

Public Works & Capital Projects

RESOLUTION NO. 2017012

RE: AUTHORIZING ACQUISITION OF A PERMANENT EASEMENT FROM JAMES PHILLIP BURGESS AND JOHN G. SHULTZ, JR., OF A PORTION OF REAL PROPERTY FOR THE REPLACEMENT OF BRIDGE S-37 LOCATED ON BULLS HEAD ROAD (COUNTY ROUTE 19) OVER THE LITTLE WAPPINGER CREEK, TOWN OF STANFORD

Legislators PULVER, BORCHERT, BOLNER, and SAGLIANO offer the following and move its adoption:

WHEREAS, the Department of Public Works has proposed the replacement of the Bridge S-37 located on Bulls Head Road (County Route 19) over the Little Wappinger Creek, in the Town of Stanford, which project includes the acquisition of a permanent easement of 9,601+/- square foot parcel to facilitate the reconstruction and continued maintenance of the said bridge, and

WHEREAS, this Legislature in Resolution No. 2015272, adopted the findings of the Dutchess County Department of Public Works that this project is an unlisted action and will not have any adverse environmental impact, and

WHEREAS, the Department of Public Works has made a determination that in order to replace the said bridge, it is necessary to acquire a permanent easement on a portion of property presently owned by James Phillip Burgess and John G. Shultz, Jr., as Tenants by the Entirety, and

WHEREAS, a proposed Agreement to acquire a Permanent Easement between the County and the property owners is annexed hereto, and

WHEREAS, the property is described as a portion of parcel number: 135200-6668-04-820114-0000, consisting of 9,601+/- square feet, more or less as shown on Map 3, Parcel 5 a copy of which is annexed hereto, and

WHEREAS, the Commissioner of Public Works has recommended that the subject property, Fee Acquisition, be purchased for the sum of up to \$17,890 as well as up to \$1,000 in related expenses, if any, and that the terms and conditions of the Agreement be carried forth, now therefore, be it

RESOLVED, that the County Executive or his designee is authorized to execute the Agreement to Acquire a Permanent Easement in substantially the same form as annexed hereto along with any other necessary documents in connection with this acquisition, and be it further

RESOLVED, that on the submission by the property owner of a deed to the aforementioned land, which shall include the terms and conditions of the Agreement to Acquire a Permanent Easement, and such other documents as may be necessary to convey free and clear title to the County of Dutchess, that payment be made to the property owner in the sum of \$17,890 and in addition the County is authorized to up to \$1,000 in related expenses and filing fees, if any, for such conveyance, and

RESOLVED, that the terms and conditions of the aforementioned Agreement to Purchase Real Property be carried out by the Dutchess County Department of Public Works.

CA-002-17  
CAB/kvh/R-0958-D  
12/28/16  
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 23rd day of January 2017, 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 23<sup>rd</sup> day of January 2017.

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 \$ 18,890

Total Current Year Revenue \$ \_\_\_\_\_  
and Source

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

Identify Line Items(s):

HO289.5120.3009 2000 Bridges (ISTEA/TEA21)

Related Expenses: Amount \$ \_\_\_\_\_

Nature/Reason:

Anticipated Savings to County: \_\_\_\_\_

Net County Cost (this year): \$18,890

Over Five Years: \_\_\_\_\_

#### Additional Comments/Explanation:

BRIDGE S-37 BULLS HEAD ROAD (COUNTY ROUTE 19) OVER THE LITTLE WAPPINGER CREEK  
TOWN OF STANFORD, DUTCHESS COUNTY, NEW YORK

Authorization to acquire in fee a 9,601+/- square foot parcel as shown on Map 3, Parcel 5 for the purchase price of \$17,890.00 from James Phillip Burgess and John G. Schultz, Jr., tenants by the entirety.

Related expenses in the amount of \$1,000 are included in the Total Current Year Costs.

Prepared by: Matthew W. Davls

Prepared On: 11/30/16

ADVANCE PAYMENT AGREEMENT TO PURCHASE REAL PROPERTY

Project: Bridge S-37 (BIN 334850), Bulls Head Road (CR 19) Over Little Wappingers Creek, Town of Stanford  
Map: 3 Parcel(s): 5&6

This Advance Payment Agreement by and between JAMES PHILLIP BURGESS AND JOHN G. SCHULTZ, JR., TENANTS BY THE ENTIRETY, residing at 410 Central Park W hereinafter referred to as "Seller", and the COUNTY OF DUTCHESS, with offices at 22 Market Street, Poughkeepsie, New York, 12601 hereinafter referred to as "Buyer".

1. PROPERTY DESCRIPTION. The Seller agrees to sell, grant, convey:

- all right title and interest* to 9,601± square feet of real property. Purchase price is \$17,490.
- a permanent easement* to 0± square feet of real property. Purchase price is \$0.
- a temporary easement* to 2,877± square feet of real property. Purchase price is \$400.

Located at 5-15 Old Depot Way, Stanfordville, NY, Dutchess County, and is further described as parcel(s) 5&6 on Exhibit "A", attached hereto.

Being a portion of those same lands described in that certain deed dated May 8, 2014 and recorded August 6, 2014 in Document # 02-2014-4540 in the Office of the County Clerk for Dutchess County (re: Grid #135200-6668-04-820114-0000),

2. IMPROVEMENTS INCLUDED IN THE PURCHASE. The following improvements, if any, now in or on the property are included in this Advance Payment Agreement: Approximately 96 square feet of Jerith Delgard Elba style Black aluminum fence with a 56 square feet (14' width by 4' height) double drive gate and two fence posts; approximately 150 linear feet of black vinyl chain link fence (4' height) with 6' wide single walk gate; 5 Pine Trees (2-4" caliper), one medium sized Bush, Gravel, Driveway; Ornamental planted area; Natural Vegetation (trees/grass/shrubbery/brush)
3. PURCHASE PRICE. The Seller and the Buyer cannot agree upon the value of the real property interest(s) to be conveyed. The Buyer is willing to pay an amount equal to the highest approved appraisal of the just compensation for the property. This amount is SEVENTEEN THOUSAND EIGHT HUNDRED NINETY 00/100 DOLLARS (\$17,890.00). This amount includes the real property interest(s) described in Paragraph 1 and the improvements described in Paragraph 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 documents which the Buyer deems necessary to authorize payment and to convey to the Buyer clear title to the property described in paragraph 1 subject to the claim of the Seller. The parties agree that the Seller's right of the advance payment shall not be conditioned on the waiver of any other right.
4. CLOSING DATE AND PLACE. Payment of \$17,890 will be made by the Buyer to the Seller on or about February 4, 2017. This Agreement may be subject to the approval of the Dutchess County Legislature.
5. CLAIM. In accordance with Article 5 of the New York State Eminent Domain Procedure Law, the Seller hereby reserves the right to file a claim in the Dutchess County Supreme Court. 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 OF CLAIM. It is understood and agreed by and between the parties hereto, that if the Seller intends to file a claim for additional compensation in the Dutchess County Supreme Court, he/she/ it must file the claim within one (1) year from the date of the execution of this Agreement. If the Seller fails to file the claim in the time period stated, 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. MARKETABILITY OF TITLE. Buyer shall pay for the costs associated with 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 agrees to cooperate with the Buyer in its curative action activities. 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. In the alternative, the Seller may elect to satisfy the liens and encumbrances from another source of funds.
9. RECORDING COSTS, & CLOSING ADJUSTMENTS. Buyer will pay all recording fees, if any. 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 acquisition 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.

IN WITNESS WHEREOF, on this 12th day of November, 2016, the parties have entered into this Agreement.

APPROVED AS TO FORM:

SELLER: [Signature]  
JAMES PHILIP BURGESS

Department of Law

SELLER: [Signature]  
JOHN G. SCHULTZ, JR.

APPROVED AS TO CONTENT:

COUNTY OF DUTCHESS:

[Signature]  
Department of Public Works

Print Name: John G. Schultz, Jr.

Title: \_\_\_\_\_

REPLACEMENT OF BRIDGE S-37 (ON 3343850)  
 BULLS HEAD ROAD (CR-19) OVER LITTLE WAPPINGER CREEK.  
 RIGHT OF WAY ACQUISITION MAP

COUNTY OF DUTCHESS  
 DEPARTMENT OF PUBLIC WORKS  
 ACQUISITION MAP

MAP NO. 3  
 PARCEL NO. 5 & 6  
 SHEET 1 OF 3

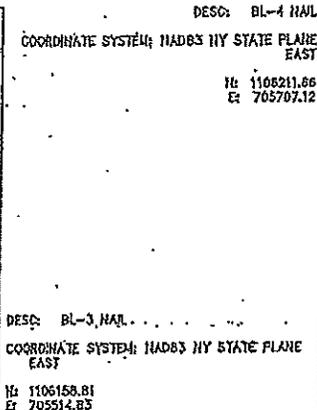
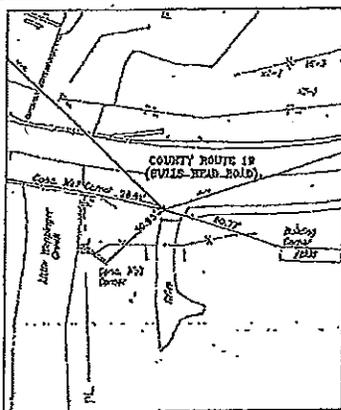
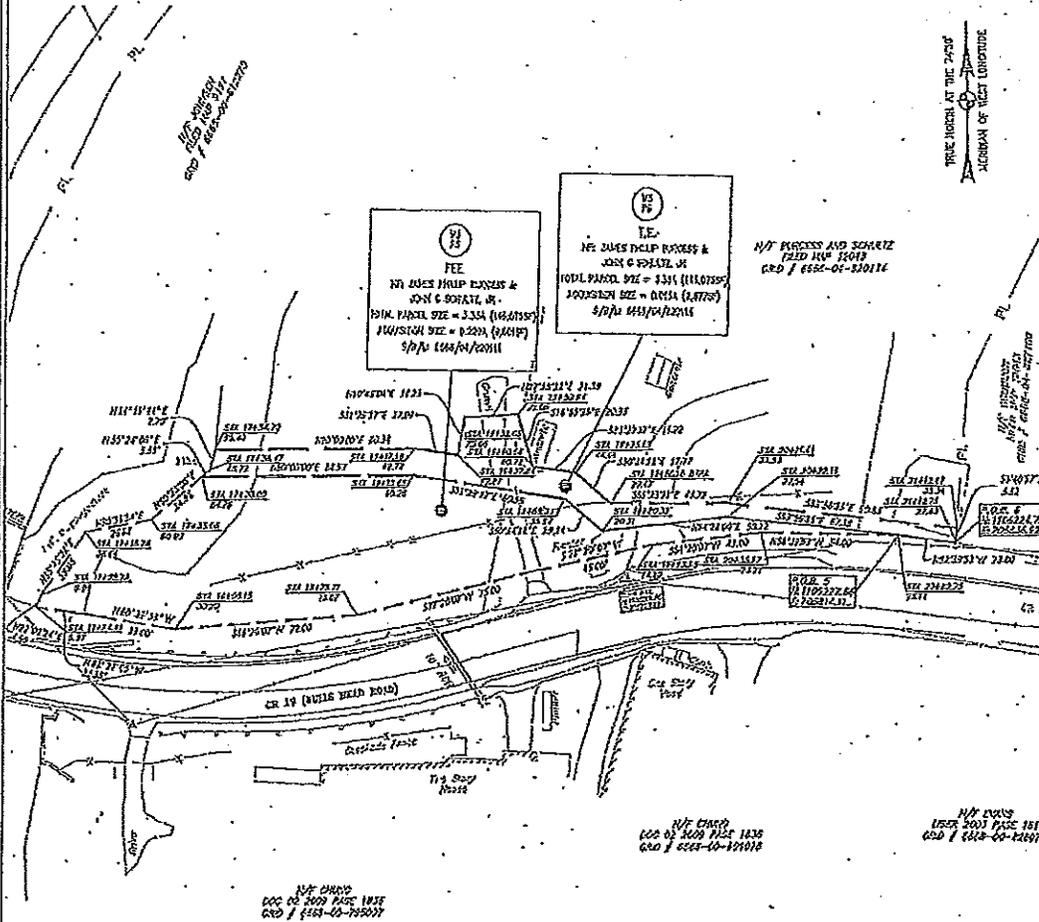


Point of Sale Point  
 Parcel No. 5  
 N 1105222.68 E 705514.31

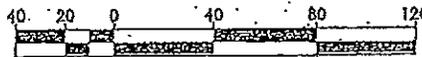
Point of Sale Point  
 Parcel No. 6  
 N 1105224.73 E 705536.62

Acquisition Description  
 Type: Fee & E.E.  
 Portion of Real Property Tax Parcel ID No. 6688-04-620114  
 Town of Stamford  
 County of Dutchess  
 State of New York

Repealed Owner:  
 James Philip Burgess  
 5-15 Old Depot Way  
 Stamford, N.Y. 12581



BL-3: STA 17+82.98



BL-4: STA 19+85.30



All that certain plot, piece or parcel of land situate, lying and being in the Town of Stanford, County of Dutchess, State of New York, shown as Parcel No. 5 on accompanying map to be acquired in Fee;

Commencing at a point on the northerly line of Bulls Head Road which is intersected by southeast corner of lands now or formerly of Burgess and Schultz (tax lot 6668-04-820114) and the southwest corner of lands now or formerly of Goodson (tax lot 6668-04-827100); thence North 82°39'53" West a distance of 23.00 feet to a point to the Point of Beginning;

Thence along Bulls Head Road the following courses and distances;

- 1) North 80°39'53" West a distance of 56.60 feet to a point;
- 2) South 84°20'07" West a distance of 43.00 feet to a point;
- 3) South 70°20'07" West a distance of 45.00 feet to a point;
- 4) South 77°20'07" West a distance of 75.00 feet to a point;
- 5) South 86°20'07" West a distance of 72.00 feet to a point;
- 6) North 80°39'53" West a distance of 33.00 feet to a point;
- 7) North 81°27'05" West a distance of 22.55 feet to a point;

Thence along the center of Little Wappinger Creek the following courses and distances;

- 8) North 22°02'24" East a distance of 4.58 feet to a point;
- 9) North 35°45'21" East a distance of 28.08 feet to a point;
- 10) North 80°58'54" East a distance of 26.87 feet to a point;
- 11) North 50°28'05" East a distance of 24.91 feet to a point;

Thence through lands now or formerly of Burgess and Schultz the following courses and distances;

- 12) North 90°00'00" East a distance of 86.57 feet to a point;
- 13) South 81°29'17" East a distance of 60.55 feet to a point;
- 14) South 50°74'11" East a distance of 19.14 feet to a point;
- 15) North 84°28'00" East a distance of 60.12 feet to a point;
- 16) South 83°56'38" East a distance of 67.59 feet to the Point of Beginning.

Containing 8,601 square feet or 0.220 acres more or less.

A temporary easement to be exercised in, on and over the property delineated above for the purpose of roadway realignment, roadside grading, driveway reconstruction, landscape restoration, etc., for use and exercisable during the construction or reconstruction of the highway and terminating upon the approval of the completed work, unless sooner terminated if deemed no longer necessary for highway purposes and released by the Commissioner of Public Works or other authorized representative acting for the County of Dutchess or its assignee. Such easement shall be exercised in and to of that (those) piece(s) or parcel(s) of property designated as Parcel No. 5 as shown on the accompanying Map No. 3.

Beginning at a point on the northerly line of Bulls Head Road which is intersected by southeast corner of lands now or formerly of Burgess and Schultz (tax lot 6668-04-820114) and the southwest corner of lands now or formerly of Goodson (tax lot 6668-04-827100);

Thence through lands now or formerly of Burgess and Schultz the following courses and distances;

- 1) North 82°39'53" West a distance of 23.00 feet to a point;
- 2) North 83°56'38" West a distance of 67.59 feet to a point;
- 3) South 84°28'00" West a distance of 60.12 feet to a point;
- 4) North 50°74'11" West a distance of 19.14 feet to a point;



- 5) North 81°29'17" West a distance of 60.55 feet to a point;
  - 6) North 90°00'00" West a distance of 84.57 feet to a point;  
thence along the centerline of the Little Wappinger Creek;
  - 7) North 50°28'08" East a distance of 3.99 feet to a point;
  - 8) North 14°18'24" East a distance of 2.70 feet to a point;  
thence continuing through lands now or formerly of Dutgess and Schultz;
  - 9) North 90°00'00" East a distance of 80.34 feet to a point;
  - 10) South 81°29'17" East a distance of 17.08 feet to a point;
  - 11) North 10°45'04" East a distance of 14.23 feet to a point;
  - 12) North 87°18'12" East a distance of 21.39 feet to a point;
  - 13) South 16°55'25" East a distance of 20.35 feet to a point;
  - 14) South 81°29'17" East a distance of 16.72 feet to a point;
  - 15) South 88°14'11" East a distance of 17.77 feet to a point;
  - 16) South 89°23'23" East a distance of 46.72 feet to a point;
  - 17) South 83°56'38" East a distance of 90.86 feet to a point;
  - 18) South 02°40'57" West a distance of 3.52 feet to the Point of Beginning.
- Containing 2,877 square feet or 0.066 acres more or less.

<sup>1</sup>Unauthorized alteration of a survey map having 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.

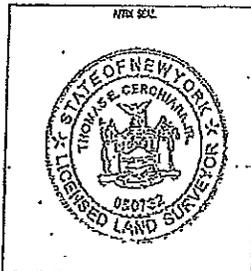
Date: July 18, 2016

Land Surveyor: Thomas E. Cerchione

P.L.S. License No: 050702

Parcel 5 Area = 9,601 sq ft  
0.220 Acres

Parcel 6 Area = 2,877 sq ft  
0.066 Acres



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

Date: July 21, 2016

*Robert H. Knite*

Robert H. Knite, MA, ASLA Commissioner of Public Works

Recommended by:

Date: July 21, 2016

*Robert H. Bolking*

Robert H. Bolking, P.E.  
Deputy Commissioner of Public Works