

ARLINGTON COUNTY, VIRGINIA



County Board Agenda Item Meeting of June 12, 2010

**CONFIDENTIAL
CLOSED SESSION
LAND MATTER**

DATE: June 8, 2010

SUBJECT: Approval of an Agreement of Sale between Kamizaki, LLC, as Seller, and the County Board of Arlington County, Virginia, as Purchaser, for the Land and the Improvements Located at 3538 Wilson Boulevard, Arlington, Virginia (RPC # 19016005).

C.M. RECOMMENDATIONS:

1. Approve the attached Agreement of Sale between Kamizaki, LLC and the County Board of Arlington County, Virginia, for the County Board's purchase of 3538 Wilson Boulevard, Arlington Virginia (RPC #19016005); and
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute, on behalf of the County Board, the attached Agreement of Sale and all related documents necessary for the acquisition, subject to approval as to form of such documents by the County Attorney.
3. Appropriate \$1,450,000 plus related closing costs from the General Fund - Debt Service account (101.91151) to the General Capital Fund in the department of Parks and Recreation (313.80001).

ISSUE: This Board Report requests the approval of an Agreement of Sale for the County Board's purchase of the property and existing improvements located at 3538 Wilson Boulevard. There are no issues identified with this report.

SUMMARY: The attached Agreement of Sale is an offer by Kamizaki, LLC to sell the land and improvements located at 3538 Wilson Boulevard (the "Property") to the County Board for a purchase price of one million four hundred fifty thousand dollars (\$1,450,000). If the County Board approves this acquisition, then the improvements on the Property would be deconstructed, and grass would be planted on the surface of the Property. The rear portion of the Property would serve to connect Maury Park and Herselle-Milliken Park. The front portion of the Property would remain undeveloped unless and until such time that the County Board decides to use the Property for future development or other public purposes.

County Manager: MBB/EMD

County Attorney: PAK GAM

Staff: Michael Halewski – DES, Real Estate Bureau

BACKGROUND: The Property is located on the south side of Wilson Boulevard, mid-block between North Lincoln Street and North Monroe Street. The Property is located in the Virginia Square Metro area, and is in the Ashton Heights Civic Association. The Property is shown on the Vicinity Maps attached hereto as Exhibits B1, B2 and B3. The Property consists of: 1) approximately 10,809 square feet of land, currently zoned C-2 (Service Commercial); and 2) improvements, including a two-story, 2,600 square-foot building, a small detached garage, and shed. The main building is partially renovated, and is currently vacant. The Property was purchased by the current owner in 2006 for \$1,595,000.

The Public Spaces Master Plan references the Virginia Square Sector Plan, which calls for the expansion of Maury Park eastward to North Lincoln Street, and southward to 8th Street North. The County Board previously purchased the two parcels fronting on North Lincoln Street that currently constitute Herselle-Milliken Park. The proposed acquisition of the Property is consistent with, and in furtherance of, the Public Spaces Master Plan and the Virginia Square Sector Plan.

DISCUSSION: County staff has concluded negotiations with the Seller, subject to Board approval, for the acquisition of the Property. In December of 2009, County staff obtained a summary appraisal report from a Virginia licensed real estate appraiser. The report indicated the fair market value of the Property as being one million six hundred twenty thousand dollars (\$1,620,000). The proposed purchase price of the Property is one million four hundred fifty thousand dollars (\$1,450,000). The Property is to be delivered to the County vacant, free of trade fixtures from the owner's business, and in broom swept condition.

Much of the due diligence that is commonly associated with the acquisition of commercial real property has been performed by the County. A Phase I environmental study of the Property, prepared for the County by Greenhorne and O'Mara, indicates that there are no reported environmental conditions or environmental liability related to the Property.

This Property is uniquely located between and immediately adjacent to Maury Park and Herselle-Milliken Park. Acquisition of the Property will provide a connection between Maury Park and Herselle-Milliken Park through the rear half of the Property. If the County Board approves the proposed acquisition of the Property, County staff intends to deconstruct all existing improvements on the Property, and plant grass over the entire Property. The rear portion of the Property will remain covered with grass as a connection between the two existing parks. If the opportunity presents itself in the future, then the County could subdivide the Property, and the front portion of the Property may be used as part of a future development. The current density associated with the entire Property could also be available for transfer in aid of future development of the park.

The Agreement of Sale becomes null and void if the County Board does not approve the Agreement by June 30, 2010. Closing will occur within thirty (30) days after completion by the County of the environmental due diligence, unless closing is extended for resolution of survey and title issues.

FISCAL IMPACT: The Property is to be purchased by the County for One Million Four Hundred Fifty Thousand Dollars (\$1,450,000), plus additional closing costs. Sufficient funds exist in the General Fund debt service account, and with the board action, will be appropriated to the General Fund Capital account. The available funds are a result of the unspent debt service budget due to lower than budgeted interest rates and cash flowing of projects which helped to reduce and defer the amount needed to be financed.

CONCLUSION: If the County Board wishes to take the recommended action, then the following motion is made for use in open session:

I move that the County Board:

1. Approve the attached Agreement of Sale between Kamizaki, LLC and the County Board of Arlington County, Virginia, for the County Board's purchase of 3538 Wilson Boulevard, Arlington Virginia (RPC #19016005); and
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute, on behalf of the County Board, the attached Agreement of Sale and all related documents necessary for the acquisition, subject to approval as to form of such documents by the County Attorney.
3. Appropriate \$1,450,000 plus related closing costs from the General Fund - Debt Service account (101.91151) to the General Capital Fund in the department of Parks and Recreation (313.80001).

EXHIBIT A
AGREEMENT OF SALE
AGREEMENT OF SALE

This AGREEMENT OF SALE (the "Agreement") is made on _____, 20__ by and between by **KAMIZAKI, LLC**, a Virginia limited liability company ("Seller"), and **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate and politic ("Purchaser"). Seller and Purchaser are sometimes referred to hereinafter as the "Parties".

In consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the mutual benefits to be received by the parties, Seller agrees to sell, and Purchaser agrees to buy pursuant to the terms and conditions of this Agreement, in fee simple absolute, all that land, together with the improvements thereon, situate, lying and being in Arlington County, Virginia, and being more particularly described in paragraph 1 below:

1. THE PROPERTY: All that certain parcel or tract of land, together with the improvements thereon and appurtenances thereto, situate, lying and being in Arlington County, Virginia, and known as 3538 Wilson Boulevard (RPC # 19016005), and being more particularly described as:

Lot No. 1 of the subdivision of Moyler's Addition To Clarendon, as the same appears on a plat recorded in Deed Book 159 at Page 152, the dedication of which is of record in Deed Book 159 at Page 140, among the land records of Arlington County, Virginia.

Less and Except 121.69 square feet of land conveyed to the County Board of Arlington County, Virginia by Deed dated August 5, 1947 and recorded August 18, 1947 in Deed Book 788 at Page 419, among the land records of Arlington County, Virginia.

2. PRICE: The total purchase price of the Property is One Million Four Hundred Fifty Thousand and 00/100 Dollars (\$1,450,000.00), subject to adjustments as provided for in this Agreement, to be paid by Purchaser to Seller as set forth hereafter (the "Purchase Price").

3. SETTLEMENT:

- a. The settlement of the sale of the Property in accordance with this Agreement (the "Settlement" or "Settlement Date") shall take place within thirty (30) days after the completion of the requirements of Paragraph 10 (Hazardous Materials), unless extended to meet the conditions and requirements of Paragraph 5 (Title), Paragraph 11 (Survey), or as provided in Paragraph 3b.
- b. The Real Estate Bureau Chief, Engineering and Capital Projects Division of the Arlington County Department of Environmental Services is authorized to extend the Settlement Date on behalf of Purchaser pursuant to any provision of this Agreement, or upon written agreement of Seller and Purchaser.
- c. Settlement shall take place in the offices of Walker Title, LLC, 2009 14th Street North, Suite 603, Arlington, Virginia 22201, or at such other place, and by such other person or entity as Purchaser desires (the "Settlement Agent").
- d. On or before Settlement, Purchaser shall deliver good funds to the Settlement Agent for the Purchase Price. The settlement proceeds due to Seller, after prorations and adjustments made pursuant to this Agreement, will be disbursed by the Settlement Agent's trustee check or wired funds upon the completion of the bring-down of title and recording of the deed of conveyance.
- e. Seller represents and warrants to Purchaser that Seller is not a "foreign person" as defined by §1445 of the Internal Revenue Code, and is a resident of Virginia. At the time of Settlement, Seller shall execute necessary forms and affidavits stating the same under penalty of perjury and providing Seller's true and correct address and United States Taxpayer Identification Number for a proper 1099 Internal Revenue Service Form. Seller and Purchaser shall also execute such other settlement documents as are reasonably required by the Settlement Agent.
- f. Seller warrants and represents that it has the full legal right and authority to execute this Agreement and to convey the Property to Purchaser and to execute any and all other documents necessary or desirable to effectuate Seller's obligations under this Agreement of Sale. If additional signatures, authority or documentation is required by the title insurance company or the Settlement Agent, Seller shall promptly and at its own cost supply the

same. If Seller is a legal entity such as a corporation, partnership, limited liability company or is a fiduciary, such as a trustee, executor or administrator, then Seller warrants and represents that it has the authority to execute this Agreement on behalf of Seller, and to bind Seller to the terms of this Agreement.

g. **DISCLOSURES: a. Choice of Settlement Agent: You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement attorney who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.**

h. **ESCROW, CLOSING, AND SETTLEMENT GUIDELINES: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement, or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provisions of the Consumer Real Estate Settlement Protection Act. (1997, c.716.)**

4. **ENCUMBRANCES:** Seller shall not, either by commission or omission, cause or permit the Property to be encumbered in any way after Seller's execution of this Agreement.

5. **TITLE:** Seller agrees to execute and deliver a good and sufficient General Warranty deed with English Covenants of Title to the Property to Purchaser at Settlement. The Property shall be conveyed free and clear of all deeds of trust, judgments, liens,

indebtedness or encumbrances, and without restrictions, easements, rights of way, covenants of record, title and survey exceptions, or leases, which, in the sole opinion of Purchaser, restrict or adversely affect the use of the Property by Purchaser for public purposes (together "Title Exceptions"). In addition, title shall be marketable and fully insurable ("Marketability") at usual and normal rates by a highly reliable national title insurance company licensed to do business in the Commonwealth of Virginia and approved by Purchaser, and free of Title Exceptions. Seller shall, at its sole expense, remove any such Title Exceptions or objectionable Marketability matters prior to Settlement. So long as Seller is actively pursuing the removal of such Title Exceptions or objectionable Marketability matters in good faith, the Settlement Date shall be extended until such Title Exceptions or objectionable Marketability matters are corrected, at the sole option of Purchaser. If at any time Purchaser concludes that such Title Exceptions or objectionable Marketability matters cannot be removed in a timely and satisfactory fashion, then Purchaser may declare this Agreement void, and neither party will have further rights or responsibilities hereunder.

6. CHARGES: Examination of title, notary fees, State and local recording taxes (except the Virginia grantor tax) if any such taxes are applicable to this transaction, and Purchaser's attorney's fees are to be the cost of Purchaser. Seller shall pay for its own attorney's fees and costs, the preparation of the deed, the Virginia grantor tax, a reasonable settlement fee, the release of any liens or encumbrances against the Property, and the costs and attorney's fees to cure or remove any Title Exceptions or objectionable Marketability matters. Real estate taxes, water, sewer, utility and all other charges are to be pro-rated to the Settlement Date.

7. ELECTION REGARDING RELOCATION ASSISTANCE: This Agreement is the result of the arms-length negotiations for a voluntary sale of the Property. The Parties agree that no Federal, State, or local relocation assistance is applicable to this transaction.

8. DAMAGE PRIOR TO POSSESSION: Risk of loss shall be on Seller until the recordation of the deed. If, prior to delivery of possession, the Property is damaged by any casualty, Purchaser may, at Purchaser's sole option, terminate this Agreement.

9. POSSESSION AT SETTLEMENT: Seller agrees to give possession of the Property at Settlement.

10. HAZARDOUS MATERIALS:

- a. Seller represents that, to the best of Seller's knowledge: (i) neither Seller, nor its predecessors in title, have disposed of, released, or deposited hazardous or toxic wastes or substances, including asbestos, regulated by the most stringent applicable Federal, State or Local environmental, health, and safety laws, regulations, ordinances, or standards ("Hazardous Materials") on or within any part of the Property; and (ii) Seller has no actual knowledge of any such disposal, release, or deposit of Hazardous Materials on or within any part of the Property. Seller further warrants that Seller has not disposed of, released, or deposited any Hazardous Materials originating on the Property, except as provided by law at a site or facility approved by Federal, or State or Local regulatory agencies for the disposal of such materials. These representations and warranties in this paragraph shall survive conveyance of the Property to Purchaser or Purchaser's termination of this Agreement.
- b. Prior to Settlement, Purchaser may have the Property inspected by a contractor of Purchaser's choice for the presence of Hazardous Materials, including asbestos and lead based paint in amounts or forms in excess of the most stringent applicable Federal, State or local environmental, health and safety laws, regulations, ordinances, or standards. This inspection shall assume continued use of all improvements, if any, on the Property. The aforesaid inspection, together with any report, opinion or investigation of the Property for Hazardous Materials shall be referred to as the "Inspection Report".
- c. Seller represents and warrants to Purchaser that Seller shall not, either by commission or omission, cause or permit the disposal, release, or deposit of any actionable quantities of Hazardous Materials on or within any part of the Property after the date this Agreement is executed on behalf of the Purchaser. These representations and warranties in this paragraph shall survive conveyance of the Property to Purchaser or Purchaser's termination of this Agreement.

- d. If the Inspection Report shows the presence of Hazardous Materials, then Purchaser shall have the right, but not the obligation, after receipt of the Inspection Report, to either:
 - (i) proceed to Settlement with no reduction in the Purchase Price; or
 - (ii) terminate this Agreement prior to Settlement by providing written notice to Seller. Upon delivery of such notice to Seller, Purchaser and Seller shall have no further duties, liabilities and obligations to the other party under this Agreement, except as to any representations and warranties made pursuant to Paragraph 10.
- e. If Purchaser is satisfied, in its sole discretion, that the Property is free of Hazardous Materials, or that the amount of such Hazardous Materials is not sufficient to prevent the purchase of the Property, then Purchaser shall proceed with the purchase of the Property and Settlement shall take place in accordance with the terms and conditions of this Agreement.

11. **SURVEY:** The boundaries and acreage of the Property to be conveyed may be determined and depicted by a survey prepared by a registered land surveyor or engineer, conducted at the direction and expense of Purchaser. The survey may locate and depict all improvements, easements, rights of way, set backs, encroachments, flood plain and flood fringe areas and any other particulars which may be required by Purchaser. Purchaser shall provide Seller with a copy of the survey and, with a list of any matters which, in Purchaser's sole discretion, restrict or adversely affect Purchaser's intended use of the Property, encumber the Property, or otherwise adversely affect the marketability, use or enjoyment of the Property (all of the aforesaid being referred to as "Survey Exceptions"). Thereafter, Seller, at its own expense, shall remove any such Survey Exceptions prior to Settlement. Notwithstanding the foregoing, so long as Seller is actively pursuing the removal of Survey Exceptions in good faith, the Settlement Date shall be extended until such Survey Exceptions are corrected, at the option of Purchaser. If at any time Purchaser concludes that the Survey Exceptions cannot be removed in a timely and satisfactory fashion, then Purchaser may declare this Agreement void, and neither party will have further rights or responsibilities hereunder.

12. **INSPECTION OF PREMISES:** Seller shall permit the agents, designees and employees of Purchaser access to the Property at all reasonable times for the purpose of making the inspections necessary in connection with paragraph 10 (Hazardous or Toxic

Materials), a building condition survey, and the survey pursuant to paragraph 11 (Survey), and for any other purpose contemplated by this Agreement.

13. NOTICES: All notices, demands, and requests which may be given, or are required to be given by either party to the other shall be in writing, and shall be either hand delivered by Federal Express or sent by United States certified mail, return receipt requested, with proper first class postage prepaid, properly and fully addressed:

If to Seller: KAMIZAKI, LLC
 c/o Thomas Meyer
 Condo 1, Inc.
 3240 Wilson Boulevard, Suite 120
 Arlington, Virginia 22201

If to Purchaser: Real Estate Bureau Chief
 Arlington County Department of Environmental Services
 2100 Clarendon Blvd, Suite 800
 Arlington, Virginia 22201

Notice shall be deemed effective upon delivery.

Any party may, by like notice given at least ten (10) days before such change becomes effective, designate a new address to which such notices shall be sent.

14. COMMISSIONS: Seller and Purchaser represent and warrant to each other that neither has dealt with any real estate broker, agent or finder with respect to the transaction contemplated by this Agreement. Seller shall indemnify, defend and hold Purchaser, its elected and appointed officials, officers and employees, harmless of, from and against any demand, suit, claim or liability, for any broker's, agent's or finder's fee asserted by any person or entity claiming to be engaged by or on behalf of Seller.

15. DAMAGES: In the event Seller fails or refuses to perform its obligations under this Agreement, including but not limited to its obligation to convey the Property, Purchaser shall be entitled to recover all of its costs and expenses incurred in connection with this Agreement, any breach of this Agreement, or the enforcement of this Agreement, including but not limited to its costs for the preparation of this Agreement, for all inspections, studies and surveys performed or contracted for in connection with this Agreement, and all of its attorney's fees and court costs incurred pursuant to this paragraph. In addition to the foregoing, Purchaser shall be entitled to all other damages it has suffered, in accordance with law. Without limiting or waiving the foregoing, Purchaser may also seek all remedies to which it is entitled in equity, including the right to an injunction or restraining order and the right to seek specific performance.

16. **PURCHASER APPROVAL REQUIRED:** The execution of this Agreement by Seller constitutes an offer to sell the Property to Purchaser. This offer shall become null and void if the County Board of Arlington County, Virginia does not approve the Agreement within thirty (30) days after the Agreement is executed by Seller and delivered to Purchaser.

17. **BINDING AGREEMENT:** The parties to this Agreement mutually agree that it shall be binding upon them, and each of the respective heirs, executors, administrators, successors and assigns; that the provisions hereof shall survive the execution and delivery of the deed aforesaid and shall not be merged therein except as specifically provided herein; that this Agreement contains the final and entire agreement between the parties hereto; and that they shall not be bound by any terms conditions, statements, warranties or representations, oral or written, not contained herein.

18. **APPLICABLE LAW:** This Agreement shall be construed, interpreted and applied according to the laws of the Commonwealth of Virginia. All legal actions brought by either Purchaser or Seller concerning this Agreement shall be brought in the Arlington County Circuit Court.

19. **SELLER'S AUTHORITY:** The person(s) executing this Agreement on behalf of the Kamizaki, LLC hereby represents and warrants all of the following:

- a. he/she is a member of Kamizaki, LLC, that he/she is duly authorized to enter into this Agreement on behalf of Kamizaki, LLC, and that he/she is authorized to bind Kamizaki, LLC in this conveyance; and
- b. Kamizaki, LLC exists as of the date of execution of this Agreement, that Kamizaki, LLC is in good standing as of the date of execution of this Agreement.

This Paragraph 19 is in addition to, and not in lieu of, any other requirements of this Agreement.

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WITNESS the following signatures:

SELLER: KAMIZAKI, LLC, a Virginia limited liability company

BY:

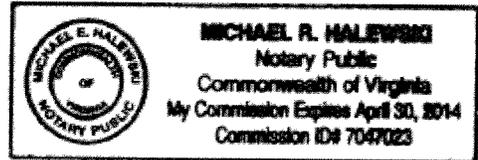
[Handwritten Signature]
By: _____
Name: THOMAS K. MEYER
Title: CO-MANAGER

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Arlington

The foregoing instrument was acknowledged before me this 1ST day of June, 2010, by Thomas K. Meyer, Manager of KAMIZAKI, LLC, a Virginia limited liability company.

Michael R. Halewski
Notary Public

My Commission expires: April 30, 2014



PURCHASER: THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of Arlington County, Virginia.

Notary Public

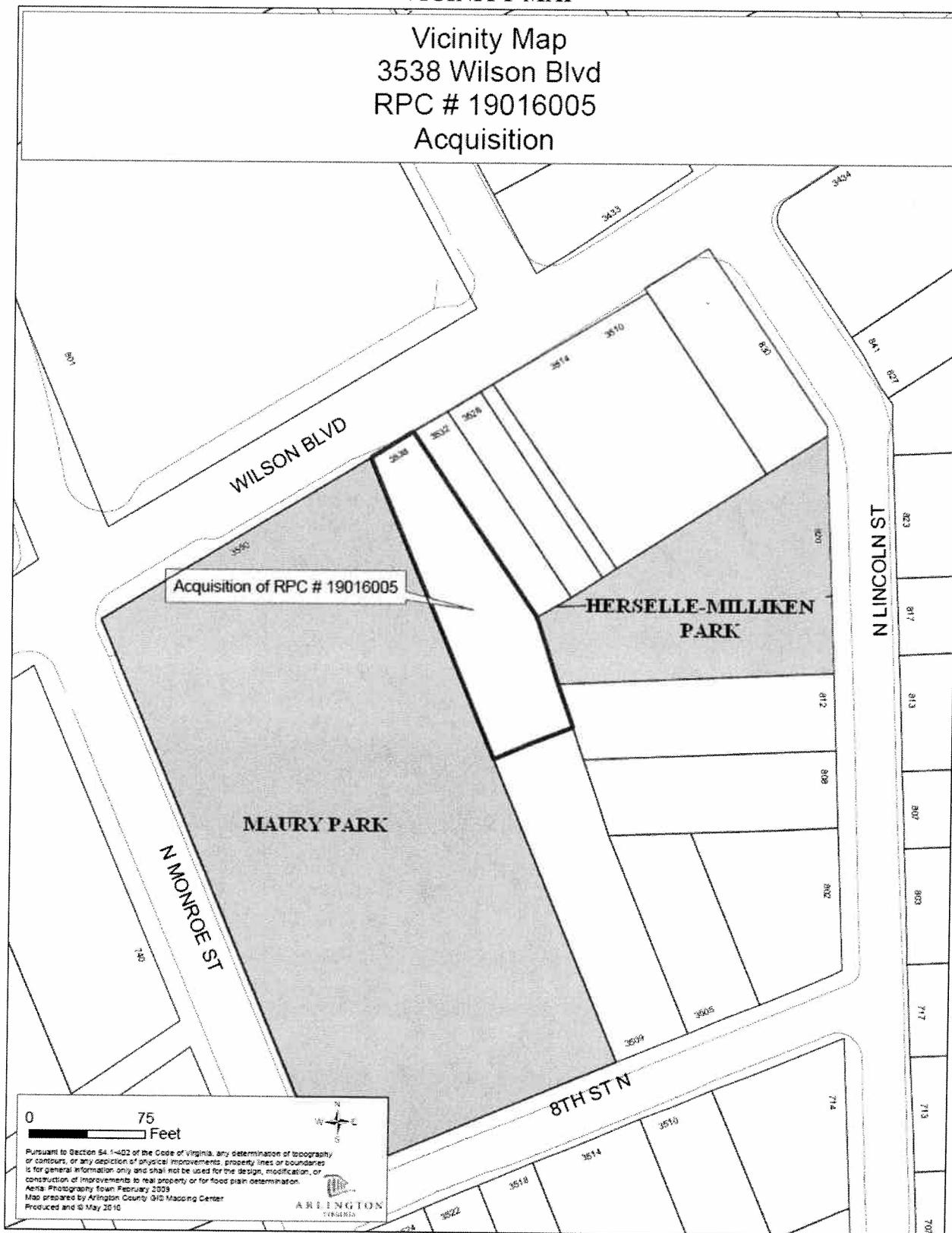
My Commission expires: _____

Approved as to form:

County Attorney

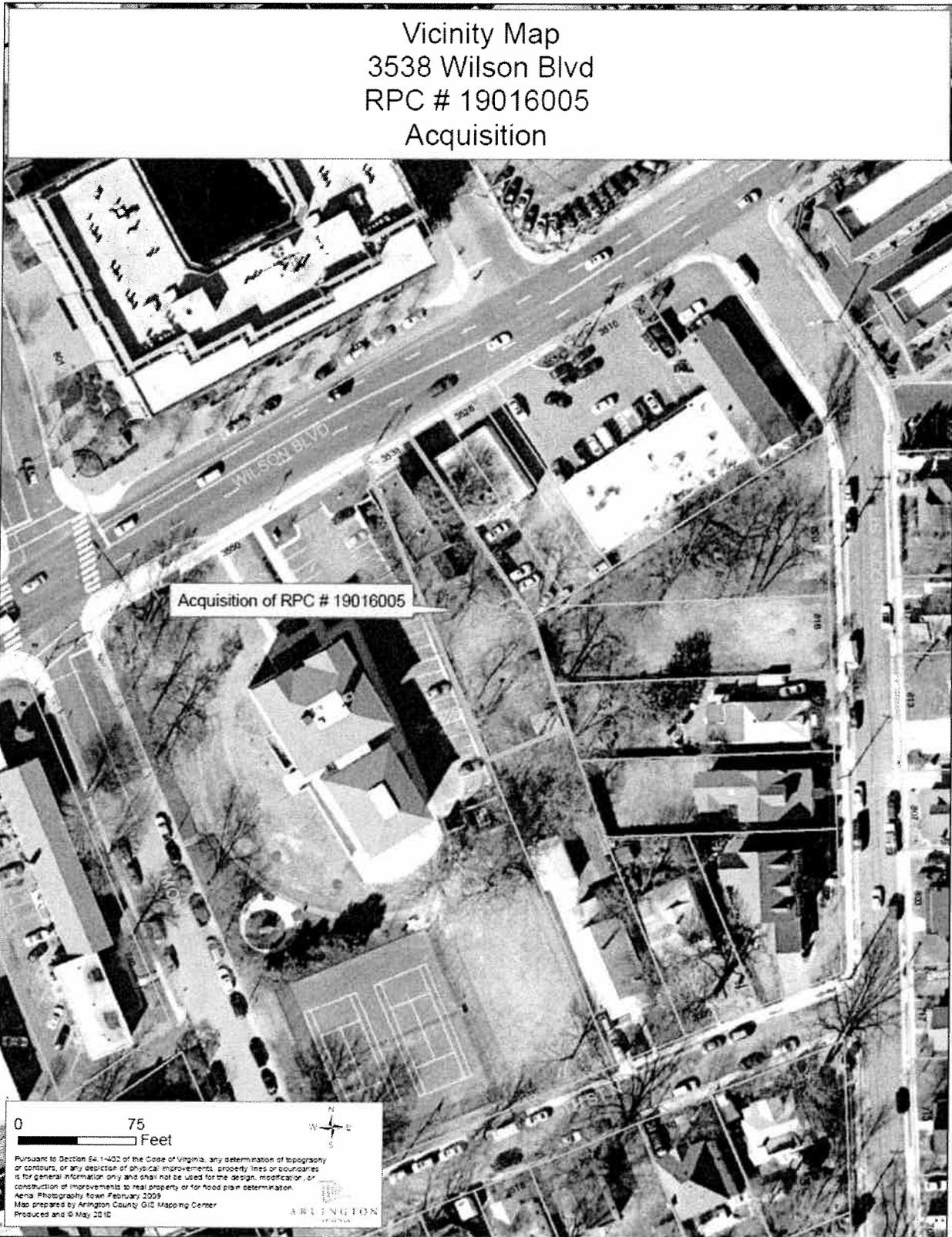
**EXHIBIT B-1
VICINITY MAP**

Vicinity Map
3538 Wilson Blvd
RPC # 19016005
Acquisition



Acquisition of 3538 Wilson Boulevard

**EXHIBIT B-2
VICINITY MAP**



**EXHIBIT B-3
VICINITY MAP**

Vicinity Map
3538 Wilson Blvd
RPC # 19016005
Acquisition

