367, Code of Virginia**, (ii) the Virginia Governmental Frauds Act (Sec. 18.2-498.1 et seq.), (iii) Chapter 4.2 (Sec. 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;
- (6) The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
- (7) The contractor failed to provide to the City in a timely manner any information requested by the City relevant to subdivisions 1 through 6 of this subsection.

All decisions regarding denial of prequalification are final unless the contractor appeals the decision as provided in **Section 310 of this Manual**. Prequalification of a bidder shall not constitute a conclusive determination of the bidder's responsibility. The City may reject any bidder as non-responsible on the basis of subsequently discovered information. Failure of a bidder to prequalify for a given procurement does not bar the bidder from seeking prequalification for future procurements or bidding on procurements which do not require prequalification. In the case of prequalification of a prospective contractor for construction, the prequalification procedure will be executed in accordance with **Section 2.2-4317, of the Code of Virginia (1950) as amended**.

30910. Prequalification Denial and Appeal Process

Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the City shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the

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determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The City Manager shall issue its written determination of disqualification or ineligibility based on all information in the possession of the City, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the City shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the City shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards set forth in **Article 9 of this Manual**.*

*If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility. **State Law Reference: Sec. 2.2-4357, Code of Virginia.***

311. Publication of the Invitation to Bid

When publication of an Invitation to Bid is required pursuant to **Section 302 of this Manual**, the newspaper notice will include a general description of the articles to be purchased or sold, shall state where bid packages and specifications may be secured, and designate the time and place for *receiving and* opening bids.

312. Solicitation of Bidders and Offerors

The person responsible for any procurement transaction shall also solicit sealed bids or proposals from all responsible prospective suppliers who have requested their names to be added to a "bidders list", by sending such notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

313. Brand Names in the Invitation to Bid or Request for Proposal

Unless otherwise provided in the Invitation to Bid or Request for Proposal, the name of a certain brand, make, or manufacturer does not restrict bidders to the specific brand, make, or manufacturer named. Instead, it conveys the general style, type, character, and quality of the article desired, and any article which the City, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. **State Law Reference: Sec. 2.2-4315, Code of Virginia (1950) as amended.**

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3124. Bid Bonds on Construction Contracts

Pursuant to **Section 2.2-4336, Code of Virginia (1950) as amended**, except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of ~~\$100,000~~ \$500,000 or transportation-related projects authorized under Article 2 (Sec. 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth of Virginia, shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, the bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond or alternate security shall not exceed five percent of the amount bid.

For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with **Section 308 of this manual**.

No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Article 2 (Sec. 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth of Virginia.

3135. Bid Bonds for Other Contracts

At the discretion of the City Manager or ~~person handling~~ designee the particular procurement, bidders for contracts for which a bid bond is not required under **Section 410 of this Manual 2.2-4337 Code of Virginia (1950) as amended**, may nevertheless be required to submit with their bid a bid bond or a certified check in an amount to be determined by the City Manager or designee and specified in the Invitation to Bid, which shall be forfeited to the City as liquidated damages upon the bidder's failure to execute a contract awarded to him or upon bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him.

3146. Cancellation of an Invitation for Bid or Request for Proposal

An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be cancelled or rejected without penalty or any tupe of financial reimbursement to a bidder or offers submitting a response. The reasons for cancellation shall be made part of the contract file and such file shall remain sealed and unavailable for public inspection.

State Law Reference: Sec. 2.2-4319, Code of Virginia (1950) as amended.

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3157. Submission and Opening of Bids

Bids shall be submitted sealed to the person responsible, *indicated on the Invitation for Bid or Request for Proposal*, for the procurement transaction and shall be identified as bids/*proposal* on the envelope. Bids shall be opened in public at the time and place stated in the public notices. *No public opening of proposals is required for offers submitted in relation to a competitive negotiation program.*

No bid *solicitation* arriving after the ~~hour~~ *stated time* designated for the *receiving and/or* opening shall be considered.

3168. Withdrawal of Bids Due to Error

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an *unintentional arithmetic error or* unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The procedure for bid withdrawal must be stated in the ~~advertisement for bids~~ *solicitation*.

The procedure for withdrawal of bids on public construction contracts shall be selected by the person responsible for the procurement transaction from the two following alternatives and included in the bid advertisement:

(1) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

(2) The bidder shall submit to the person in charge of the procurement his original work papers, documents and materials used in the preparation of the bid one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail; ~~at or prior to the time fixed for the opening of bids.~~

In either instance, such work papers, documents and materials may be considered, *at the bidder's request*, as trade secrets or proprietary information. ~~subject to the following conditions: Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to~~ **Section 309 B of this Manual** shall not be subject to the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. **State Law Reference: Section 2.2-4342 F, of the Code of Virginia (1950) as amended.**

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~~If~~ The bids shall be opened one day following the time fixed by the City for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the City until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. No bid may be withdrawn under this section when the result would be the awarding of the contract or another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

C. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

D. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

E. The City shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the City denies the withdrawal of a bid under the provisions of this section, ~~the~~ The City shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the City shall return all work papers and copies thereof that have been submitted by the bidder. **State Law Reference: Sec. 2.2-4330, Code of Virginia (1950) as amended.**

3179. Bid Evaluation

A. In addition to price, the City may also consider the following factors in determining the lowest responsive and responsible bidder:

(1) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(2) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;

(3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(4) The quality of performance of previous contracts or services;

(5) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

(6) The quality, availability, and adaptability of the goods or services to the particular use required;

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(7) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

31820. Bid Award

Bids shall be awarded to the lowest responsive and responsible bidder. In making the award, City Council or the person responsible for the procurement transaction upon advice of the City Attorney, as the case may be, may waive informalities in bids. When the terms and conditions of multiple bids are so provided in the Invitation to Bid, awards may be made to more than one bidder.

Unless cancelled or rejected, a responsible bid from the lowest responsive and responsible bidder shall be accepted as submitted except that if the bid from the lowest responsible bidder exceeds available funds, the City may negotiate with the apparent low bidder to obtain a contract price within available funds.

When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the person responsible for the procurement transaction and after approval by the City Manager shall be filed with the other papers relating to the transaction. **State Law Reference: Sec. 2.2-4318, Code of Virginia(1950) as amended.**

31921. Tie Bids

In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms, or corporations (with bidders situated within the City of Poquoson given first preference) if such a choice is available; otherwise the tie shall be decided by lot. Where all bidders are Virginia persons, firms, or corporations (or, alternatively, if all bidders are non-Virginia persons, firms, or corporations), the tie shall also be decided by lot.

Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia. **State Law Reference: Sec. 2.2-4324, Code of Virginia (1950) as amended.**

3202. Multi-Step Sealed Bidding

When it is considered impractical to initially prepare a purchase description based on price, an invitation for bids may be issued requesting the submission of unpriced offers to bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

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3213. Sole Source Procurement – Competitive Sealed Bidding or Competitive Negotiation

Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination *and must be signed by the City Manager. City Council* The City Manager shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract whichever occurs first.

3224. Emergency Purchases

In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiations; however, such procurement shall be made with such competition as is practicable under the circumstances. ~~City Council~~ The City Manager shall issue a written determination of the basis for the emergency and for the selection of the particular contractor. The person responsible for the procurement transaction shall keep records of ~~Council's~~ the written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. The written notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the City awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. **State Law Reference: Sec. 2.2-4303 F, Code of Virginia (1950) as amended.**

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ARTICLE 4: CONTRACT FORMATION

401. Standard Contract Use

The standard contract approved by the City Attorney should be used for all contracts less than \$50,000 in value. City Attorney approval shall be required for any contracts greater than or equal to \$50,000 in value or for situations in which the standard contract is not utilized. A vendor's standard contract is not to be used unless approved by the City Attorney.

402. Contract Pricing Arrangement

Subject to the limitations of this Manual, any type of contract which is appropriate to the procurement and which will promote the best interests of the City, *including fixed price or cost reimbursement based contracts*, may be used; provided that the use of a cost-plus-a-percentage-of-cost contract or a cost-plus-a-percentage-of-construction-cost contract, however, is prohibited, *except in the case of emergency affecting the public health, safety, or welfare, during which time a public contract may be awarded on the basis of cost plus a percentage of cost*. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supply, service or construction item required except under such a contract.

The following contract pricing arrangements shall not be prohibited by this section:

1. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims; or

2. A cost plus a percentage of the private investment made by a private entity as a basis for the procurement of commercial or financial consulting services related to a qualifying transportation facility under the Public-Private Transportation Act of 1995 (Sec. 33.2-1800 et seq.) or a qualifying project under the Public-Private Education Facilities and Infrastructure Act of 2002 (Sec. 56-575.1 et seq.) where the commercial or financial consulting services are sought to solicit or to solicit and evaluate proposals for the qualifying transportation facility or the qualifying project. As used in this section, "private entity" and "qualifying transportation facility" mean the same as those terms are defined in Sec. 33.2-1800 and "qualifying project" means the same as that term is defined in Sec. 56-575.1. State Law Reference: Sec. 2.2-4331, Code of Virginia.

403. Employment Discrimination by Contractor Prohibited; Required Contract Provisions

Every City contract of over \$10,000 shall include the following provisions:

During the performance of this contract, the contractor agrees as follows:

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1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an ~~e~~Equal ~~e~~Opportunity ~~e~~Employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor shall include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. **State Law Reference: Sec. 2.2-4311, Code of Virginia (1950) as amended.**

403.1 Immigration Law Required Provision

The City shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986. State Law Reference: Sec. 2.2-4311.1, Code of Virginia.

403.2 Compliance with State Law

A. The City shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, the City shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

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C. Any bidder or offeror described in subsection B above that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the City Manager.

D. Any business entity described in subsection A that enters into a contract with the City pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section. **State Law Reference: Sec. 2.2-4311.2, Code of Virginia.**

4034. Contract Provisions Barring Damages for Unreasonable Delays

A. Any provision contained in any public construction contract ~~entered into on or after July 1, 1994,~~ that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the City, its agents or employees and due to causes within their control is against public policy and is void and unenforceable.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

- (1) Allows the City to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
- (2) Requires notice of any delay be the party claiming the delay;
- (3) Provides for liquidated damages for delay; or
- (4) Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the City for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the City and shall pay it for a percentage of all costs incurred by the City in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact. **State Law Reference: Sec. 2.2-4335, Code of Virginia (1950), as amended.**

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D. Upon denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract, the City shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the City shall be equal to the percentage of the contractor's total delay claim for which the City's denial is determined through litigation or arbitration to have been made in bad faith. **State Law Reference: Sec. 2.2-4335, Code of Virginia**

4045. Multi-Term Contracts

Unless otherwise provided by law, a contract for goods or services, or insurance may be entered into for any period of time deemed to be in the best interests of the City, provided the term of the contract and conditions for renewal or extension are included in the solicitation, and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

4056. Contract Modification

A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five (25) percent of the amount of the contract or ten thousand dollars (\$10,000), whichever is greater, without the advance written approval of the City Manager. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer. **State Law Reference: Sec. 2.2-4309, Code of Virginia (1950), as amended.**

4067. Retainage on Construction Contracts

In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sums when payment is due, with not more than five percent being retained to assure faithful performance of the contract. All amounts of retainage withheld may be included in the final payment.

Any subcontractor for a public project which provides for similar progress payments shall be subject to the same limitations. **State Law Reference: Sec. 2.2-4333, Code of Virginia.**

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4078. Contracts with Religious Organizations

The City may enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

A. For the purposes of this section, “faith-based organization” means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

B. The City, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization’s religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

C. The City shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the City does not discriminate against faith-based organizations.

D. A faith-based organization contracting with the City (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient’s religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the City. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

E. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with the City shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

F. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

G. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the City and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the City shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

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*The City shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the City and a faith-based organization a notice in bold face type that states: "Neither the City's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form." **State Law Reference: Sec. 2.2-4343.1, Code of Virginia.***

409. Escrow Account Procedures

As provided in **Section 2.2-4334, Code of Virginia (1950), as amended**, in the case of a public contract of \$200,000 or more for the construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures and the installation of water, gas, sewer lines and pumping stations *where portions of the contract price are to be retained*, provisions shall be included in the City's bid proposal for the contractor to use an escrow account procedure for utilization of the City's retainage funds by so indicating in the space provided in the proposal documents. An escrow agreement form, substantially the same as that used by the Commonwealth of Virginia Department of *Transportation and executed by the escrow agent, the contractor, and the surety*, shall be included with the proposal documents. If the successful bidder has properly indicated its desire to use the escrow account procedure, then upon award of the contract to such bidder, ~~it shall be~~ *the bidder shall have* fifteen (15) days from the date of such award to submit the signed escrow agreement to the City using the form provided. Should the successful bidder fail to timely submit such escrow agreement properly executed, then it shall forfeit its rights to the use of the escrow account procedure. When elected, ~~the escrow account procedure shall conform to the requirements of~~ **Section 2.2-4334 B, Code of Virginia (1950), as amended**, and all regulations promulgated by the City Manager relative to the escrow procedure shall be substantially the same as those used by the Commonwealth of Virginia Department of Transportation. *The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth.* The escrow procedure here provided shall not apply to public contracts for the construction of railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

Any public contract for construction which provides for the payment of the interest on retained funds may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the contractor's control stated in the contract, shall pay a specified penalty for each day exceeding the completion date as stated in the contract.

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Any subcontract for a project ~~which is subject to the escrow account procedures here required~~ *that provides for similar process payments* will be subject to the provisions of this section.

40810. Performance and Payment Bonds

A. Upon the award of any public construction contract exceeding \$100,000 to any prime contractor, such contractor shall furnish to the City the following bonds:

(1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. *For transportation-related projects authorized under Article 2 (Sec 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.*

(2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contract to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in ~~the prosecution~~ *furtherance* of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia. In lieu of such bond, the contractor may furnish an alternate form of security as provided in **Section 413 of this Manual**.

C. Bonds shall be made payable to the City of Poquoson.

D. *A copy of each of the bonds shall be filed with the department head in charge of the procurement contract management, and the original shall be sent to the City Manager's office to be filed with the original contract.*

E. Nothing in this section shall preclude the person with responsibility for the procurement transaction from requiring payment of performance bonds for construction contracts below \$100,000.

G. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for the subcontract.

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40911. Action on Performance Bonds

A. No action against the surety on a performance bond shall be brought unless within one year after:

(1) Completion of the contract, including the expiration of all warranties and guarantees, or

(2) Discovery of the defect or breach of warranty, if the action be for such. **State Law Reference: Sec. 2.2-4340, Code of Virginia (1950), as amended.**

4102. Action on Payment Bonds; Waiver of Right to Sue

A. Any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the list of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgement and have execution on the judgement. The obligee named in the bond need not be named a party to such action. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond, but who has no contractual relationship, expressed or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.

B. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond but who has no contractual relationship, expressed or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor, performance or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person who right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents. ***State Law Reference: Sec. 2.2-4341, Code of Virginia.***

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4113. Alternative Forms of Security

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the City Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the City equivalent to the corporate surety's bond.

State Law Reference: Sec. 2.2-4338, Code of Virginia. ~~(1950), as amended.~~

4124. Contract Extension

The term of any existing contract may be extended to allow completion of any work under taken pursuant thereto but not completed during the original term of the contract.

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ARTICLE 5: SMALL PURCHASES AND MISCELLANEOUS PROCUREMENTS

501. Small Purchases

A. Unless the City Manager or *designee* ~~the person responsible for the procurement transaction~~ shall determine that competitive sealed bidding or competitive negotiation should be required ~~in the best interest of the City~~, the following procurements shall not be subject to the requirements of the competitive sealed bidding or competitive negotiation requirement of this Manual:

(1) All purchases of goods, printing, non-professional services and capital improvements not expected to exceed ~~thirty~~ *fifty* thousand dollars (~~\$30,000~~) (*\$50,000*) and any other single or term contract not expected to exceed ~~thirty~~ *fifty* thousand dollars (~~\$30,000~~) (*\$50,000*). **State Law Reference: Sec. 2.2-4303 G, Code of Virginia (1950), as amended;**

a. Purchases of ~~\$2,499~~ *\$4,999* or less may be made from a ~~sole~~ *single* source without securing a written purchase order or approved sole source determination; however, obtaining several quotations is *always* encouraged.

~~b. Purchases of \$2,499 or less may be made from a sole source for fleet maintenance without securing a written purchase order or approved sole source determination; however, obtaining several quotations is encouraged.~~

~~c. Purchases of \$2,499 to \$4,999 shall require three verbal or three written quotations and a written purchase order.~~

~~d. Smaller purchases of \$2,499 or less but where the combined order of identical items or materials totals \$2,500 or more shall require the verbal or written quotations and a written purchase order.~~

~~e. Purchases of \$5,000 to \$29,999 shall require three written quotations and a written purchase order.~~

(2) Single or term contracts for professional services not expected to exceed ~~twenty thousand dollars~~ (~~\$20,000~~) *\$49,999*;

B. Such awards shall be based, except when the person responsible for the procurement transaction shall determine in writing that it is impracticable to do so, on three (3) or more competitive quotations. *Receipt of a "No Bid" is considered a response.* Whenever the person responsible for a procurement transaction determines that seeking competitive quotations for a particular procurement is not practicable, a written determination to that effect shall be made and submitted to

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the City Manager for approval. No such non-competitive procurement may be made without the City Manager's written approval **IN ADVANCE**. Award shall be made by the person responsible for the procurement transaction, with such approval as required, to the business offering the lowest acceptable quotation.

C. In making determinations as to practicability, the person responsible for the procurement transaction shall consider the cost of the purchasing process relative to the cost of items being purchased and shall not be limited necessarily to considerations of cost factors alone.

D. No contract requirement or amount shall be ~~artificially split or~~ divided ~~either~~ so as to constitute a small purchase under this section.

502. Sole Source Procurement – Small Purchases

A contract not requiring formal competitive sealed bidding or competitive negotiation may be awarded without competition when the person responsible for the procurement transaction determines in writing, after conducting a good faith review of available sources, that there is only one source for the required good, service, insurance or construction item and such determination is approved in writing by the City Manager. The person responsible for the procurement shall thoroughly document the procedures they undertook to review and solicit available sources, the contractor selected, and the item to be procured. The person responsible for the procurement transaction shall conduct negotiations as appropriate, as to price, delivery and terms.

503. Emergency Purchases – Small Purchases

In case of emergency, a contract for items that do not require competitive sealed bidding or competitive negotiations may be awarded without following normal small purchase guidelines. The person responsible for the procurement shall prepare a written determination of the emergency, and competition attempted as practicable under the circumstances, what is being procured and the selection of a particular contractor. The City Manger shall approve in writing the written determination of the emergency.

504. Public Auction Procurements

Upon a determination made in advance by the City Manager in writing that the purchase of goods, products or commodities from a public auction sale is in the best interest of the public, such items may be purchased at auction, including online public auctions. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions or reverse auctioning. ***State Law Reference: Sec. 2.2-4303, Code of Virginia.***

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ARTICLE 6: NON-COMPETITIVE METHODS OF SOURCE SELECTION

601. Exceptions to Requirements for Competitive Procurement

The City may enter into the following contracts without competition:

A. Contracts for the purchase of goods or services (1) which are performed or produced by persons, or in schools or work shops, under the supervision of the Virginia Department for the ~~Visually Handicapped~~ Blind and Vision Impaired; or (2) ~~which are performed or produced by non-profit sheltered workshops or other non-profit organizations which are for~~ employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

B. Legal services subject, however, to the pertinent provisions.

C. Contracts for the employment of expert witnesses and other services associated with litigation or regulatory proceedings.

D. Purchase from the state penitentiary, state contracts, or from the state purchasing department warehouse.

E. Purchases for special police work when the Chief of Police certifies to the City Manager that items are needed for confidential operations approved in advance by the City Manager ~~undercover operations.~~

The City may also enter into the contracts without competition for good or sums up to \$50,000.

A. Honoraria, entertainment (speakers, lecturers, musicians, performing artists).

B. Training that is specialized, proprietary, not typically available to the general public for which competition is generally unavailable, off-site, and requires a registration fee.

C. Artists (does not include graphic artists); original works of art; and original, or authentic antique period art frames (does not include newly created replacement or reproduction frames.)

D. Photographers other than for graduations and yearbooks, e.g., for official photographs/portraits.

E. Purchases of used equipment including used equipment purchased at public or online auction.

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ARTICLE 7: DISPOSAL OF SURPLUS PERSONAL PROPERTY

701. Procedure

A. The Assistant City Manager shall have the responsibility for the management and disposal of surplus property. He or she shall have the authority to transfer to or between City departments, to sell by public auction, *direct sale*, or sealed bid, to sell or donate to another government entity or bona fide non-profit organization, to exchange, destroy or otherwise dispose of supplies, materials, and equipment determined by him or her, ~~with the approval of the City Manager~~ to be surplus, obsolete, worn out, unused or unsuitable for public use. *Disposal of surplus property does not apply to real estate.*

B. Disposal of surplus property shall be made in the manner deemed by the Assistant City Manager to be most appropriate for the class of commodity. The Assistant City Manager may delegate to the head of a department authority to dispose of certain surplus property which is being relinquished by that department. In carrying out such disposal the department head should follow any and all applicable procedures contained in Appendix B of this Manual together with such procedures as are designated by the Assistant City Manager.

C. *The Department of Finance shall be notified of the disposition of any surplus property acquired with an original purchase price of \$5,000 or above, regardless of the method of disposal.*

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ARTICLE 8: DEBARMENT

801. Remedies

~~Article 3 of the "Virginia Public Procurement Act", as amended, dealing with remedies in public contracting is hereinafter incorporated into this Manual as Appendix C.~~

8021. Authority to Debar

After reasonable notice to the ~~person~~ *party* involved and reasonable opportunity for that ~~person~~ *party* to be heard, the City Manager, after consulting with the City Attorney, ~~is authorized to~~ may debar a ~~person~~ *party* for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years.

8032. Causes for Debarment

Causes for debarment include:

A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract;

B. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a City contractor;

C. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

D. Violation of contract provisions, as set forth below, of a character which is regarded by the City Manager to be so serious as to justify debarment action:

(1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

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E. Any other cause the City Manager determines to be as serious and compelling as to affect responsibility as a City contractor including debarment by another governmental entity for any cause in this Manual, and for violation of the ethical standards set forth in this Manual.

8043. Decision to Debar

The City Manager shall issue a written decision to debar. The decision shall state the reasons for the action taken and inform the debarred person involved of his rights concerning judicial or administrative review. The City shall immediately mail or otherwise furnish a copy of the decision to the debarred or suspended vendor. *The City may also provide this decision to the Virginia Department of General Services, Division of Purchases and Supply to be included on the list of debarred vendors.*

8054. Notice of Decision

A copy of the decision required by **Section 8043. “Decision to Debar”** shall be mailed or otherwise furnished immediately to the debarred or suspended person.

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ARTICLE 9: ADMINISTRATIVE APPEALS PROCEDURE

901. Application of Administrative Appeals Procedure

An administrative appeals procedure is hereinafter described which shall be used for hearing protests of decision to award or an award, appeals from refusals to allow withdrawal of bids, appeals from debarments, appeals from determinations on non-responsibility, and appeals from decisions on disputes arising during the performance of a contract.

902. Appeal Submission and Applicable Time Limits

A. To initiate the administrative appeals procedure, the aggrieved party shall submit in writing a protest or appeal to the City Manager. The protest or appeal shall include the basis for the protest or appeal and the relief sought. Protests and appeals must be submitted within the following time limits:

- (1)* A protest of a decision to award or an award shall be submitted within ten (10) days after the award or the announcement of the decision to award, whichever occurs first;
- (2)* An appeal from a refusal to allow withdrawal of a bid shall be submitted within ~~ten~~ *five (5)* days after receipt of the decision;
- (3)* An appeal from a debarment shall be submitted within thirty (30) days after receipt of the decision;
- (4)* An appeal from a determination of non-responsibility shall be submitted within ten (10) days after receipt of the decision;
- (5)* An appeal from a decision resulting from a contract dispute shall be submitted within sixty (60) days after final payment.

903. Response by the City Manager

Upon receipt of a protest or an appeal, the City Manager or designee, shall respond in writing to the protest or appeal within ten (10) days, or give verbal notice to the protesting or appealing party within ten (10) days that a hearing is required to present the facts concerning the protest or appeal. The City Manager or designee shall establish a location, date, and time for the hearing. The hearing shall allow for the presentation of relevant facts and shall allow representatives of the City and the aggrieved party to explain their position on the matter. At the conclusion of the hearing, the City Manager may choose to respond to the aggrieved party's protest or appeal verbally. A verbal response shall be summarized in writing and filed with the other documents concerning the protest

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or appeal. If a verbal response is not given to the aggrieved party at the conclusion of the hearing, the City Manager shall issue a written response within ten (10) days after the conclusion of the hearing.

904. Request for Panel Hearing; Applicable Time Limits

Should the aggrieved party not be satisfied with the response given by the City Manager, the aggrieved party may request a panel hearing. A request for a panel hearing shall be submitted in writing to the City Manager within ten (10) days after receipt of a written response or within ten (10) days of the issuance of a verbal response.

905. Appointment of Panel

Upon receipt of a request for a panel hearing, the City Manager shall appoint a panel of three (3) or more disinterested persons. Panel members may be disinterested City employees or non-employees. The City Manager shall attempt to select a panel which collectively has knowledge of current state and local government procurement laws and regulations, familiarity with the type of product and/or service provided by the aggrieved party and knowledge of the product or service application in a similar environment.

906. Appointment of Chairman and Taking of Evidence

The panel members shall select a chairman who shall establish a location, date, and time for the panel hearing to be conducted. The panel hearing shall allow for the presentation of relevant facts and pertinent information by the aggrieved party and the person responsible for the procurement transaction. The participation of other City department and City agency employees who have contributed to an evaluation or decision making process or any persons involved in a contract dispute may be required. Should the aggrieved party elect to be represented by legal counsel, the City Manager, of his own accord or at the request of the person responsible for the procurement transaction, may request assistance from the City Attorney.

907. Hearing Procedures

The panel hearing is an administrative process and is not meant to be conducted as a full court proceeding. The panel, by majority vote, may decide procedural questions and rule upon objections raised during the course of the hearing. At the option of the aggrieved party or person responsible for the procurement transaction, opening statements may be made at the beginning of the hearing setting forth the issues and the panel may ask for such statements in order to clarify the issues involved. However, the panel shall take into account all reliable and substantial relevant facts and pertinent information produced at the hearing. The aggrieved party and the person responsible for

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the procurement transaction shall produce such additional relevant facts and pertinent information as the panel may deem necessary in understanding and determining a protest or an appeal.

908. Panel Finding Time Limit; Decision Final

Within ten (10) days after the conclusion of the panel hearing, the panel shall issue a written decision containing the findings of fact. The findings of fact shall be final and conclusive and shall not be set aside unless the same are fraudulent or arbitrary or capricious, or so grossly erroneous as to imply bad faith.

909. Panel Deliberations and Permitted Relief

A. The panel, in rendering its decision, shall decide the protest or appeal on the merits. The panel has the responsibility of insuring the proper application of statutes, regulations, policies, and procedures. The panel does not have the authority to formulate or to change policy. Accordingly, the panel shall make its decision within the following parameters:

B. A proposed award or an award shall be reversed only if the aggrieved party establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations, or the terms and conditions of the request for quotation, Invitation to Bid or the Request for Proposal. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The City Manager shall cancel the proposed award or revise it to comply with the law. If, after the award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined by the City Manager. Where the award has been made and performance has begun, the City Manager may declare the contract void upon a finding that this action is in the best interest of the City. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits. When a panel determines that there is probable cause to believe that a decision to award was based on fraud or corruption, the City Manager may enjoin the award of the contract to a particular bidder.

C. A decision denying a bidder withdrawal of a bid shall be reversed only if the aggrieved party establishes that the decision to deny withdrawal of the bid was clearly erroneous.

D. A decision debaring a bidder or offeror, actual or prospective, from participation shall be reversed only if the aggrieved party establishes that the decision was arbitrary or capricious.

E. A decision determining that a bidder or offeror is not a responsible bidder or offeror for

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a particular contract shall be reversed only if the aggrieved party establishes that the decision was arbitrary or capricious. If it is determined that the decision determining non-responsibility was *arbitrary or capricious, and the award of the contract in question has not been made, the sole relief* shall be a finding that the bidder is a responsible bidder for the contract in question. If, after an award, it is determined that a determination of non-responsibility was arbitrary or capricious, the City Manager, upon determining the action to be in the best interest of the City, may enjoin the performance of a contract where performance has not begun. Where the award has been made and performance has begun, the City Manager may declare the contract void. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

F. A decision resulting from a contract dispute shall be reversed only if the aggrieved party establishes that the decision is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the request for quotation, Invitation to Bid or the Request for Proposal or any resulting contract document.

910. Judicial Review

Any party to the Administrative Appeals Procedure, including the City, shall be entitled to institute judicial review if such action is brought within thirty (30) days of receipt of the panel's written decision. State Law Reference: Sec. 2.2-4365, Code of Virginia.

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APPENDIX A: GLOSSARY OF SELECTED PURCHASING TERMS

Affiliate *An individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

Best Value *The overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.*

Bid An offer submitted in response to an Invitation for Bid; can become a contract upon acceptance by the City.

Blanket Purchase Order A contract under which a vendor agrees to provide goods or services to a purchaser on a demand basis.

Brand Name or Equal Specification A specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of equality, performance and other salient characteristics needed to meet City requirements and which provides for the submission of equivalent products.

Business Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Change Order (Unilateral) A written order unilaterally issued by the City Manager *or designee* directing the contractor to make changes which the "changes" clauses of the contract authorizes the City to order without the consent of the contractor.

Confidential Information Any information which is available to an employee only because of the employee's status as an employee of the City and is not a matter of public knowledge or available to the public on request.

Confirming Purchase Order A purchase order restating the same terms originally placed verbally.

Construction Building, altering, repairing, improving or demolishing any structure, building, or highway and any draining, dredging, excavation, grading, or similar work upon real property.

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Construction Management Contract A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

Contract All types of City agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

Contract Modification Any written alteration in specifications, delivery point, date of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties of the contract.

Contractor Any entity that has a direct contract with the City or any agency of the City.

Cost Analysis The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

Cost Data Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost-Reimbursement Contract A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Manual, and a fee or profit, if any.

Delivery The formal handing over of property; the transfer of possession, as by carrier to purchaser.

Design-build Contract A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

Emergency Defined as situations which would adversely affect the life, health or well being of citizens or employees. Work stoppages, unforeseen conditions, rapid response actions, etc., qualify as emergencies if the conditions arise from unforeseen circumstances. Conditions which arise from a lack of planning on the part of users do not qualify as emergencies under most circumstances.

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Employee An individual drawing a salary or wages from the City whether elected or not; any non-compensated individual performing personal services for the City or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of this city; and any non-compensated individual serving as an elected official of the City.

Employment Services Organization *An organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.*

Female-Owned or Female-Controlled Business A business enterprise at least 50 percent of which is owned by females or in the case of a publicly owned business at least 51 percent of the stock of which is owned by females.

Goods All material, equipment, supplies, printing, and automated data processing hardware and software.

Informality A minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity, or delivery schedules of the goods, services or construction being procured.

Insurance A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.

Invitation for Bid All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. ~~No confidential or proprietary data shall be solicited in any invitation for bid.~~

Minority-Owned Business A business enterprise that is owned or controlled by one or more *minority individuals who are us citizens or legal resident aliens or in the case of a corporation, partnership or limited liability company or other entity, at least 51% of equity ownership interest in the corporation, partnership or limited liability company or other entity is owned by one or more minority individuals who are us citizens or legal resident aliens and both the management and daily business operations were controlled by 51% or more minority individuals.* ~~socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Blacks, Puerto Ricans, Spanish speaking Americans, American Indians, Eskimos, and Aleuts.~~

Nominal Value So small, slight or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name but in no case to be more than two hundred dollars.

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Non-Professional Services Any services not specifically identified as professional services in the definition of professional services.

Payment Voucher A document authorizing payment and records the transaction in the accounting records before a check is issued.

Professional Services Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.

Person Any business, individual, union, committee, club, other organization, or group of individuals.

Public Body Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some government duty, and empowered by law to undertake the activities described in this Manual.

Public Contract An agreement between a public body and a nongovernmental source that is enforceable in a court of law.

Purchase Order A purchaser's written document to a supplier formally stating all terms and conditions of a proposed transaction.

Qualified Products List An approved list of goods, services or construction items described by model or catalog number, which prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

Request for Proposal All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Request for Quotation A form of informal solicitation, including obtaining oral or written quotes from vendors, without formal advertising and receipt of sealed bids.

Responsible Bidder A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

Responsive Bidder or Offeror A person who has submitted a bid or proposal which conforms in all material respects to the Invitation to Bid or Request for Proposal.

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Reverse Auctioning *A procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

Services Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

~~**Sheltered Workshop** A work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related~~

Small Business A United States corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, and has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

Sole Source Procurement *Only one practicable source available to provide the required goods or services and competition is not available.*

Specification Any description of the physical or functional characteristics or of the nature of a good, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service, or construction item for delivery.

Subcontractor Any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

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APPENDIX B: STANDARD OPERATING PROCEDURES

101. Petty Cash Purchase Procedures

The use of Petty Cash shall be highly discouraged. The City has established a petty cash fund in the Treasurer's Office, Parks and Recreation, and Library. The fund should be used for small out-of-pocket expenses (i.e., postage, office supplies, mileage, etc.) to reimburse employees who have been authorized to purchase items. All receipts shall be signed and dated by the employee who made the purchase, approved by the department head or authorized designee, and shall bear appropriate description budgetary line item codes for each item purchased. The City does not pay the sales and use tax when goods are purchased for the City. Under extenuating circumstances the Director of Finance may approve the reimbursement. It is ~~the employee's responsibility to~~ imperative that the employee ensure that the vendor does not charge sales tax. A Sales and Use Tax Certificate of Exemption form ~~should~~ must be presented to the vendor prior to the purchase. This form can be obtained from the Finance Department. A petty cash receipt signed by the employee and an authorized City official is required. No disbursement from the fund may total more than \$50.

102. Credit Card Purchase Procedures

Purchases may be made by authorized ~~City employees~~ personnel or designee using credit cards. All credit card receipts shall be signed and dated by the employee who made the purchase, approved by the department head or authorized designee, and shall bear appropriate budgetary line item codes for each item purchase. Receipts for meals shall include the detailed receipt of food purchased and the credit card receipt, the persons in attendance and purpose. City employees will submit to the Finance Department a completed payment voucher along with the original credit card receipt(s) within (3) three working days. The City does not pay sales tax on credit card purchases. It is the responsibility of the card holder to ensure sale tax is not charged and to remedy any sale tax charges that were erroneously charged.

103. Payment Voucher Procedures

Department heads may make small purchases under ~~\$2,500~~ \$5,000, including any shipping charges, at their discretion and within their budget availability. Such purchases must be charged to the appropriate budgetary line item codes. If budget funds are not available, payment may be denied and the person who ordered the goods may be held personally responsible for payment of the invoice. Once the bill is received, it should be attached with a copy of the invoice to a Payment Voucher (Exhibit A) and sent to the Finance Department for payment of the invoice. Neither a Purchase Requisition nor Purchase Order is required. This procedure should not be used for items that are procured under a Term Contract or Blanket Purchase Order Agreement.

104. Threshold for Issuing Purchase Orders

Department Heads are responsible for preparing Purchase Requisition (Exhibit B) for all purchases ~~\$2,500~~ \$5,000 including shipping charges or greater. Smaller individual items that are less than ~~\$2,500~~ \$5,000 but the combined order of identical items or materials are \$5,000 need a Purchase Requisition.

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All required information should be on the Purchase Requisition, including appropriate competitive quoting or bid information. Selection of the lowest bidder, detail of item to be procured, and price information, department heads should sign the Purchase Requisition certifying the availability of funds within their department. The Director of Finance may sign and approve of all Purchase Orders up to \$50,000, at which point the City Manager must sign and approve all purchases.

105. Basic Purchase Procedure

There are many decisions that will have to be made by the department head. His/her experience and judgment will determine, to a large degree, the success of the purchase considering the needs of the department, advantages to the City, and the relationship with the vendor. Some of the elements of the purchase requisition should be evaluated as follows:

- a. Delivery date
- b. Inspection and acceptance considerations
- c. F.O.B. Point considerations
- d. Dollar value or procurement
- e. Prospect of competition.
- f. Discount for early payment

Competition normally exists when two or more qualified sources of supply compete independently and on an equal basis for the City's requirements. Except for valid sole source or emergency items, adequate competition should be sought. Although the purchase request so indicates, the buyer cannot always assume that the only potential sources are those listed.

The department head submits a completed Purchase Requisition to the Finance Department for a purchase order to be issued. The purchase order must be prepared and received by the requesting department before items or services are ordered. The Finance Department will assign the next numerical Purchase Order (Exhibit C). Once the City Manager or Director of Finance signs the Purchase Order, 3 copies will be distributed as follows:

1. **Vendor** Requesting department delivers to vendor by hand, mail or fax.
2. **Requesting Department** Retained for filing with other purchase documentation, along with ~~the yellow~~ a copy of purchase requisition with all verbal and written quote information.
3. **Finance Department** Retained with all original purchase documentation. Along with Purchase Requisition with all verbal and written quote information.

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106. Blanket Purchase Orders

Blanket purchase orders can be used for purchases less than ~~\$30,000~~ \$50,000 when:

- (1) purchasing repetitive, specified services or items, or categories of items from the same vendor over a set period of time;
- (2) ordering maintenance supplies;
- (3) items are for immediate use.

Blanket purchase orders generally should not be used when:

- (1) use of the procedure will adversely affect use of other purchasing techniques that might produce greater discounts;
- (2) items are for replenishing stock;
- (3) no benefit will derive over and above a regular purchase order;
- (4) quality of a vendor or services is questionable;
- (5) prices are unknown at ordering time, or subject to change later without notice.

Quote information required for Small Purchases under **Article 5, Section 501 of this Manual**, and apply to all blanket purchase orders. In order to increase efficiency and flexibility in the use of blanket purchase orders, any City employee formally authorized by his or her department head may place or pick up orders. The employee shall sign his or her name on the order/receipt slip, which shall be coded on a payment voucher and immediately forwarded to the City Finance Department for payment. A list of all blanket purchase orders will be issued to users each fiscal year and any other time a change occurs.

107. Emergency Purchase Orders

Emergency purchase orders restate an order placed verbally and may be used for emergencies and to speed the purchase of incidental items under conditions which would hamper ongoing work if procured through the normal purchase order process. In all cases, purchase order numbers are secured and given to the vendor prior to placement of an order. The number is to appear on packing slips and invoices for payment. Emergency purchase orders should follow **Section 322** or ~~**Section 503**~~ where applicable.

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108. Preparation of the Invitation for Bid or Request for Proposal

The requesting department shall coordinate the preparation of necessary documents for Invitations for Bids, ~~and~~ Requests for Proposals, *and requests for quotes*, including the bid request, special conditions, specifications, bid or proposal advertisement, special bid sheets, and the list of bidders or offerors.

Invitation for Bid files will consist of the following:

For Construction:

- *Date for Receipt of bids.*
- *Whether a Prebid meeting is recommended.*
- *Expected Bid Amounts.*
- *Liquidated Damages amount, if required.*
- *Scope of Work*
- *Special Considerations*
- *How plans will be distributed.*
- *Pricing Method*
- *Plans may be provided as .pdf documents*
- *Bonding Requirements*
- *Retainage Amounts (if any)*

For Goods & Other Services:

- *Date For Receipt of bids*
- *Whether a Prebid meeting is recommended.*
- *Expected Bid Amounts.*
- *Scope of Work*
- *Special Considerations*
- *Pricing Method*

Requests for Proposals files will consist of the following:

For Professional Services:

- *Date for Receipt of proposals.*
- *Whether a Pre-Submittal meeting is recommended.*
- *Scope of Work including a list of deliverables*
- *Qualifications of prospective offerors.*
- *Evaluation Criteria*

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For Other than Professional Services:

- Date for Receipt of proposals.
- Whether a Pre-Submittal meeting is recommended.
- Scope of Work including a list of deliverables, or an explanation of services required.
- Qualifications of prospective offerors.
- Evaluation Criteria
- Potential pricing methods.

Request for Quotes files will consist of the following:

- Date for Receipt of quotes.
- Scope of Work including a list of deliverables, or an explanation of services required.
- Potential pricing methods.
- Special Considerations (if any).

~~Requests for Proposals shall indicate in general terms the goods or services the City seeks to procure, specifying the factors which the City will use in evaluating the proposal and containing any other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the offeror.~~

The requesting department shall consider the desirability of broad competition among vendors as a key factor in the preparation of ~~both~~ bid specifications, ~~and~~ Requests for Proposals, and request for quotes.

109. Bid and Proposal Files

The Department Heads, as appropriate, shall maintain complete control files on all formal bids and proposals for the City for a period of 5 years after audit as required by the Virginia State Library Procurement Records. The file on each bid or proposal shall contain a copy of: the bid or proposal invitation, general conditions, special conditions, specifications, advertisements, all bids or proposals received, bid tabulation, and evidence of award. ~~Award information and~~ Final contracts shall be submitted to the Finance Department. Bids and proposals are subject to the annual financial audit as performed by the City's auditors.

110. Disposal Procedure

A full description and relevant details of surplus and obsolete property shall be submitted to the Assistant City Manger, who shall investigate all proposals to dispose of surplus property. In collaboration with the Department Heads, he/she will either negotiate reassignment to another department, ~~obtain the City Manager's approval to~~ destroy, or ~~prepare a recommendation to~~ advertise by sealed bid or sell by auction. All sales shall be made in compliance with Commonwealth of Virginia statutes, and all bidding shall be open to the general public. No City

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employee or member of a City employee's immediate family shall participate in a sealed bid sale by the City, but City employees may participate in public auctions. The Assistant City Manager shall collect all proceeds, turning them over to the Finance Department as soon as possible. Sale, donation, or exchange to another government entity or bona fide non-profit organization is exempt from the above procedure ~~prior approval is obtained from the City Manager.~~

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Exhibit A

City of Poquoson Payment Voucher

VENDOR # _____

CUSTOMER ACCT.# _____

TOTAL DUE \$ _____ - DUE DATE _____

VENDOR NAME _____

MAIL CHECK TO _____

- _____ Blanket Purchase Order Payment - PO # _____
- _____ Partial Payment of PO # _____
- _____ Invoice (s) attached
- NOTE: Submit original invoice with voucher.
- _____ Explanation for no invoice

INVOICE DATE	INVOICE #	ACCOUNT NUMBER	DESCRIPTION	AMOUNT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Authorized and Certified as to availability of funds: _____
Department Head Date

Approved for payment: _____
Finance Director

Processed
Document #

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APPENDIX C: ETHICS IN PUBLIC CONTRACTING

Chapter 43 Article 6 Code of Virginia shall apply in its entirety for all persons with responsibility for making procurement transactions.

§ 2.2-4367. Purpose.

The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

1982, c. 647, § 11-72; 1987, Sp. Sess., c. 1; 2001, c. 844.

§ 2.2-4368. Definitions.

As used in this article:

"Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

"Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" means any person employed by a public body, including elected officials or appointed members of governing bodies.

1982, c. 647, § 11-73; 1987, Sp. Sess., c. 1; 2001, c. 844.

§ 2.2-4369. Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions A 2, 3 and 4 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

1982, c. 647, § 11-74; 1985, c. 565; 1987, Sp. Sess., c. 1; 1997, c. 83; 2001, c. 844; 2003, c. 694.

§ 2.2-4370. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

1982, c. 647, § 11-76; 2001, c. 844.

§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.

A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is

exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

1982, c. 647, §§ 11-75, 11-77; 2001, c. 844.

§ 2.2-4372. Kickbacks.

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

1982, c. 647, § 11-78; 2001, c. 844.

§ 2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

1997, c. 68, § 11-78.1; 2001, c. 844.

§ 2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited.

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101.

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

1982, c. 647, § 11-79; 1993, c. 202; 1994, c. 882; 1996, c. 827; 2001, c. 844.

§ 2.2-4375. Certification of compliance required; penalty for false statements.

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.

1992, c. 761, § 11-79.1; 2001, c. 844.

§ 2.2-4376. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

1992, c. 761, § 11-79.2; 2001, c. 844.

§ 2.2-4376.1. Contributions and gifts; prohibition during procurement process.

A. No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

2010, c. [732](#); 2011, c. [624](#).

§ 2.2-4377. Penalty for violation.

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

1982, c. 647, § 11-80; 2001, c. [844](#).

CITY OF POQUOSON PURCHASE PROCEDURES QUICK REFERENCE GUIDE



May 1999
Revised: 07/2007,

GOALS

The purchasing system operated by the City of Poquoson strives to:

- **EMPHASIZE** quality, value, and integrity in all procurements;
- **EXERCISE** positive fiscal control over public expenditures;
- **DELEGATE** purchasing authority when possible and prudent;
- **PROMOTE** administrative efficiency, and
- **COMPLY** with the Virginia Public Procurement Act.

INTENT

The purpose of this guide is to assist employees engaged in procuring goods and services for the City of Poquoson. It provides a "quick reference" to City purchasing procedures but **does not replace** the City of Poquoson Purchase Procedures Manual. Wherever conflicts between procedures identified in the Purchase Procedures Quick Reference Guide and the Purchase Procedures Manual occur, the provisions of the Purchase Procedures Manual shall in all cases apply. When in doubt, the City Manager and the Director of Finance are available to provide assistance and answer questions. Ultimately, the success of the purchasing process will depend on all departments conscientiously following established purchasing procedures.

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

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PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Responsibilities.

... of City Council

- * appropriates funds
- * approves contracts for goods or services of ~~\$30,000~~ \$100,000 or more, except for recurring expenditures such as salaries, utilities, school, and library payments
- * authorizes use of competitive negotiation for other than professional services as an alternative to competitive sealed bidding for purchases over ~~\$30,000~~ \$100,000
- * approves contracts over ~~\$20,000~~ \$100,000 for **professional services**
- * approves sale or lease of real property for 5 years or more
- * approves purchase or lease of real property for 5 years or more costing \$25,000 or more
- * approves other specific contracts
- * ~~issues a written determination~~ approves contracts for sole source and emergency purchases that are over ~~\$30,000~~ \$100,000

...of the City Manager

- * serves as chief contracting officer
- * approves purchase orders over ~~\$30,000~~ \$50,000
- * approves consultant, engineering & construction contracts
- * authorizes, as Council's agent, use of competitive negotiation for **other than professional services** as an alternative to competitive sealed bidding for purchases that are ~~\$30,000~~ \$100,000 or less
- * authorizes, as Council's agent, permission to **purchase** goods from a public auction
- * debars persons/firms, for cause, from consideration for award of contracts
- * appoints administrative appeals panel members
- * approves contract modifications increasing cost by no more than 25% or \$10,000, whichever is greater
- * approves sole source and emergency purchases that are ~~\$30,000~~ \$100,000 or less
- * executes contracts for other than professional services between ~~\$15,000~~ \$10,000 and ~~\$30,000~~ \$100,000, or greater than ~~\$30,000~~ \$100,000 at the direction of Council

...of the City Attorney

- * enforces and renders opinions regarding the Virginia Conflict of Interest Act
- * reviews and approves contracts as to form when requested by City Manager
- * approves alternative forms of security for bid bonds

...of the Assistant City Manager

- * disposes of surplus property

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

...of the Director of Finance

- * assists in the development and review of bid specifications for items to be purchased
- * determines the most appropriate procurement methodology
- * directs and manages the purchasing system
- * approves purchase orders less than ~~\$30,000~~ \$50,000
- * manages formal bid and proposal programs

...of Department Heads and their designated employees

- * conduct various procurement responsibilities
- * prepare purchase requisitions
- * receive and inspect materials
- * sign contracts under ~~\$5,000~~ \$10,000
- * detect and correct discrepancies
- * submit documents to substantiate payment
- * prequalifies bidders

...of the Finance Department

- * pays vendors
- * provides financial management data

Unauthorized Purchases. No person shall purchase or contract for any goods, services, insurance or construction on behalf of the City except as authorized by and in full compliance with the Purchase Procedures Manual. Any purchase order or contract made contrary to these provisions is not approved and the City shall not be bound thereby.

Failure to comply with the requirements of the Purchase Procedures Manual shall be cause for disciplinary action in accordance with the City's Personnel Manual.

Petty Cash Purchase Procedures. The use of Petty Cash shall be highly discouraged. The City has established a petty cash fund in the Treasurer's Office, Parks and Recreation and Library. The fund should be used for small out-of-pocket expenses (i.e. postage, office supplies, mileage, etc.) to reimburse employees who have been authorized to purchase items. All receipts shall be signed and dated by the employee who made the purchase, approved by the Department Head or authorized designee, and shall bear appropriate description budgetary line item codes for each item purchased. The City does not pay the sales and use tax when goods are purchased for the City. Under extenuating circumstances, the Director of Finance may approve reimbursement. It is ~~the employee's responsibility to ensure~~ imperative that the employee ensures that the vendor does not charge sales tax. A Sales and Use Tax Certificate of Exemption form ~~should~~ must be presented to the vendor prior to the purchase. This form can be obtained from the Finance Department. A petty cash receipt signed by the employee and an authorized City official is required. No disbursement from the fund may total more than \$50.

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Credit Card Purchase Procedures. Purchases may be made by authorized City employees using store credit cards. All credit card receipts shall be signed and dated by the employee who made the purchase, approved by the department head or authorized designee, and shall bear appropriate description budgetary line item codes for each item purchased. Receipts for meals shall include the detailed receipt of food purchased, ~~and~~ the credit card receipt, *persons in attendance and purpose*. City employees submit to the Finance Department a completed payment voucher along with the original credit card receipt within (3) three working days. The payment voucher must be signed and dated by the department head. *The City does not pay sales tax on credit card purchases. It is the responsibility of the cardholder to ensure sales tax is not charged and to remedy any sales tax charges that were erroneously charged.*

Payment Voucher Procedures. Department heads may make small purchases under ~~\$2,500~~ \$5,000, including any shipping charges, at their discretion and within their budget availability. Such purchases must be charged to the appropriate budgetary line item codes. If budget funds are not available payment may be denied and the person who ordered the goods may be held personally responsible for payment of the invoice. Once the bill is received it should be attached with a copy of the invoice to a Payment Voucher and sent to the Finance Department for payment of the invoice. Neither a Purchase Requisition nor Purchase Order is required. This procedure should not be used for items that are procured under a Term contract or Blanket Purchase Order Agreement.

SUMMARY OF POQUOSON PURCHASING PROCEDURES AND REQUIREMENTS

<i>Anticipated Cost</i>	<i>Quotations Required?</i>	<i>Bids or Proposals Required?</i>	<i>Purchase Order Required?</i>	<i>Authority to Approve Contract</i>
Under \$2,500 <u>\$5,000</u>	Desirable	No	No	Departmental
\$2,500 <u>\$5,000</u> to \$4,999 <u>\$9,999</u>	3 Verbal*	No	Yes	Departmental
\$5,000 <u>\$10,000</u> to \$29,999 <u>\$49,999</u>	Written	No	Yes	City Manager
\$30,000 and over <u>\$50,000 to \$100,000</u>	No <u>Written</u>	Yes**	Yes	City Manager, Council
\$100,000 and over	<u>Written</u>	Yes**	Yes	<u>City Council</u>
	*or written	**must be advertised		

Small Purchase Procedures. The majority of day-to-day purchases, those not exceeding ~~\$30,000~~ \$49,999, may be made using small purchase procedures. Departments must not circumvent competitive procurement requirements by fragmenting orders for like goods or services so that they fall within the dollar limits established for small purchases.

Although the City does not require formal competition for small purchases, negotiation and competition constitute major components of its small purchase procedure. Departments ~~may~~ must secure either verbal or written price quotations (*see chart above*) for purchases between ~~\$2,500~~ \$5,000 and ~~\$9,999~~ \$49,999; however, departments shall obtain formal written quotations for purchases of goods and services that are ~~\$5,000~~ \$10,000 or greater. Request for Quotation forms are available

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

from the Finance Department. These forms should be used to record both written and verbal quotations. (Samples of both these forms appear in this Guide.)- In either case, departments shall solicit the required number of quotations, and keep the information gathered with the purchase orders as backup documentation. *Departments shall not reveal quotations to competing vendors prior to award,* and should conduct a price check on expenditures of any dollar amount when buying unfamiliar materials.

Formal Bids and Proposals. Formal bids and proposals are required for all procurements of ~~\$30,000~~ \$50,000 or greater. The City Manager's Office and the Finance Department should review all formal bids and proposals prior to issuance. Department heads are responsible for preparation of all necessary documents including the bid/proposal request, special conditions, specifications, scope of work, advertisement, bid/evaluation sheets, and the bidders' list. Answers to technical questions arising during the bidding process are the responsibility of the department, which will coordinate a reply and ensure that all potential suppliers are provided the same information.

Departments must take care during the bidding and negotiation processes to avoid disclosure of sensitive or confidential information to competing bidders or offerors. Once competitive sealed bids are opened, the entire bid file becomes public information and may be released. Once competitive sealed proposals are received and opened, they shall be evaluated and *remain confidential until an award recommendation is made.* ~~may then be discussed with offerors. The only public information that may be released during this phase of the process is the number of proposals received and the names of the offerors. The name of the successful offeror and award price shall not be released until the contract recommendation has been approved for award.~~ All inquiries and requests for information regarding competitive sealed proposals will be directed to the responsible department head, unless otherwise specified in the Request for Proposals.

The City of Poquoson Purchase Procedures Manual includes detailed procedures for competitive sealed bids and competitive negotiation.

Formal bids and proposals must be kept on file for a period of 5 years *after the end of the contract period* and is subject to the City's annual financial audit. Therefore, all documents must be kept in an organized manner and be available for the auditors. **Appendix B, Section 109 of this Manual.**

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Sample Telephone Request for Quotation Form

Finance Department

PHONE QUOTE RECORD

Date:	Recorded By:
Time:	Requisition Number:

Item No.	Description	Qty.	Vendor #1	Vendor #2	Vendor #3
TOTALS					

Vendor #1	Vendor #2	Vendor #3
Name: _____	Name: _____	Name: _____
Phone: _____	Phone: _____	Phone: _____
Contact: _____	Contact: _____	Contact: _____

Purchase from Vendor #1
 Terms: _____

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Sample Written Request for Quotation Form

<p>City of Poquoson Finance Department 500 City Hall Avenue Poquoson, VA 23662 757-868-3030</p> <p>REQUEST FOR QUOTATION Number: _____ Issue Date: _____</p> <p><u><i>THIS IS NOT AN ORDER</i></u></p>			
<u>Quantity</u>	<u>Description</u>	<u>Unit Price</u>	<u>Amount</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Name of Company _____			
By (Signature) _____			
Title _____			
Quotation Date _____			
			_____ Buyer

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Source Selection. The Virginia Division of Purchases and Supply maintains term contracts for a wide variety of goods and services. In addition, the City participates with other municipal governments in cooperative procurement agreements for items such as police vehicles, photocopier paper, janitorial supplies, and uniform rental. Departments may purchase under these contracts and benefit from the lower prices that result from quantity buying. ***Departments shall use State contracts and cooperative purchase agreements as preferred sources of supply whenever it is to the City's advantage.***

Purchase Requisitions. A properly completed purchase requisition should be prepared by the department and signed by the Department Head. The completed form is forwarded to the Finance Department for use in generating a purchase order to a specific vendor. A sample Purchase Requisition appears on the next page.

A purchase order is required before goods or services are purchased.

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Purchase Orders, Authority, and Shipment. There are many decisions that will have to be made by the department head. His/her experience and judgment will determine, to a large degree, the success of the purchase considering the needs of the department, advantages to the City, and the relationship with the vendor. Some of the elements of the purchase requisition should be evaluated as follows:

- a. Delivery date
- b. Inspection and acceptance considerations
- c. F.O.B. Point considerations
- d. Dollar value or procurement
- e. Prospect of competition
- f. Discount for early payment
- g. New Vendor requires a W9 form
- h. Certificate of Insurance form

Competition normally exists when three or more qualified sources of supply compete independently and on an equal basis for the City's requirements. Except for valid sole source items, adequate competition should be sought. Although the purchase request so indicates, the buyer cannot always assume that the only potential sources are those listed.

The Department Head submits a completed Purchase Requisition to the Finance Department. The Finance Department will assign the next numerical Purchase Order. Once the Director of Finance signs the Purchase Order, 3 copies will be distributed as follows:

1. ***Vendor*** - copy delivered by hand, mail or fax.
2. ***Requesting Department*** – copy retained for filing with other purchase documentation, along with ~~the yellow~~ a copy of purchase requisition with all verbal and written quote information.
3. ***Finance Department*** - copy retained with all original purchase documentation.

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Sample Purchase Order Form

PURCHASE ORDER	CITY OF POQUOSON	*****
PAGE- 1 Batch # 654	500 CITY HALL AVE	** PURCHASE **
	POQUOSON, VA 23662-0000	** ORDER NUMBER **
	PHONE # 757-868-3030	** 61229 **
	FAX # 757-868-3101	*****
		DATE-2006/12/12

VENDOR- RUMMEL, KLEPPER & KAHL 002757	SHIP TO- CITY OF POQUOSON	
11838 ROCK LANDING DR	CITY MANAGER'S OFFICE	
SUITE 140	500 CITY HALL AVE	
NEWPORT NEWS, VA 23606	POQUOSON, VA 23662	

ORDER DATE- 2006/12/12 SHIP VIA- ATTENTION- PAYMENT TERMS: NET 30 DAYS
 REQUESTED SHIP DATE- 00000000 REFERENCE-

ITEM NO.	STOCK#	QUANTITY	UNIT ISSUE	DESCRIPTION G/L NUMBER	UNIT COST	EXTENDED COST
1		1		FINAL ELEVATION CERTIFICATE 001-4-040-045100-3140- FOR 5 HOMES UNDER 1ST HMGP, PHASE I	2,750.000	2,750.00
TOTAL COST						\$2,750.00

***** IMPORTANT *****
 OUR PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE.
 PLEASE ADVISE US IF YOU ARE UNABLE, FOR ANY REASON, TO SHIP ON THE REQUESTED DATE.
 THIS PURCHASE IS EXEMPT FROM TAX UNDER PROVISIONS OF ALL STATE RETAIL SALES AND USE TAX ACTS.

ORDER TYPE- NO CHARGE/CORE APPROVED BY- L DESSOFFY DATE- 2006/12/12

L Dessoffy

Purchase Order Substitutions, Amendments, and Cancellations. Substitutions on purchase orders must be approved in advance by the department head issuing the award. Any goods delivered that do not meet purchase order specifications may be returned to the vendor at the vendor's expense. It is the responsibility of department personnel to immediately notify the Finance Department, ~~as appropriate~~, when prices or items are changed on a purchase order. The authorized purchaser either accepts or rejects the change in writing. *Departments should be careful about permitting changes that were not agreed upon during initial negotiations.* Changes concerning quantity or price on orders less than ~~\$2,500~~ \$5,000 (which do not require purchase orders) may be verbal. Changes affecting orders ~~greater than \$2,500~~ \$5,000 or greater, and all changes regarding specifications regardless of value, must be written. No fixed price purchase order shall be increased by more than 25 percent of the amount or \$10,000 (whichever is greater) without the advance written approval of the City Manager.

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

No purchase order may be cancelled except in writing by the department head that issued the order. Vendors who deviate from the requirements of a purchase order prior to receipt of an order authorizing such substitution, change, or cancellation do so at their own risk.

Receipt of Orders. Departments are responsible for receiving and inspecting their orders. Packing slips or invoices shall accompany all shipments and shall reference the purchase order number assigned by the ordering department. Shipments are to be checked against the departmental copy of the purchase order to verify that quantities, units, etc., match the original order. Overshipments may be rejected and returned at the vendor's expense. Vendors should be given a specific delivery location and should receive a signed receipt of the goods delivered.

Department heads shall complete the receiving report copy of each purchase order upon receipt of the order by signing their name, the date of receipt of the items and any discrepancies or other notations. The receiving report shall be forwarded with packing slips, bills of lading, statements, and other substantiating documentation to the Finance Department for vendor payment within five days of the completion of the order.

When an order is received, the department should:

- (1) Examine shipping cartons for obvious/apparent damage.
- (2) Locate packing lists and freight bills.
- (3) Count and verify items received against packing lists.
- (4) Examine the items received for damage. If damage is found, the employee receiving the shipment should write a complete description of the damage and immediately notify the department head or Finance Department, as appropriate.
- (5) If the shipment is complete, the employee receiving the shipment should sign and date the receiving report, attach the packing slip, and forward both to the department head or Finance Department, as appropriate, for comparison against the vendor invoice.
- (6) If the shipment is incomplete, the employee receiving the shipment should note the shortage on the packing slip and forward it to the department head or Director of Finance Department, as appropriate. The same method should be followed for each shipment received until the order is complete. *Do not send the receiving report or invoice to the Finance Department until all items are received.*

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Loss or Damage in Transit. The City accepts title only when goods are received, regardless of the FOB point. The receiving department will note all apparent damages in transit on the freight bill and notify the vendor. Discovery of concealed damage or loss must be reported by the receiving department to the carrier and the vendor within seven days of receipt, and prior to removal from the point of delivery. The vendor will make immediate replacement of the damaged or lost merchandise and will be responsible for filing a claim against the carrier. If damage is to a small quantity, and the department will not be inconvenienced because of the shortage, the department head may deduct the amount of damage or loss from his or her invoice to the city in lieu of replacement.

Freight Charges. Normally, all orders placed by City departments will require prices to be FOB destination, including only the actual freight rate costs at the lowest and best rate and based upon the actual weight of the goods to be shipped. If an order is placed FOB origin, the vendor shall be required to prepay the charges and add the amount to the invoice. A copy of the freight bill is to be attached to all invoices that include freight charges.

Vendor Visits. The City welcomes visits to its departments by current and prospective vendors. In order that the staff and vendors may schedule their time most productively, vendors are advised to make appointments with Department Heads before visiting.

Billings and Payments. The name, address and telephone number of the requisitioning department is to be shown on each purchase order. Vendors shall be instructed to submit invoices directly to: **City of Poquoson, Finance Department, 500 City Hall Avenue, Poquoson, VA 23662.** If, after initially contacting the requisitioning department, a vendor has an unresolved payment problem with a contract or purchase order, the vendor should be referred to the Finance Department. Department heads may initiate partial payments when portions of an order have been received in good condition and have been properly invoiced by the vendor.

Procurement Review. The Director of Finance is responsible for reviewing specifications and sources of supply, and the Department Head and the Director of Finance are jointly responsible for developing a list of acceptable vendors of a specific product or service whenever necessary. Departments may not materially alter specifications without discussion with the Director of Finance. Review of purchase orders includes, but is not limited to:

- (1) Requests for "sole source" and "emergency" purchases.
- (2) Requests for goods of a quality that seems to be greater or less than required.
- (3) Requests where materials seem inconsistent with requirements.
- (4) Requests that do not conform to City standards.
- (5) Requests without proper authorization.

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Timetable. A smooth-functioning organization requires the processing of purchase orders in a timely fashion. Departments should consider the following guidelines when establishing priorities. (All delays significantly beyond these processing times will be discussed with the requisitioner.)

<i>Procurement Type</i>	<i>Processing Time</i>
<i>Rush (Emergency) Orders</i>	Immediately
<i>Regular Orders</i>	3 to 5 days
<i>Invitation for Bids</i>	30 to 45 days
<i>Request for Proposals</i>	60 to 90 days

Expediting. Departments are responsible for follow-up on all overdue or back-ordered purchase orders. In order to accomplish prompt receipt of materials, departments shall regularly review their logs of purchase orders issued and:

- (1) Locate any order where the material has not been received by or after the anticipated delivery date.
- (2) Ascertain whether the material is still outstanding and required.
- (3) If the material has not been received but is no longer required, the requestor shall write "CANCEL" in the description area of the receiving report, sign, and date it and return it to the department head. Upon receipt of the receiving report, the department head shall prepare written notification to the vendor advising that the order has been cancelled. The Department Head should then forward the receiving report to the Finance Department so the encumbered funds can be released.
- (4) If the material has not been received and is still required, the department head shall call the vendor and ascertain the shipping date, noting the expected date of receipt in their logs of purchase orders issued, on the receiving copy of the purchase order, and on any other pertinent information derived from the vendor.

Scheduled Purchasing, Adherence to City Standard Specifications. The Finance Department will identify commodities where consolidation of orders, scheduled buying and use of standardized specifications will be to the City's advantage and will directly manage the purchase of those particular groups of commodities according to a predetermined schedule or standardized specifications.

Examples of these purchases include but are not limited to computer systems, hardware, software, telephone equipment, long-distance services, and various supplies. Requesting departments will forward requisitions for these items to the Finance Department for issuance of purchase orders.

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

Sole Source and Emergency Procurements. While the City of Poquoson strives to employ competitive procedures throughout its purchasing system, under certain circumstances sole source contract awards are necessary to serve the best interests of the City and its citizens. Sole source awards involve procurements through the solicitation of a bid or proposal from only one source. All sole source and emergency procurements require written documentation that it is not practical to procure the required goods and services using competitive procedures.

All written determinations for non-competitive procurements of goods, services, insurance or construction items estimated to cost between ~~\$2,500~~ \$5,000 and ~~\$30,000~~ \$50,000 shall be approved by the City Manager. The City Manager shall approve contracts for goods or services normally requiring formal competitive sealed bidding or competitive negotiation (~~\$30,000+~~) (\$50,000). City Manager approval for any sole source or emergency purchases should be obtained prior to initiation of the procurement process. If the sole source or emergency procurement is not approved by the City Manager, the purchase requisition will be returned to the department.

A sole source or emergency purchase determination documents the basis for the sole source or emergency determination, indicates that only one source was determined to be practicably available, and identifies the item being procured and the contractor selected. Copies of the written determination will be maintained by the requesting department and the Finance Department.

City Council shall approve sole source or emergency purchases exceeding ~~\$30,000~~ \$100,000. A public notice documenting the details of the sole source or emergency procurement shall be posted in a designated public area in the requesting department or published in a newspaper of general circulation on the date the City awards or announces its decision to award the contract, whichever comes first.

A contract may be awarded through non-competitive negotiation only for:

- (1) the procurement of goods and services which the City ~~Council have~~ has determined in writing are provided by only one source;
- (2) an emergency, as defined in Appendix A of the Purchase Procedures Manual;
- (3) the procurement of goods and services produced or performed by persons in schools or workshops under the supervision of the Virginia Department for the ~~Visually Handicapped~~ Blind and Vision Impaired;
or by any other non-profit sheltered workshop or organization providing transitional or supported employment services for the handicapped;
- (4) the procurement of goods and services required in emergency situations where urgency will not permit the delay associated with competitive solicitation;
- (5) the procurement of legal services, the employment of expert witnesses, and other services

PURCHASE PROCEDURES QUICK REFERENCE GUIDE

associated with litigation or regulatory proceedings.

- (6) procurements from the state penitentiary, state contracts, state purchasing department warehouse, or for special ~~undercover police work~~ *confidential operations* when certified by the Police Chief.

Office Supplies and Equipment. In most cases, departments will obtain their own office supplies and equipment. However, departments should strive to combine orders for commonly used items to take advantage of quantity discounts whenever possible.

Maintenance Contracts. Departments are responsible for forwarding all equipment and building maintenance contracts to the Finance Department for processing. If the annual amount of the maintenance contract is ~~\$2,500~~ *\$5,000* or greater a purchase order is required on a fiscal year basis. The Department head is responsible for managing and updating maintenance files whenever an agreement is due for renewal. When a maintenance contract is in effect, the user department will place a telephone call directly to the company for service on the covered equipment.

Surplus Property Disposal. A full description and relevant details of surplus and obsolete property should be submitted to the Assistant City Manager, who shall investigate all proposals to dispose of surplus property. In collaboration with the department head, the Assistant City Manager will either negotiate reassignment to another department, ~~obtain the City Manager's approval to destroy or prepare a recommendation to advertise by sealed bid or sell by auction.~~ All sales shall be made in compliance with Commonwealth of Virginia statutes, and all bidding shall be open to the general public. **No City employee or member of a City employee's immediate family shall participate in a sealed bid sale by the City, but City employees may participate in public auctions.** The Assistant City Manager shall collect all proceeds, turning them over to the Treasurer as soon as possible. Sale, donation, or exchange to another government entity or bona fide non-profit organization is exempt from the above procedure provided prior approval is obtained from the City Manager.

The Finance Department must be informed about the disposal of surplus property for fixed assets, ~~anything~~ *purchased greater than \$5,000*, as well as ~~property insurance.~~



CITY OF POQUOSON

Office of the City Manager
J. Randall Wheeler

500 City Hall Avenue, Poquoson, Virginia 23662-1996
(757)868-3000 Fax (757)868-3101

June 27, 2016

To: City Council

From: City Manager

Subject: Resolutions Appointing A Student Representative To The Parks and Recreation Advisory Board

A request has been received from the Chairman of the Parks and Recreation Board for the appointment of a Student Representative. A copy of that request which explains why the request is made, the selection process and the recommended appointee is included with this item for your review.

This appointment is to be made by City Council pursuant to Article 4 of the By-Laws of the Advisory Board which were approved and officially adopted by City Council on February 25, 2013.

JFW:ei

RESOLUTION NO. _____

**RESOLUTION APPOINTING A STUDENT REPRESENTATIVE
TO THE PARKS AND RECREATION ADVISORY BOARD**

BE IT RESOLVED by the Council of the City of Poquoson, Virginia:

Section 1: That the following High School student be and the same hereby is appointed as an ex-officio member of the Parks and Recreation Advisory Board for a term beginning on September 1, 2016 and continuing until June 30, 2017.

Name

Section 2: That this resolution shall be in effect on and after its adoption.

ADOPTED: _____

TESTE: _____

City Clerk



Memorandum

June 27, 2016

TO: City Manager/Assistant City Manager
FROM: Keith Feigh, Parks and Recreation Advisory Board Chairman
SUBJECT: Parks and Recreation Advisory Board Request: Student Board Representative
Through: Gretchen Gochenour, Assistant Director Community Recreation

At its January 2016 meeting, the Poquoson Parks and Recreation Advisory Board determined that it would be beneficial to add a Student Board Representative. It is envisioned that this individual will provide a youth-participant perspective on activities and facilities provided by the Office of Community Recreation Department. During the January meeting, a sub-committee was appointed by the Parks & Recreation Advisory Board Chairman and asked to determine a process to move forward with the Student Board Representative Initiative. The process would include requirements, qualifications and justification for the position, a candidate application, and a timeline for the selection of a student representative to join the nine-member Board.

At its February meeting, the sub-committee presented a draft candidate application and process timeline to the Board. The Board made the decision that a candidate must have rising Sophomore or Junior standing in high school at the time of the appointment (anticipated to be in the summer of 2016), have experience in Community Recreation activities, and serve a term from September thru June. Some changes were suggested and incorporated into the application, and the following timeline was put in place:

February: Present the Board with written requirements and rationale for Student Representative and a draft application.
March: Finalize and approve the candidate application.
April: Announce and publicize the position and distribute the application.
May: Receive applications, conduct interviews, and select a candidate
June: Present candidate name to City Manager or Council for approval
September: Student Representative Term Begins

Following the April 2016 Board meeting, copies of the candidate application were made available at the Department of Community Recreation Office and the Poquoson High School Guidance Office. The position was advertised on the Community Recreation website, at the Department office, on cable Channel 47, and at the PHS Guidance Office. The Board established the deadline of 2 May for receipt of all applications.

On 2 May, all applications were collected. The sub-committee carefully reviewed each application for compliance with the stated requirements. The sub-committee then determined which applicants to interview based upon the qualifications listed in the application. Candidate interviews were set for 23 May. Following the interview process, the sub-committee selected a candidate whose name they will forward to the City Manager's Office for consideration for approval and by Council if necessary.

The recommended candidate for consideration for the position of Student Representative to the Poquoson Parks and Recreation Advisory Board is Ms. Martha Chiappazzi. Martha will be a rising sophomore at Poquoson High School this summer. She has participated in Community Recreation activities for several years including youth recreation soccer, field hockey clinics and leagues, and swim team. She has also volunteered her time with the Community Recreation Department by helping with youth swimming lessons and assisting at the Annual Easter Egg Hunt.

Ms. Chiappazzi possesses all of the qualifications the sub-committee was looking for and will be an excellent addition to the Advisory Board as its Student Representative.

BY-LAWS OF THE POQUOSON PARKS & RECREATION

ADVISORY BOARD

ARTICLE 1 NAME

Section 1. The name of this organization shall be the Poquoson Parks and Recreation Advisory Board.

ARTICLE 2 MISSION

Section 1. **Poquoson City Council:** The Board shall advise the City Council on all matters referred to it by the City Council.

Section 2. **Planning:** The Board shall identify the recreational facility needs of the City, prioritize those needs, and recommend a Master Plan to satisfy those needs to the City Council. The Board is responsible for providing recommended changes to the Parks and Recreational sub-element contained in the Comprehensive Plan which shall be updated every five years.

Section 3. **Public information and Participation:** The Board shall function as a voice of the public, to advise City Council on all matters that pertain to the planning, administration, and budgeting for City Parks and Recreation facilities and programs. The Board shall host public meetings pertaining to parks, and provide educational and promotional information to the general public.

Section 4. **Projects:** The Board shall be responsible for recommending projects to the Director of Parks & Recreation for approval by City Council, and for reviewing and providing recommendations on projects to be addressed by the City Council including any actions involving right-of-way, sale and purchase of property for use as City-owned recreational areas.

Section 5. **Cooperation with Other Organizations:** The Board will promote full cooperation and coordination between the Parks and Recreation Department and other agencies such as the school division, other City departments and community non-profit organizations and agencies.

Section 6. **Temporary Committees:** The Board shall be responsible for appointing temporary committees that deal with specific issues requiring additional public input.

Section 7. Administration: The Board shall work in concert with the City Director of Parks & Recreation, City Planner and City Council members to preserve the integrity of the City of Poquoson's park and open space system through planning and administration, including budget preparations for specific park capital projects.

ARTICLE 3 BOARD STRUCTURE

The Board is responsible to the City Council of Poquoson. The Director of Parks and Recreation, or his/her designee, is responsible to advise the Board on all matters deemed pertinent to the Parks and Recreation activities but is not supervised by the Board.

ARTICLE 4 MEMBERSHIP

Section 1. The Board shall consist of nine (9) voting members. All members will be residents of the City of Poquoson. The Board shall consist of two members from each voting district and three members at large. Members of the Board will be appointed by the City Council for such terms as City Council shall provide. The Director of Parks & Recreation, or his/her designee, shall serve as an ex-officio non-voting member of the Board. City Council may at its discretion, select one member of City Council to serve as an ex-officio member of the Board. Council may also appoint, at its discretion, no more than three youth, one from each voting district, to serve one year terms as ex-officio members of the Advisory Board.

Section 2. Voting members will be appointed or designated by the City Council for a three year term or to fill vacancies for the remainder of a term, unless there is a deemed necessary exception. The terms shall be staggered in such a manner to allow no more than 40% of the board membership's terms to expire in any one year.

Section 3. Members may be removed by the City Council after a resolution for the same is passed by the Council. Reasons for removal are: a lack of performance of duties; demonstration of conflict of interest; more than three unexcused absences during a 12 month period, or other activities detrimental to the best interests of the City. In the event of such occurrence the Chairperson shall advise City Council.

Section 4. The Board will request vacancies occurring on this Board be filled through appointment by City Council within thirty days of notification of the vacancy. Members may be reappointed for additional terms provided they

communicate to City Council in writing their desire for reappointment prior to the expiration of their term.

Section 5. Members shall serve without pay or compensation, but under certain conditions may be reimbursed for expenses incurred while performing their duties.

ARTICLE 5 OFFICERS OF THE BOARD

Section 1. The officers of the Board shall consist of a Chairperson, Vice-Chairperson and Secretary.

Section 2. The officers of the Board shall be elected annually at the first meeting after the first of January to serve a 1 year term. The Chairperson may not serve more than 3 consecutive terms.

Section 3. Officers shall be elected from the membership of the Board by majority vote of the members present. No vote shall take place unless a quorum is present. The candidates do not have to be present.

Section 4. Vacancies occurring among the officers of the Board shall be filled by special election within 30 days.

Section 5. City Council shall be notified when a new Chairperson is elected.

ARTICLE 6 CHAIRPERSON'S DUTIES

Section 1. The Chairperson shall, in consultation with Parks and Recreation staff, prepare the agenda for, and preside over all meetings.

Section 2. The Chairperson shall sign all documents executed on behalf of the Board.

Section 3. The Chairperson shall serve as the spokesperson for the Board to present or explain views and/or actions taken by the Board.

Section 4. The Chairperson shall perform other duties as directed by the City Council or by amendment to these By-laws.

Section 5. The Chairperson may appoint another member of the Board to temporarily assume elements of these responsibilities in the absence of the Chairperson.

ARTICLE 7 VICE-CHAIRPERSON'S DUTIES

Section 1. In the absence of the Chairperson, the Vice-Chairperson shall assume all the powers and duties of the Chairperson.

Section 2. The Vice-Chairperson shall perform other duties as directed by the Chairperson, City Council or by amendment to these By-laws.

ARTICLE 8 SECRETARY'S DUTIES

Section 1. The Secretary shall keep detailed minutes of each meeting and provide these to the Director of Parks and Recreation, or his/her designee, for publication and distribution to Board members prior to the next meeting.

Section 2. The Secretary shall be responsible for all official correspondence for the Board or as directed by the Chairperson and shall maintain a file of all correspondence.

Section 3. The Secretary shall maintain a current list of all Board members and their contact information, and shall keep all members informed of any changes.

Section 4. By agreement, certain duties may be delegated to City staff.

ARTICLE 9 MEETINGS

Section 1. Regular meetings shall be held once a month, or at a minimum on a quarterly basis. The date, time and location will be determined by the Board by consensus. Special meetings may be called at any time by the Chairperson, City Council, the Director of Parks and Recreation, or his/her designee, or by five members of the Board. Meetings are open to the public except when circumstances require a closed session. Closed sessions will only be conducted upon the advice and direction of the City Attorney.

Section 2. A quorum at any meeting of the Board shall consist of not fewer than five of the currently appointed members. Any action by those present, provided there is a quorum, constitutes an action of the Board. In the event a quorum is not present at any meeting, the members may adjourn and reschedule the meeting at a later date with required notice.

ARTICLE 10 COMMITTEES

Section 1. Committees may be appointed by the Chairperson from the Board membership from time to time to work on special projects and report their findings at regular meetings. Upon completion of the assigned task, the Chairperson shall dissolve the committee.

Section 2. The Board may create when it so deems necessary standing committees. The Chairperson shall appoint any such committees from Board membership. Committee members shall serve until their term of office expires. Committee members may be reappointed should their term on the Board be extended by reappointment by City Council.

ARTICLE 11 PARLIAMENTARY AUTHORITY

Each member of the Poquoson Parks & Recreation Advisory Board shall be entitled to vote on all matters brought before the Board. A roll call vote shall be taken on a motion whenever the vote is not unanimous. All other voting procedures shall be governed by parliamentary procedure according to Robert's Rules of Order (Newly Revised). No proxy votes shall be allowed.

ARTICLE 12 AMENDMENTS

These By-laws may be approved or amended in whole or in part by a 2/3 vote of the Poquoson Parks and Recreation Advisory Board, subject to the approval of the Poquoson City Council, during a regularly scheduled meeting provided any proposed changes to the By-laws are distributed in written form to all members at least ten days prior to the meeting at which action is taken on the proposed changes.

ARTICLE 13 ENACTMENT

These By-laws and any amendments shall become effective when approved by a concurring majority vote by the current voting members of the Board and adopted by a Resolution of the City Council.

Approved by the Poquoson Parks and Recreation Advisory Board this 6th day of February, 2013.

The Poquoson Parks & Recreation Advisory

By: _____



CITY OF POQUOSON

Office of the City Manager
J. Randall Wheeler

500 City Hall Avenue, Poquoson, Virginia 23662-1996
(757)868-3000 Fax (757)868-3101

June 27, 2016

To: City Council
From: City Manager
Subject: Resolution Designating FOIA Officers For The City of Poquoson

Legislation was passed during the 2016 General Assembly session requiring all cities, towns and counties with a population of more than 250 to designate and identify a local FOIA (Freedom of Information Act) officer(s). The Officer will be responsible for the FOIA requests made to the City. The person should have specific knowledge of the FOIA provisions and must undergo annual training given by either the City Attorney or the FOIA Advisory Council.

Presented therefore for your consideration is a resolution designating FOIA Officer(s) for administrative records and for Police records. Recommendations for these appointments are Judy Wiggins, City Clerk, Victoria Diggs, Deputy City Clerk and Clifford Bowen, Police Chief. Judy and Vicki will be responsible for all inquiries except for those pertaining to the Police Department.

The rights and responsibilities of requestors and the responsibilities of the FOIA officers and the procedures they must follow are explained in detail and posted on the City's website. The officers along with their contact information are identified as well.

RESOLUTION NO. ____

**RESOLUTION DESIGNATING FOIA
(FREEDOM OF INFORMATION ACT) OFFICERS
FOR THE CITY OF POQUOSON**

WHEREAS, effective July 1, 2016, legislation passed during the 2016 session of the General Assembly requires the designation of a FOIA officer(s) by all cities, towns, or counties having a population of 250 or more whose responsibility shall be to respond to all FOIA requests received by the locality; and

WHEREAS, the legislation also requires that information about FOIA and the designated officer(s) must be provided on the website with a link to the City's homepage.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Poquoson, Virginia:

Section 1: That the following persons be and the same hereby are designated as the City's FOIA officers to serve at the pleasure of Council:

<u>Name</u>	<u>Terms Expire</u>
1.	Pleasure of Council
2.	Pleasure of Council
3.	Pleasure of Council

Section 2: That this resolution shall be in effect on and after its adoption.

ADOPTED: _____

TESTE: _____
City Clerk