

RESOLUTION NO. 2014293

RE: AUTHORIZING CONDEMNATION PROCEEDING FOR ACQUISITION IN FEE AND TWO TEMPORARY EASEMENTS OF REAL PROPERTY OWNED BY STANLEY M. ZABAWSKI AND JOHN M. ZABAWSKI FOR THE REHABILITATION OF CR 21 (NOXON ROAD) AND CR 49 (TITUSVILLE ROAD) INTERSECTION, TOWN OF LAGRANGE (PIN 8758.69)

Legislators HUTCHINGS and MICCIO offer the following and move its adoption:

WHEREAS, the Department of Public Works has proposed the improvement of CR 21 (Noxon Road) and CR 49 (Titusville Road) intersection, in the Town of LaGrange, which project (PIN#8758.69) includes the acquisition of portions of certain properties, and

WHEREAS, a Negative Declaration was approved and adopted by this Legislature on December 8, 2008 under Resolution No. 208403 with the Department of Public Works having determined that the improvement and project constitutes an Unlisted Action under SEQRA, and

WHEREAS, it has been determined that a portion of property owned by Stanley M. Zabawski and John M. Zabawski is necessary to advance the rehabilitation of County Route 21 and County Route 49 intersection under a Federal Aid Project, and

WHEREAS, due to outstanding mortgages and a judgment against the property, it is not possible to obtain clear title, therefore, condemnation is necessary to advance the project, and

WHEREAS, the property to acquire in fee is described as 123.59± square meters (1,330.30± square feet) parcel; a temporary easement described as 154.79± square meters (1,666.09± square feet) parcel; and a temporary easement described as 34.18± square meters (367.95± square feet) parcel located at on the west side of CR 21 (Noxon Road) in the Town of La Grange as shown on Dutchess County Acquisition Map No. 55, Parcel No. 114 (fee acquisition) and Map No. 55, Parcel No. 115 (temporary easement), and Map No. 55, Parcel No. 116 (temporary easement), portions of Tax Grid No. 133400-6360-01-196539-0000, a copy of the acquisition map is annexed hereto, and

WHEREAS, authorization is requested to begin Eminent Domain Proceedings to acquire fee interest and temporary easements in a portion of property owned by Stanley M. Zabawski and John M. Zabawski for a total consideration of \$5,190.00 (\$4,180.00 for the fee acquisition and \$827.00 and \$183.00 respectively for the temporary easements) plus \$3,000.00 in related expenses, and

WHEREAS, it is now necessary for this Legislature to authorize the commencement of proceedings pursuant to the Eminent Domain Procedure Law for the acquisition of said property as follows:

<u>Name</u>	<u>Map No.</u>	<u>Parcel Nos.</u>	<u>Square Meter</u>	<u>Proffered Amount</u>
Stanley M. Zabawski	55 (FEE)	114	123.59±	\$4,180.00
& John M. Zabawski	55 (TE)	115	154.79±	\$ 827.00
	55 (TE)	116	34.18±	\$ 183.00

now, therefore, be it

RESOLVED, that the Commissioner of Public Works on behalf of Dutchess County be and he hereby is authorized and empowered to commence proceedings pursuant to the Eminent Domain Procedure Law for the fee acquisition and temporary easements of the above property in furtherance of the rehabilitation of the intersection of Noxon Road, CR 21, and Titusville Road, CR 49, in the Town of LaGrange, Dutchess County, New York.

CA-152-14

CAB/ca/R-0907-VV

8/13/14; 10/8/14

Fiscal Impact: See attached statement

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 10th day of November 2014, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 10th day of November 2014.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS

(To be completed by requesting department)

Total Current Year Cost \$ 8,190

Total Current Year Revenue \$ 7,781
and Source

Source of County Funds (check one): Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other (explain).

Identify Line Items(s):

Related Expenses: Amount \$ 3,000

Nature/Reason:

Anticipated Administrative Costs and Fees.

Anticipated Savings to County: \$7,781

Net County Cost (this year): \$409
Over Five Years: _____

Additional Comments/Explanation:

This Fiscal Impact Statement pertains to the accompanying resolution request form seeking authorization to acquire additional right of way under the Eminent Domain Procedure Law, for property owned by Stanley M. Zabawski and John M. Zabawaski, identified on Map 55, Parcels 114-116 for the project identified as PIN 8758.69 Rehabilitation of CR 21 (Noxon Road) and CR 49 (Titusville Road) Intersection, Town of Lagrange, for the purchase price of \$5,190.00.

The total current year cost includes \$3000 in related expenses.

Prepared by: Matthew W. Davis

EX. 2929

ADVANCE PAYMENT AGREEMENT TO PURCHASE REAL PROPERTY
(FEE ACQUISITION)

Project: REHABILITATION OF NOXON ROAD/TITUSVILLE ROAD INTERSECTION
PIN: 8758.69 Map: 55 Parcel: 114

This Advance Payment Agreement by and between STANLEY M. ZABAWSKI and JOHN M. ZABAWSKI (JULIA ZABAWSKI died a resident of Dutchess County on July 27, 2013), hereinafter referred to as the "Seller", and the COUNTY OF DUTCHESS, hereinafter referred to as the "Buyer", pertains to that portion of real property interest required for public right of way purposes only.

1. **PROPERTY DESCRIPTION.** The Seller agrees to sell, grant, convey all right, title and interest to a 123.59± Square Meter (1330.30± Square Foot) parcel located on the West Side of CR 21, Noxon Road, in the Town of LaGrange, Dutchess County, New York, further described as:

Being a portion of those same lands described in a deed dated June 10, 2004, and recorded on September 8, 2004 in Liber 22004 at Page 9281 (as Document #0220049281) in the Office of the County Clerk for Dutchess County, New York with the address 322 Noxon Road (Re. Tax map No. 133400-6360-01-196539-0000), and being the same lands designated as Map 55, Parcel 114 on exhibit "A" attached here to.
2. **IMPROVEMENTS INCLUDED IN THE ACQUISITION.** The following improvements, if any, now in or on the property are included in this Advance Payment Agreement: 818.06 sq. ft. of lawn, 409.03 sq. ft. of driveway material, (1) 11' diameter tree and (1) 13" diameter tree to be removed.
3. **PURCHASE PRICE.** Whereas, the Seller and the Buyer cannot agree upon the value of the real property interest and the legal damages, the Buyer is willing to pay an amount equal to the amount determined by the Buyer to be the value of the real property interest to be acquired and the legal damages. This amount is Four Thousand One Hundred Eight dollars (\$4,180.00). This price includes the real property interest described in Paragraph one (1) and the improvements described in Paragraph two (2). The Seller agrees, as a prerequisite to such advance payment, to execute and to deliver or cause the execution and delivery to the Buyer of all formal papers which the Buyer deems necessary to authorize payment and to secure to the Buyer a full release of all claims (other than the claim of the Seller) by reason of the acquisition of the aforementioned real property interest with improvements.
4. **PAYMENT.** Payment is to be made upon approval of this agreement by the Buyer after authorization by appropriate administrative and legal entities, as may be required by statute, and after Buyer has provided all papers necessary to convey clear title and release all third party claims to the advance payment proceeds.
5. **CLAIM.** Pursuant to New York State Eminent Domain Procedure Law, the Seller hereby reserves the right to file a claim with the Supreme Court, held in the judicial district where the real property is situated, or if a claim has been filed, reserves the right to prosecute said claim, it being understood, however, that any such claim shall be filed within one (1) year after title to the aforementioned real property interest is conveyed. It is agreed that, if the Supreme Court finds the value of the real property interest acquired is equal to or exceeds the advance payment amount, the amount of such advance payment shall be deducted from the amount so found by the court or, in the alternative, the award of said court shall be in the amount of the excess, if any, over and above the advance payment amount. In the event the amount so found by the court is less than the amount of said advance payment, the Buyer, upon application made to the court on at least eight days notice to the Seller, may request the difference between the award as found by the court and the amount of said advance payment. This Paragraph 5 of this Advance Payment Agreement shall not merge into the deed and shall survive the conveyance of the aforementioned real property interest.
6. **FILING.** It is understood and agreed by and between the parties hereto, that pursuant to statute, if no claim is filed by the Seller in the Supreme Court within one (1) year after title to the aforementioned real property interest is conveyed, then, upon the expiration of that time, this Advance Payment Agreement shall automatically become a Purchase Agreement in full and complete settlement of all claims without further

ratification, approval or consent by Seller and Seller shall be deemed to have released Seller's claim against the Buyer.

- 7. TITLE DOCUMENTS. Buyer will pay for and furnish to the Seller an acquisition map.
- 8. MARKETABILITY OF TITLE. Buyer shall pay for curative action, as deemed necessary by the Buyer, to insure good and valid marketable title in fee simple and/or permanent easement to the property. Such curative action is defined as the effort required to clear title, including but not limited to attending meetings, document preparation, obtaining releases and recording documents. The Seller shall be responsible for the cost to satisfy liens and encumbrances identified by the Buyer. Said cost shall be deducted from the amount stated in paragraph three (3), and paid to the appropriate party by the Buyer.
- 9. RECORDING COSTS, TRANSFER TAX & CLOSING ADJUSTMENTS. Buyer will pay all recording fees and the real property transfer tax. The following, as applicable and as deemed appropriate by the Buyer, will be prorated and adjusted between Seller and Buyer as of the date of conveyance: current taxes computed on a fiscal year basis, excluding delinquent items, interest and penalties; rent payments; current common charges or assessments.
- 10. RESPONSIBILITY OF PERSONS UNDER THIS AGREEMENT; ASSIGNABILITY. The aforesaid terms, agreements and understandings shall bind and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
- 11. ENTIRE AGREEMENT. This Advance Payment Agreement when signed by both the Buyer and the Seller will be the record of the complete Advance Payment Agreement between the Buyer and Seller concerning the condemnation of the property. No verbal agreements or promises will be binding.
- 12. NOTICES. All notices under this Advance Payment Agreement shall be deemed delivered upon receipt. Any notices relating to this Advance Payment Agreement may be given by the attorneys for the parties.
- 13. PROJECT RELATED IMPROVEMENTS. The following improvements will occur within this fee acquisition as a result of the Rehabilitation of the Noxon Road/Titusville Road Intersection Project, PIN 8758.69; Including, but not limited to the following: Noxon Road and its shoulder will be widened and the adjacent side slope will be graded to meet with the existing ground and seeded to re-establish a grass surface.
- 14. ADDENDA. The following Addenda are incorporated into this Advance Payment Agreement:
 Temporary Easement Cost to Cure Other _____

IN WITNESS WHEREOF, on this 30th day of October, 2013, the parties have entered into this Advance Payment Agreement.

Seller: [Signature]
John M. Zabawski

Seller: [Signature]
Stanley M. Zabawski

STATE OF NEW YORK

)
) SS:

COUNTY OF DUTCHESS

On this 31st day of October, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Stanley M. Zabawski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on this instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public

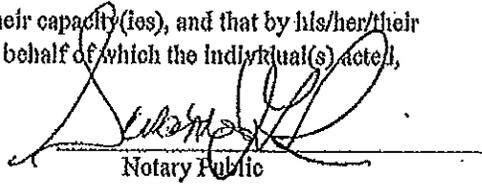
SUSANNE J. HICKS
Notary Public, State of New York
No. 4821387
Qualified in Dutchess County
Commission Expires July 31, 2014

STATE OF NEW YORK
COUNTY OF DUTCHESS

)
) SS:
)

On this 31st day of October, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared John M. Zabawski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on this instrument, the individual(s), or the person upon behalf of which the individual(s) act(s), executed the instrument.

SUSANNE J. HICKS
Notary Public, State of New York
No. 4821687
Qualified in Dutchess County
Commission Expires July 31, 2014


Notary Public

County of Dutchess

Witness: _____

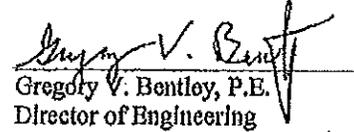
Buyer: _____

Marcus J. Molinaro
County Executive

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Carol A. Bogle
Sr. Asst. County Attorney


Gregory V. Bentley, P.E.
Director of Engineering

ADVANCE PAYMENT AGREEMENT TO PURCHASE REAL PROPERTY
(TEMPORARY EASEMENT)

Project: REHABILITATION OF NOXON ROAD/TITUSVILLE ROAD INTERSECTION
PIN: 8758.69 Map: 55 Parcel: 115

This Advance Payment Agreement by and between STANLEY M. ZABAWSKI and JOHN M. ZABAWSKI (JULIA ZABAWSKI died a resident of Dutchess County on July 27, 2013), hereinafter referred to as the "Seller", and the COUNTY OF DUTCHESS, hereinafter referred to as the "Buyer", pertains to that portion of real property interest required for public right of way purposes only.

1. **PROPERTY DESCRIPTION.** The Seller agrees to sell, grant, convey a temporary easement to a 154.79± Square Meter (1666.09± Square Foot) parcel located on the West Side of CR 21, Noxon Road, in the Town of LaGrange, Dutchess County, New York, further described as:

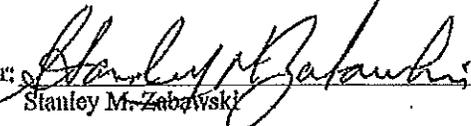
Being a portion of those same lands described in a deed dated June 10, 2004, and recorded on September 8, 2004 in Liber 22004 at Page 9281 (as Document #0220049281) in the Office of the County Clerk for Dutchess County, New York with the address 322 Noxon Road (Re. Tax map No. 133400-6360-01-196539-0000), and being the same lands designated as Map 55, Parcel 115 on exhibit "A" attached here to.

2. **IMPROVEMENTS INCLUDED IN THE ACQUISITION.** The following improvements, if any, now in or on the property are included in this Advance Payment Agreement: None
3. **PURCHASE PRICE.** Whereas, the Seller and the Buyer cannot agree upon the value of the real property interest and the legal damages, the Buyer is willing to pay an amount equal to the amount determined by the Buyer to be the value of the real property interest to be acquired and the legal damages. This amount is Eight Hundred Twenty Seven dollars (\$827.00). This price includes the real property interest described in Paragraph one (1) and the improvements described in Paragraph two (2). The Seller agrees, as a prerequisite to such advance payment, to execute and to deliver or cause the execution and delivery to the Buyer of all formal papers which the Buyer deems necessary to authorize payment and to secure to the Buyer a full release of all claims (other than the claim of the Seller) by reason of the acquisition of the aforementioned real property interest with improvements.
4. **PAYMENT.** Payment is to be made upon approval of this agreement by the Buyer after authorization by appropriate administrative and legal entities, as may be required by statute, and after Buyer has provided all papers necessary to convey clear title and release all third party claims to the advance payment proceeds.
5. **CLAIM.** Pursuant to New York State Eminent Domain Procedure Law, the Seller hereby reserves the right to file a claim with the Supreme Court, held in the judicial district where the real property is situated, or if a claim has been filed, reserves the right to prosecute said claim, it being understood, however, that any such claim shall be filed within one (1) year after title to the aforementioned real property interest is conveyed. It is agreed that, if the Supreme Court finds the value of the real property interest acquired is equal to or exceeds the advance payment amount, the amount of such advance payment shall be deducted from the amount so found by the court or, in the alternative, the award of said court shall be in the amount of the excess, if any, over and above the advance payment amount. In the event the amount so found by the court is less than the amount of said advance payment, the Buyer, upon application made to the court on at least eight days notice to the Seller, may request the difference between the award as found by the court and the amount of said advance payment. This Paragraph 5 of this Advance Payment Agreement shall not merge into the deed and shall survive the conveyance of the aforementioned real property interest.
6. **FILING.** It is understood and agreed by and between the parties hereto, that pursuant to statute, if no claim is filed by the Seller in the Supreme Court within one (1) year after title to the aforementioned real property interest is conveyed, then, upon the expiration of that time, this Advance Payment Agreement shall automatically become a Purchase Agreement in full and complete settlement of all claims without further ratification, approval or consent by Seller and Seller shall be deemed to have released Seller's claim against the Buyer.

7. **TITLE DOCUMENTS.** Buyer will pay for and furnish to the Seller an acquisition map.
8. **MARKETABILITY OF TITLE.** Buyer shall pay for curative action, as deemed necessary by the Buyer, to insure good and valid marketable title in temporary easement to the property. Such curative action is defined as the effort required to clear title, including but not limited to attending meetings, document preparation, obtaining releases and recording documents. The Seller shall be responsible for the cost to satisfy liens and encumbrances identified by the Buyer. Said cost shall be deducted from the amount stated in paragraph three (3), and paid to the appropriate party by the Buyer.
9. **RECORDING COSTS, TRANSFER TAX & CLOSING ADJUSTMENTS.** Buyer will pay all recording fees and the real property transfer tax. The following, as applicable and as deemed appropriate by the Buyer, will be prorated and adjusted between Seller and Buyer as of the date of conveyance: current taxes computed on a fiscal year basis, excluding delinquent items, interest and penalties; rent payments; current common charges or assessments.
10. **RESPONSIBILITY OF PERSONS UNDER THIS AGREEMENT; ASSIGNABILITY.** The aforesaid terms, agreements and understandings shall bind and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
11. **ENTIRE AGREEMENT.** This Advance Payment Agreement when signed by both the Buyer and the Seller will be the record of the complete Advance Payment Agreement between the Buyer and Seller concerning the condemnation of the property. No verbal agreements or promises will be binding.
12. **NOTICES.** All notices under this Advance Payment Agreement shall be deemed delivered upon receipt. Any notices relating to this Advance Payment Agreement may be given by the attorneys for the parties.
13. **PROJECT RELATED IMPROVEMENTS.** The following improvements will occur within this temporary easement as a result of the Rehabilitation of the Noxon Road/Titusville Road Intersection Project, PIN 8758.69: Work area in connection with the clearing/grubbing and grading of side slopes to meet the existing ground, seeding to re-establish a grass surface, the rehabilitation of a driveway to meet the proposed roadway edge and placement of temporary erosion and sediment control measures for the duration of this project.
14. **ADDENDA.** The following Addenda are incorporated into this Advance Payment Agreement:
 Temporary Easement Cost to Cure Other _____

IN WITNESS WHEREOF, on this 31st day of October, 2013, the parties have entered into this Advance Payment Agreement.

Seller: 
 John M. Zabawski

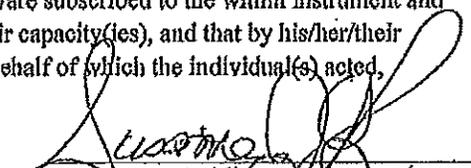
Seller: 
 Stanley M. Zabawski

STATE OF NEW YORK

)
) SS:

COUNTY OF DUTCHESS

On this 31st day of October, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Stanley M. Zabawski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on this instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


 Notary Public

SUSANNE J. HICKS
 Notary Public, State of New York
 No. 4821387
 Qualified in Dutchess County
 Commission Expires July 31, 2014

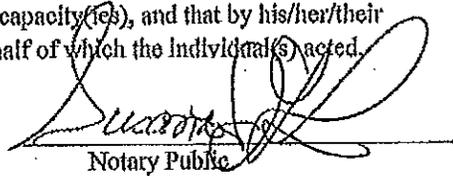
STATE OF NEW YORK)

) SS:

COUNTY OF DUTCHESS)

On this 31st day of October, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared John M. Zabawski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on this instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SUSANNE J. HICKS
Notary Public, State of New York
No. 4821987
Qualified In Dutchess County
Commission Expires July 31, 2014


Notary Public

County of Dutchess

Witness: _____

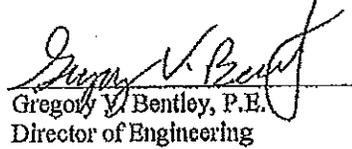
Buyer: _____

Marcus J. Molinaro
County Executive

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Carol A. Bogle
Sr. Asst. County Attorney


Gregory V. Bentley, P.E.
Director of Engineering

ADVANCE PAYMENT AGREEMENT TO PURCHASE REAL PROPERTY
(TEMPORARY EASEMENT)

Project: REHABILITATION OF NOXON ROAD/TITUSVILLE ROAD INTERSECTION
PIN: 8758.69 Map: 55 Parcel: 116

This Advance Payment Agreement by and between STANLEY M. ZABAWSKI and JOHN M. ZABAWSKI (JULIA ZABAWSKI died a resident of Dutchess County on July 27, 2013), hereinafter referred to as the "Seller", and the COUNTY OF DUTCHESS, hereinafter referred to as the "Buyer", pertains to that portion of real property interest required for public right of way purposes only.

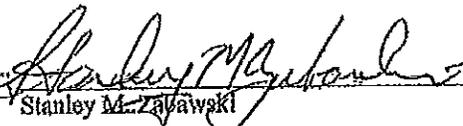
1. **PROPERTY DESCRIPTION.** The Seller agrees to sell, grant, convey a temporary easement to a 34.18± Square Meter (367.95± Square Foot) parcel located on the West Side of CR 21, Noxon Road, in the Town of LaGrange, Dutchess County, New York, further described as:

Being a portion of those same lands described in a deed dated June 10, 2004, and recorded on September 8, 2004 in Liber 22004 at Page 9281 (as Document #0220049281) in the Office of the County Clerk for Dutchess County, New York with the address 322 Noxon Road (Re. Tax map No. 133400-6360-01-196539-0000), and being the same lands designated as Map 55, Parcel 116 on exhibit "A" attached here to.
2. **IMPROVEMENTS INCLUDED IN THE ACQUISITION.** The following improvements, if any, now in or on the property are included in this Advance Payment Agreement: None
3. **PURCHASE PRICE.** Whereas, the Seller and the Buyer cannot agree upon the value of the real property interest and the legal damages, the Buyer is willing to pay an amount equal to the amount determined by the Buyer to be the value of the real property interest to be acquired and the legal damages. This amount is One Hundred Eighty Three dollars (\$183.00). This price includes the real property interest described in Paragraph one (1) and the improvements described in Paragraph two (2). The Seller agrees, as a prerequisite to such advance payment, to execute and to deliver or cause the execution and delivery to the Buyer of all formal papers which the Buyer deems necessary to authorize payment and to secure to the Buyer a full release of all claims (other than the claim of the Seller) by reason of the acquisition of the aforementioned real property interest with improvements.
4. **PAYMENT.** Payment is to be made upon approval of this agreement by the Buyer after authorization by appropriate administrative and legal entities, as may be required by statute, and after Buyer has provided all papers necessary to convey clear title and release all third party claims to the advance payment proceeds.
5. **CLAIM.** Pursuant to New York State Eminent Domain Procedure Law, the Seller hereby reserves the right to file a claim with the Supreme Court, hold in the judicial district where the real property is situated, or if a claim has been filed, reserves the right to prosecute said claim, it being understood, however, that any such claim shall be filed within one (1) year after title to the aforementioned real property interest is conveyed. It is agreed that, if the Supreme Court finds the value of the real property interest acquired is equal to or exceeds the advance payment amount, the amount of such advance payment shall be deducted from the amount so found by the court or, in the alternative, the award of said court shall be in the amount of the excess, if any, over and above the advance payment amount. In the event the amount so found by the court is less than the amount of said advance payment, the Buyer, upon application made to the court on at least eight days notice to the Seller, may request the difference between the award as found by the court and the amount of said advance payment. This Paragraph 5 of this Advance Payment Agreement shall not merge into the deed and shall survive the conveyance of the aforementioned real property interest.
6. **FILING.** It is understood and agreed by and between the parties hereto, that pursuant to statute, if no claim is filed by the Seller in the Supreme Court within one (1) year after title to the aforementioned real property interest is conveyed, then, upon the expiration of that time, this Advance Payment Agreement shall automatically become a Purchase Agreement in full and complete settlement of all claims without further ratification, approval or consent by Seller and Seller shall be deemed to have released Seller's claim against the Buyer.

7. **TITLE DOCUMENTS.** Buyer will pay for and furnish to the Seller an acquisition map.
8. **MARKETABILITY OF TITLE.** Buyer shall pay for curative action, as deemed necessary by the Buyer, to insure good and valid marketable title in temporary easement to the property. Such curative action is defined as the effort required to clear title, including but not limited to attending meetings, document preparation, obtaining releases and recording documents. The Seller shall be responsible for the cost to satisfy liens and encumbrances identified by the Buyer. Said cost shall be deducted from the amount stated in paragraph three (3), and paid to the appropriate party by the Buyer.
9. **RECORDING COSTS, TRANSFER TAX & CLOSING ADJUSTMENTS.** Buyer will pay all recording fees and the real property transfer tax. The following, as applicable and as deemed appropriate by the Buyer, will be prorated and adjusted between Seller and Buyer as of the date of conveyance: current taxes computed on a fiscal year basis, excluding delinquent items, interest and penalties; rent payments; current common charges or assessments.
10. **RESPONSIBILITY OF PERSONS UNDER THIS AGREEMENT; ASSIGNABILITY.** The aforesaid terms, agreements and understandings shall bind and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
11. **ENTIRE AGREEMENT.** This Advance Payment Agreement when signed by both the Buyer and the Seller will be the record of the complete Advance Payment Agreement between the Buyer and Seller concerning the condemnation of the property. No verbal agreements or promises will be binding.
12. **NOTICES.** All notices under this Advance Payment Agreement shall be deemed delivered upon receipt. Any notices relating to this Advance Payment Agreement may be given by the attorneys for the parties.
13. **PROJECT RELATED IMPROVEMENTS.** The following improvements will occur within this temporary easement as a result of the Rehabilitation of the Noxon Road/Titusville Road Intersection Project, PIN 8758.69: Work area in connection with the clearing/grubbing and grading of slopes to meet the existing ground, seeding to re-establish a grass surface and placement of temporary erosion and sediment control measures for the duration of this project.
14. **ADDENDA.** The following Addenda are incorporated into this Advance Payment Agreement:
 Temporary Easement Cost to Cure Other _____

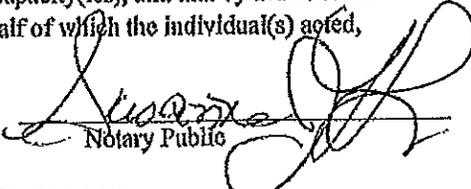
IN WITNESS WHEREOF, on this _____ day of _____, 2013, the parties have entered into this Advance Payment Agreement.

Seller: 
 John M. Zabawski

Seller: 
 Stanley M. Zabawski

STATE OF NEW YORK)
) SS:

COUNTY OF DUTCHESS
 On this 31st day of October, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared Stanley M. Zabawski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on this instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

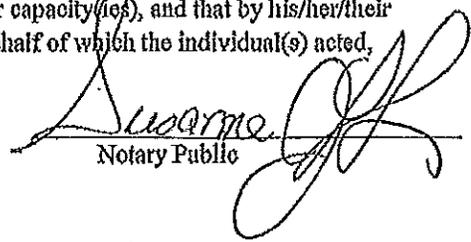

 Notary Public

SUSANNE J. HICKS
 Notary Public, State of New York
 No. 4821387
 Qualified in Dutchess County
 Commission Expires July 31, 2014

STATE OF NEW YORK)
) SS:
COUNTY OF DUTCHESS)

On this 31st day of October, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared John M. Zabawski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on this instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SUSANNE J. HICKS
Notary Public, State of New York
No. 4821387
Qualified in Dutchess County
Commission Expires July 31, 2014


Notary Public

County of Dutchess

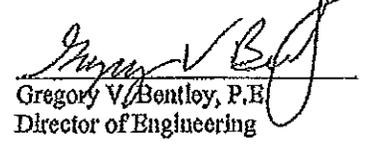
Witness: _____

Buyer: _____
Marcus J. Molinaro
County Executive

APPROVED AS TO FORM:

Carol A. Bogle
Sr. Asst. County Attorney

APPROVED AS TO CONTENT:



Gregory V. Bentley, P.E.
Director of Engineering



'EXHIBIT A'
COUNTY OF DUTCHESS
DEPARTMENT OF PUBLIC WORKS

MAP NO. 55
 PARCEL NO. 114,115,116
 SHEET 1 OF 3

REHABILITATION OF NOXON ROAD (CR 21)
 AND TITUSVILLE ROAD (CR 49) INTERSECTION

PIN 8758.69

Originals of this map (sheets 1 through 3)
 are on file at the offices of the Dutchess
 County Department of Public Works

STANLEY M ZABAWSKI
 JOHN M ZABAWSKI
 AND JULIA ZABAWSKI
 (REPUTED OWNERS)
 L.22004 P.9281

GRID
 NORTH

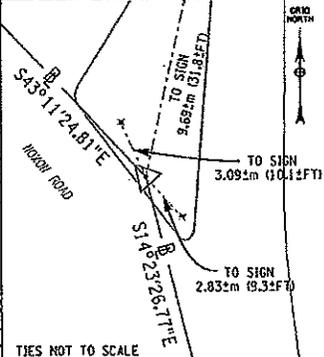
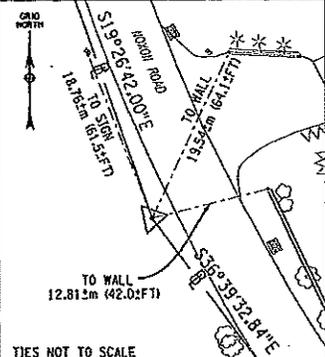
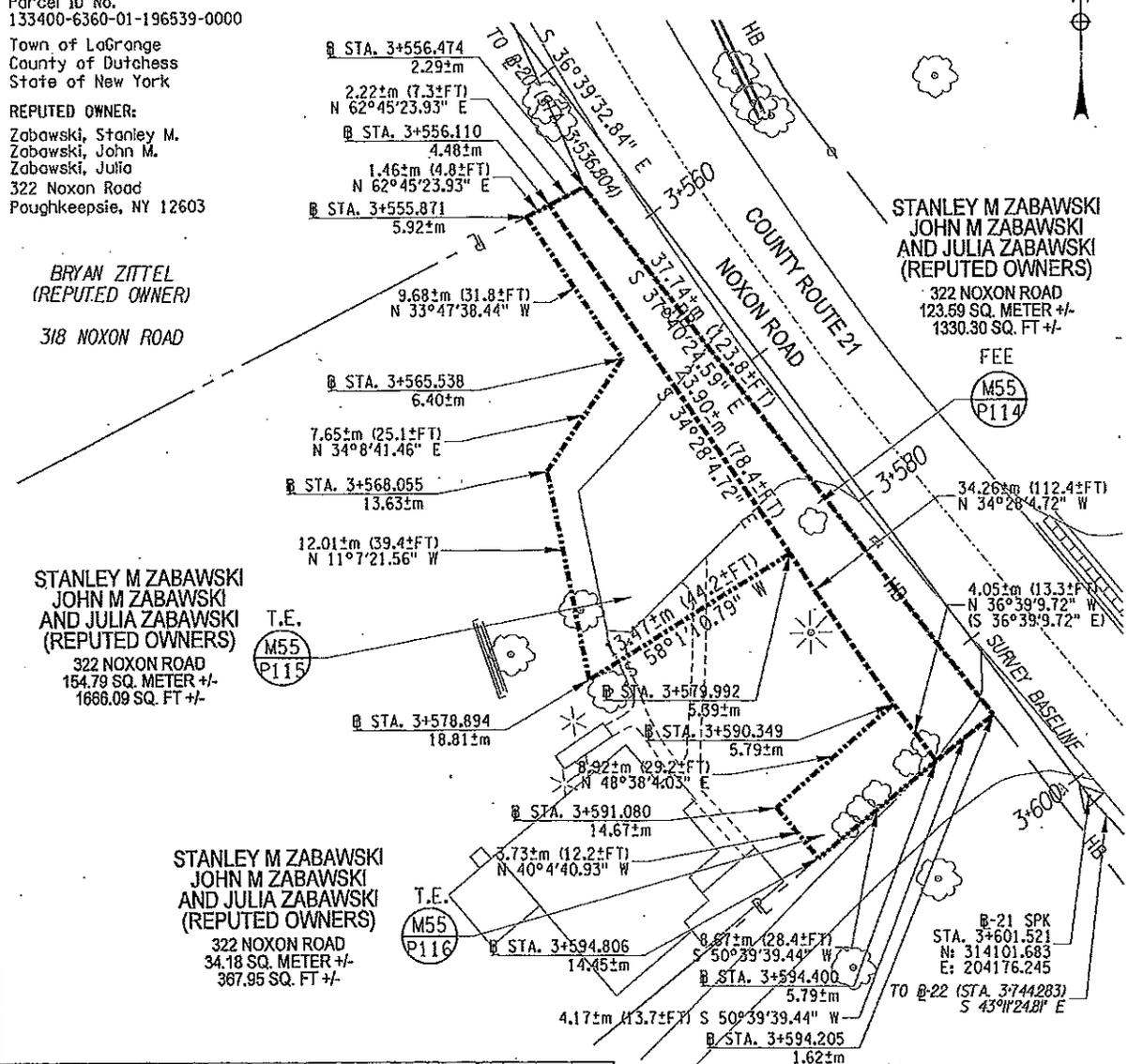
ACQUISITION DESCRIPTION:
 Types: FEE, TE
 Portion of Real Property Tax
 Parcel ID No.
 133400-6360-01-196539-0000

Town of LaGrange
 County of Dutchess
 State of New York

REPUTED OWNER:
 Zabawski, Stanley M.
 Zabawski, John M.
 Zabawski, Julia
 322 Noxon Road
 Poughkeepsie, NY 12603

BRYAN ZITTEL
 (REPUTED OWNER)
 318 NOXON ROAD

STANLEY M ZABAWSKI
JOHN M ZABAWSKI
AND JULIA ZABAWSKI
 (REPUTED OWNERS)
 322 NOXON ROAD
 123.59 SQ. METER +/-
 1330.30 SQ. FT +/-



SCALE 1:250
 ONE METER EQUALS 3.280833333 FEET.
 ONE SQUARE METER EQUALS 10.7638673611 SQUARE FEET.

TIES NOT TO SCALE	TIES NOT TO SCALE
@STA. 3+536.804 @-20 SPK N: 314153.599m E: 204137.605m	@STA. 3+744.283 (10+160.117) @-22(T3) PK N: 313997.597m E: 204273.954m

MAP NUMBER 55 3/18/13
 REVISED DATE 4/2/12 2/13/13
 DATE PREPARED 4/2/12 11/13/12



'EXHIBIT A'
 COUNTY OF DUTCHESS
 DEPARTMENT OF PUBLIC WORKS

MAP NO. 55
 PARCEL NO. 114,115,116
 SHEET 2 OF 3

REHABILITATION OF NOXON ROAD (CR 21)
 AND TITUSVILLE ROAD (CR 49) INTERSECTION

PIN 8758.69

Map of property which the Commissioner of Public Works deems necessary to be acquired in the name of the People of the County of Dutchess in fee acquisition and temporary easement for purposes connected with the highway system of the County of Dutchess, pursuant to Section 118 of the Highway Law and the Eminent Domain Procedure Law.

PARCEL 114, A FEE ACQUISITION TO BE EXERCISED FOR THE PURPOSE OF THE WIDENING OF COUNTY ROUTE 21 (NOXON ROAD) FOR THE NOXON ROAD/TITUSVILLE ROAD INTERSECTION IMPROVEMENTS PROJECT WITH IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO THE FOLLOWING: NOXON ROAD AND ITS SHOULDER WILL BE WIDENED AND THE ADJACENT SIDE SLOPE WILL BE GRADED TO MEET WITH THE EXISTING GROUND AND SEEDED TO RE-ESTABLISH A GRASS SURFACE; DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY BOUNDARY OF COUNTY ROUTE 21 (NOXON ROAD), SAID POINT ALSO BEING AT THE DIVISION LINE OF LANDS OF BRYAN ZITTEL (REPUTED OWNER) TO THE NORTH AND LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) TO THE SOUTH, SAID POINT ALSO BEING DISTANT 2.29±m MEASURED AT RIGHT ANGLES FROM STATION 3+556.474± OF THE HEREINAFTER DESCRIBED SURVEY BASELINE FOR THE RECONSTRUCTION OF COUNTY ROUTE 21 (NOXON ROAD); THENCE ALONG SAID BOUNDARY SOUTH 37°40'24.59" EAST A DISTANCE OF 37.74±m (123.8±FT) TO A POINT, SAID POINT BEING ON THE DIVISION LINE OF LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) TO THE NORTH AND LANDS OF WAYNE ERIC LINDELL AND LORI LOMBARDI (REPUTED OWNERS) TO THE SOUTH, SAID POINT ALSO BEING DISTANT 1.62±m MEASURED AT RIGHT ANGLES FROM STATION 3+594.205± OF SAID BASELINE; THENCE ALONG SAID DIVISION LINE SOUTH 50°39'39.44" WEST A DISTANCE OF 4.17±m (13.7±FT) TO A POINT, SAID POINT BEING DISTANT 5.79±m MEASURED AT RIGHT ANGLES FROM STATION 3+594.400± OF SAID BASELINE; THENCE THROUGH LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) NORTH 36°39'9.72" WEST A DISTANCE OF 4.05±m (13.3±FT) TO A POINT, SAID POINT BEING DISTANT 5.79±m MEASURED AT RIGHT ANGLES FROM STATION 3+590.349± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 34°28'4.72" WEST A DISTANCE OF 34.26±m (112.4±FT) TO A POINT, SAID POINT BEING AT THE DIVISION LINE OF LANDS OF BRYAN ZITTEL (REPUTED OWNER) TO THE NORTH AND LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) TO THE SOUTH, SAID POINT ALSO BEING DISTANT 4.48±m MEASURED AT RIGHT ANGLES FROM STATION 3+556.110± OF SAID BASELINE; THENCE CONTINUING ALONG SAID DIVISION LINE NORTH 62°45'23.93" EAST A DISTANCE OF 2.22±m (7.3±FT) TO THE POINT OF BEGINNING, SAID PARCEL BEING 123.59± SQUARE METERS (1330.30± SQUARE FEET) MORE OR LESS.

PARCEL 115, A TEMPORARY EASEMENT TO BE EXERCISED FOR THE PURPOSE OF WORK AREA IN CONNECTION WITH THE CLEARING/GRUBBING AND GRADING OF SIDE SLOPES TO MEET THE EXISTING GROUND, SEEDING TO RE-ESTABLISH A GRASS SURFACE, THE REHABILITATION OF A DRIVEWAY TO MEET THE PROPOSED ROADWAY EDGE AND PLACEMENT OF TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES FOR THE DURATION OF THIS PROJECT; ALONG COUNTY ROUTE 21 (NOXON ROAD) FOR THE NOXON ROAD/TITUSVILLE ROAD INTERSECTION IMPROVEMENTS PROJECT, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE DIVISION LINE OF LANDS OF BRYAN ZITTEL (REPUTED OWNER) TO THE NORTH AND LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) TO THE SOUTH, SAID POINT ALSO BEING DISTANT 4.48±m MEASURED AT RIGHT ANGLES FROM STATION 3+556.110± OF THE HEREINAFTER DESCRIBED SURVEY BASELINE FOR THE RECONSTRUCTION OF COUNTY ROUTE 21 (NOXON ROAD); THENCE THROUGH LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) SOUTH 34°28'4.72" EAST A DISTANCE OF 23.90±m (78.4±FT) TO A POINT, SAID POINT BEING DISTANT 5.39±m MEASURED AT RIGHT ANGLES FROM STATION 3+579.992± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 58°1'10.79" WEST A DISTANCE OF 13.47±m (44.2±FT) TO A POINT, SAID POINT BEING DISTANT 18.81±m MEASURED AT RIGHT ANGLES FROM STATION 3+578.894± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 11°7'21.56" WEST A DISTANCE OF 12.01±m (39.4±FT) TO A POINT, SAID POINT BEING DISTANT 13.63±m MEASURED AT RIGHT ANGLES FROM STATION 3+568.055± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 34°8'41.46" EAST A DISTANCE OF 7.65±m (25.1±FT) TO A POINT, SAID POINT BEING DISTANT 6.40±m MEASURED AT RIGHT ANGLES FROM STATION 3+565.538± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 33°47'38.44" WEST A DISTANCE OF 9.68±m (31.8±FT) TO A POINT, SAID POINT BEING ON THE DIVISION LINE OF LANDS OF BRYAN ZITTEL (REPUTED OWNER) TO THE NORTH AND LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) TO THE SOUTH, SAID POINT ALSO BEING DISTANT 5.92±m MEASURED AT RIGHT ANGLES FROM STATION 3+555.871± OF SAID BASELINE; THENCE CONTINUING ALONG SAID DIVISION LINE NORTH 62°45'23.93" EAST A DISTANCE OF 1.46±m (4.8±FT) TO THE POINT OF BEGINNING, SAID PARCEL BEING 154.79± SQUARE METERS (1666.09± SQUARE FEET) MORE OR LESS.

RESERVING, HOWEVER, TO THE OWNER OF ANY RIGHT, TITLE OR INTEREST IN AND TO THE PROPERTY DESCRIBED ABOVE AS PARCEL NO. 115, AND SUCH OWNER'S SUCCESSORS OR ASSIGNS, THE RIGHTS OF ACCESS AND THE RIGHT OF USING SAID PROPERTY AND SUCH USE SHALL NOT BE FURTHER LIMITED OR RESTRICTED UNDER THIS EASEMENT BEYOND THAT WHICH IS NECESSARY TO EFFECTUATE ITS PURPOSES FOR, AND AS ESTABLISHED BY, THE CONSTRUCTION AND AS SO CONSTRUCTED, THE MAINTENANCE, OF THE HEREIN IDENTIFIED PROJECT.

3/18/13
 MAP NUMBER 55 ~~2/13/13~~
 REVISED DATE ~~4/2/12~~ 11/13/12
 DATE PREPARED 4/2/12



'EXHIBIT A'
 COUNTY OF DUTCHESS
 DEPARTMENT OF PUBLIC WORKS

REHABILITATION OF NOXON ROAD (CR 21)
 AND TITUSVILLE ROAD (CR 49) INTERSECTION

PIN 8758.69

MAP NO. 55
 PARCEL NO. 114,115,116
 SHEET 3 OF 3

PARCEL 116, A TEMPORARY EASEMENT TO BE EXERCISED FOR THE PURPOSE OF WORK AREA IN CONNECTION WITH THE CLEARING/GRUBBING AND GRADING OF SIDE SLOPES TO MEET THE EXISTING GROUND, SEEDING TO RE-ESTABLISH A GRASS SURFACE AND PLACEMENT OF TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES FOR THE DURATION OF THIS PROJECT; ALONG COUNTY ROUTE 21 (NOXON ROAD) FOR THE NOXON ROAD/TITUSVILLE ROAD INTERSECTION IMPROVEMENTS PROJECT, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE DIVISION LINE OF LANDS OF WAYNE ERIC LINDELL AND LORI LOMBARDI (REPUTED OWNERS) TO THE SOUTH AND LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) TO THE NORTH, SAID POINT ALSO BEING DISTANT 5.79±m MEASURED AT RIGHT ANGLES FROM STATION 3+594.400± OF THE HEREINAFTER DESCRIBED SURVEY BASELINE FOR THE RECONSTRUCTION OF COUNTY ROUTE 21 (NOXON ROAD); THENCE ALONG SAID DIVISION LINE SOUTH 50°39'39.44" WEST A DISTANCE OF 8.67±m (28.4±FT) TO A POINT, SAID POINT BEING DISTANT 14.45±m MEASURED AT RIGHT ANGLES FROM STATION 3+594.806± OF SAID BASELINE; THENCE THROUGH LANDS OF STANLEY M ZABAWSKI, JOHN M ZABAWSKI AND JULIA ZABAWSKI (REPUTED OWNERS) NORTH 40°4'40.93" WEST A DISTANCE OF 3.73±m (12.2±FT) TO A POINT, SAID POINT BEING DISTANT 14.67±m MEASURED AT RIGHT ANGLES FROM STATION 3+591.080± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS NORTH 48°38'4.03" EAST A DISTANCE OF 8.92±m (29.2±FT) TO A POINT, SAID POINT BEING DISTANT 5.79±m MEASURED AT RIGHT ANGLES FROM STATION 3+590.349± OF SAID BASELINE; THENCE CONTINUING THROUGH SAID LANDS SOUTH 36°39'9.72" EAST A DISTANCE OF 4.05±m (13.3±FT) TO THE POINT OF BEGINNING, SAID PARCEL BEING 34.18± SQUARE METERS (367.95± SQUARE FEET) MORE OR LESS.

RESERVING, HOWEVER, TO THE OWNER OF ANY RIGHT, TITLE OR INTEREST IN AND TO THE PROPERTY DESCRIBED ABOVE AS PARCEL NO. 116, AND SUCH OWNER'S SUCCESSORS OR ASSIGNS, THE RIGHTS OF ACCESS AND THE RIGHT OF USING SAID PROPERTY AND SUCH USE SHALL NOT BE FURTHER LIMITED OR RESTRICTED UNDER THIS EASEMENT BEYOND THAT WHICH IS NECESSARY TO EFFECTUATE ITS PURPOSES FOR, AND AS ESTABLISHED BY, THE CONSTRUCTION AND AS SO CONSTRUCTED, THE MAINTENANCE, OF THE HEREIN IDENTIFIED PROJECT.

THE SURVEY BASELINE IS A PORTION OF THE 2006 SURVEY BASELINE FOR THE RE-CONSTRUCTION OF COUNTY ROUTE 21 (NOXON ROAD), AS SHOWN ON THE MAP AND DESCRIBED AS FOLLOWS:
 BEGINNING AT STATION 3+536.804; THENCE SOUTH 36°39'32.84" EAST TO STATION 3+601.521; THENCE SOUTH 43°11'24.81" EAST TO STATION 3+744.283.

I hereby certify that the property mapped above is necessary for this project, and the acquisition thereof is recommended.

Date April 9 2013

Robert H. Balkind, P.E.
 Acting Commissioner of Public Works

Recommended by:

Date April 8 2013

Gregory V. Bentley, P.E.
 Director of Engineering



"Unauthorized alteration of a survey map bearing a licensed land surveyor's seal is a violation of the New York State Education Law."

I hereby certify that this map is an accurate description and map made from an accurate survey, prepared under my direction.

Date 3/27 2013

EDWARD T. GANNON Land Surveyor
 P.L.S. License No. 49907

MAP NUMBER 55 3/18/13
~~2/13/13~~
 REVISED DATE 4/2/12 11/13/12
 DATE PREPARED 4/2/12

WSP- SELLS
 555 PLEASANTVILLE ROAD
 BRIARCLIFF MANOR, NY 10510

Public Works and Capital Projects

RESOLUTION NO. 208403

RE: ENVIRONMENTAL FINDINGS FOR THE RESURFACING, RESTORATION AND REHABILITATION OF APPROXIMATELY 2.91 KILOMETERS (1.8 miles ±) OF NOXON ROAD (CR 21) BETWEEN NYS ROUTE 55 AND TITUSVILLE ROAD (CR 49) (PIN 8755.41) AND THE REHABILITATION OF THE NOXON ROAD/TITUSVILLE RD. INTERSECTION (PIN 8758.69) WITHIN THE TOWN OF LAGRANGE, DUTCHESS COUNTY NEW YORK

Legislators KELLER-COFFEY, MANSFIELD, McCABE, and SEARS offer the following and move its adoption:

WHEREAS, Dutchess County has established itself as Lead Agency in a companion resolution in accordance with 6 NYCRR 617.6, and

WHEREAS, the Department of Public Works as has prepared a Full Environmental Assessment Form (EAF) in connection the resurfacing, restoration and rehabilitation of approximately 2.91 kilometers (1.8 miles ±) of Noxon Rd. (CR 21) between NYS Route 55 and Titusville Rd. (CR 49) and as a result has found no significant impacts on the environment would potentially occur as a result of this project, and

WHEREAS, a true copy of the EAF and Negative Declaration are annexed hereto, and

WHEREAS, the Department of Public Works has determined that the rehabilitation of the Noxon Rd./Titusville Rd. intersection is a Type II action under the State Environmental Quality Review Act (SEQRA) and that no further action is required, and

WHEREAS, it is the purpose of this Legislature in adopting this resolution, to adopt and confirm the findings of the Department of Public Works, now therefore, be it

RESOLVED, that the Legislature approves and adopts the attached Negative Declaration for the resurfacing, restoration and rehabilitation of approximately 2.91 kilometers (1.8 miles ±) of Noxon Rd. (CR 21) between NYS Route 55 and Titusville Rd. (CR 49) in accordance with 6 NYCRR 617.6, including the acquisition of portions of certain properties in the Town of LaGrange, and be it further

RESOLVED, the attached Negative Declaration is to be filed and published in accordance with 6 NYCRR 617.12.

CA-231-08 CAB/ca/G-1461 11/14/08 Fiscal Impact: See attached statement

APPROVED

WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

STATE OF NEW YORK
COUNTY OF DUTCHESS

ss:

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess, have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 8th day of December, 2008, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

December 17, 2008

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 8th day of December, 2008.

BARBARA HUGO, CLERK OF THE LEGISLATURE

McKinney's Consolidated Laws of New York Annotated
Eminent Domain Procedure Law (Refs & Annos)
Chapter 73. Of the Consolidated Laws
Article 1. Purpose; Short Title; Definitions; Applicability

McKinney's EDPL § 101

§ 101. Purpose

Currentness

It is the purpose of this law to provide the exclusive procedure by which property shall be acquired by exercise of the power of eminent domain in New York state; to assure that just compensation shall be paid to those persons whose property rights are acquired by the exercise of the power of eminent domain; to establish opportunity for public participation in the planning of public projects necessitating the exercise of eminent domain; to give due regard to the need to acquire property for public use as well as the legitimate interests of private property owners, local communities and the quality of the environment, and to that end to promote and facilitate recognition and careful consideration of those interests; to encourage settlement of claims for just compensation and expedite payments to property owners; to establish rules to reduce litigation, and to ensure equal treatment to all property owners.

Credits

(L.1977, c. 839, § 1.)

Notes of Decisions (350)

McKinney's E. D. P. L. § 101, NY EM DOM PROC § 101

Current through L.2014, chapters 1 to 402.