

SUPERVISOR
JAMES J. BACH
(716) 652-7590
jbach@townofaurora.com



WS-1

TOWN CLERK
MICHAEL LIBROCK
(716) 652-3280
townclerk@townofaurora.com

TOWN OF AURORA

300 Gleed Avenue, East Aurora, NY 14052
www.townofaurora.com

MEMO

TO: Town Board

FROM: Kathleen Moffat

RE: Establishment of Reserve Fund

DATE: 11/09/16

Approval is respectfully requested to establish a Reserve Fund for Payment of Bonded Indebtedness as per General Municipal Law section 6-h. Permitted use of this reserve fund will be payment of the principal and interest due on bonds issued for Gleed Avenue improvements. The source of funds will be the surplus moneys in the ER fund generated by the sale of 300 Gleed.

SUPERVISOR
James J. Bach
(716) 652-7590
jbach@townofaurora.com



WS-2
CLERK
Librock
52-3280
www.townofaurora.com

TOWN OF AURORA
Southside Municipal Center
300 Gleed Avenue, East Aurora, NY 14052
www.townofaurora.com

TOWN COUNCIL MEMBERS
Susan A. Friess
sfriess@townofaurora.com

September 28, 2016

Jeffrey T. Harris
jharris@townofaurora.com

To: Town Board Members

Jolene M. Jeffe
jjeffe@townofaurora.com

Charles D. Snyder
csnyder@townofaurora.com

I respectfully request the Town Board approve of the purchase of a 2017 Model 420F2 ST Caterpillar Tractor Backhoe. This being purchased off of the NYS OGS Bid # PGB22792 Group #40625 for the price of \$94122.00

SUPT. OF HIGHWAYS
David M. Gunner
(716) 652-4050
highway@townofaurora.com

This will be paid for out of DB5130.217 in the 2017 budget. It will take approximately 6 months to build. It will be delivered sometime in the spring of 2017. By ordering now we are able to lock in the price before the November price increase.

SUPT. OF BUILDING
Patrick J. Blizniak
(716) 652-7591
building@townofaurora.com

This will replace a 1992 Ford Model 555 Tractor backhoe which will be declared surplus after the new one has arrived.

ASSESSOR
Richard L. Dean
assessor@townofaurora.com
(716) 652-0011

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Gunner".

DIR. OF RECREATION
Christopher Musshafen
(716) 652-8866
chris@townofaurora.com

David M. Gunner
Superintendent of Highways

TOWN ATTORNEY
Ronald P. Bennett

TOWN JUSTICE
Jeffrey P. Markello
Anthony DiFilippo IV

HISTORIAN
Robert L. Goller
(716) 652-7944
historian@townofaurora.com

FAX: (716) 652-3507
NYS Relay Number:
1(800) 662-1220

Milton



Influencer: DAVE GUNNER

PURCHASE ORDER

9/28/2016

SALE DATE

SALE TO: TOWN OF AURORA HWY DEPT

D/B/A:

ADDRESS: 251 QUAKER RD

CITY, STATE, ZIP: EAST AURORA, NY, 14052

PHONE #: 716-652-4050 Cell #:

Fax #: 716-652-1123 EMAIL:

INVOICE TO Customer #: P.O#

SHIP TO ADDRESS: 251 QUAKER RD

CITY, STATE, ZIP: EAST AURORA, NY, 14052

DESCRIPTION

Make: 2017 CATERPILLAR SERIAL # TBD

Model: 420F2 ST ID # TBD

To include all manufacturer's standard specs in addition to the following:

CAT C4.4 ACERT Engine Tier 4 Final, Stick extendable 14", 4wd Autoshift,

cold weather package, deluxe cab, a/c, tires 12.5 80/19.5L-24, 1015 lb. counterweight,

flip over stabilizer pads, coupler manual pin grabber dual lock, ride control,,

amber beacon, am & fm radio

See attached for detailed specifications

ATTACHMENTS :

Rock Bucket-HD 24", Multi-purpose bucket 1.4 C.Y. w/ 2 pc. Cutting edge.

Priced according to NYS OGS Group 40625, Award 22792, NYS Contract PC66988, NJPA 032515-CAT

CONDITION: AS IS NEW PRODUCT WARRANTY: 1 YEAR - UNLIMITED HOURS

TRADE IN: MAKE: MODEL SERIAL # ALLOWANCE \$

DESCRIPTION: YEAR: CUSTOMER / SALESMAN #

TRADE IN: MAKE: MODEL SERIAL #: ALLOWANCE \$

DESCRIPTION: YEAR: CUSTOMER / SALESMAN #

TRADE IN: MAKE: MODEL SERIAL #: ALLOWANCE \$

DESCRIPTION: YEAR: CUSTOMER / SALESMAN #

For Office Use Only	
DATE SHIPPED	
FRT. CHG CODE (TRA, CPL, DNC)	
CSA or TMSR	
RENTAL CONV. / REVERSE MO'S	
COMPETITION	

SUBJECT TO CREDIT APPROVAL CFSC OR SMI

FINANCING TERMS:

NET CASH UPON RECEIPT OF INVOICE

SEE INSTALLMENT SALE CONTRACT

OTHER

SKIP PAYMENTS

PAYABLE AS FOLLOWS:

SELLER

SOUTHWORTH-MILTON, INC.

JIM MORELLI G1-00059-16
SALES AGENT DIV/TYPE/STOREACCEPTED BY:
BRANCH OR SALES MANAGER

PURCHASER

BY: (SIGNATURE)

(PRINT)

(MUNICIPALITY)

MAILING ADDRESS IF DIFFERENT FROM ABOVE



14th Supplemental Contract Award Notification

Title	: Group 40625 –Heavy Equipment (National Joint Powers Alliance and The Cooperative Purchasing Network Contract Piggybacks) (Statewide) Classification Code(s): 21, 22, 23, 24, 25, 39 and 40
Award Number	: <u>PGB 22792</u>
Contract Period	: Various. See Contractor Information page
Bid Opening Date	: June 11, 2015
Date of Issue	: July 13, 2015
Specification Reference	: As Incorporated In The Piggyback Agreements
Contractor Information	: Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Michael Riley Title : Contract Management Specialist 1 Phone : 518-474-6716 E-mail : Michael.riley@ogs.ny.gov	Procurement Services Customer Services Phone: 518-474-6717 E-mail : customer.services@ogs.ny.gov

**Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

This award includes a wide variety of heavy duty equipment including but not limited to aerial lift trucks, backhoes, compaction rollers, compression rollers, compressors, dozers, graders, excavators, mowing tractors, and mowing attachments.

PR # 22792

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>FED.IDENT.# / NYS VENDOR#</u>
PC66988	Caterpillar Inc. 100 NE Adams St., Peoria IL 61629	370602744 1100137599

For the current list of Contractor contact information, and pricing for this Award, please see the “Contractor Info” page located on the OGS website at: <http://www.ogs.ny.gov/purchase/spg/awards/4062522792can.HTM>.

Cash Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
 (See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS,RP,RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

(continued)

NOTE TO AUTHORIZED USERS (Cont'd):

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

CONTRACT BILLINGS AND PAYMENTS:

a. **Billings.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. **Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment.** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at <http://www.osc.state.ny.us/epay/index.htm> or by e-mail at epayments@osc.state.ny.us. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above. Inquiries relating to OSC's Electronic Payments program should be directed to:

NYS Office of the State Comptroller
Vendor Management Unit
110 State Street Mail Drop 10-4
Albany, NY 12236
Telephone: (855) 233-8363
E-Mail: helpdesk@sfs.ny.gov

c. **Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment.** The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

OGS PROCUREMENT SERVICES DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' Procurement Services to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS Procurement Services bid solicitations or contract awards. OGS Procurement Services encourages vendors to seek resolution of disputes through consultation with OGS Procurement Services staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of OGS Procurement Services Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.ny.gov).

(continued)



WS-3

TOWN OF AURORA
Southside Municipal Center

To: Aurora Town Board
From: Martha Librock, Town Clerk
Date: November 15, 2016
Re: Copier Lease

The lease on our four copiers (Town Clerk, Senior Center, Recreation and Building Dept.) is up in mid-December. Sharp Electronics Corp. has copiers on the NY State contract that fit the needs of these departments. The lease is for five years and costs less than the lease that is expiring. I'm requesting your approval to lease four Sharp copiers through Eagle Systems, 2421 Harlem Road, Buffalo, NY 14225. Eagle Systems will provide maintenance and supplies (excluding paper and staples) for \$1,000 annually for all four copiers.



Southside Municipal Center
300 Gleed Avenue, East Aurora, NY 14052

PURCHASE ORDER NO. 11-102016

Date: November 14, 2016

Vendor	Ship To	Bill To
Sharp Electronics Corp. c/o Eagle Systems Sharp Plaza Attn: Government Sales, Box B Mahwah, NJ 07430	Town of Aurora c/o Eagle Systems 2421 Harlem Road Buffalo, NY 14225	Town of Aurora 300 Gleed Avenue East Aurora, NY 14052 (716) 652-3280

NEW YORK STATE CONTRACT #22661

SHARP CONTRACT #PT66614

Quantity	Item(s)	Contract	60 Month DPP
1	SHARP MX-B402SC	\$2350.00	\$39.17
1	MXCSX1-PAPER DRAWER	\$ 213.85	\$ 3.56
1	MXDS13-BASE PLATE	\$ 75.20	\$ 1.25
1	MXDS14-STACK CABINET	\$ 32.90	\$.55
1	MXDS14-STACK CABINET	\$ 32.90	\$.55
1	MXFR260- SECURITY	\$ 270.25	\$ 4.50
1	ARD5133NT-POWER FILTER	\$ 70.50	\$ 4.72
1	SHARP MX-B402SC	\$2350.00	\$39.17
1	MXCSX1-PAPER DRAWER	\$ 213.85	\$ 3.56
1	MXDS13-BASE PLATE	\$ 75.20	\$ 1.25
1	MXDS14-STACK CABINET	\$ 32.90	\$.55
1	MXDS14-STACK CABINET	\$ 32.90	\$.55
1	MXFR260- SECURITY	\$ 270.25	\$ 4.50
1	ARD5133NT-POWER FILTER	\$ 70.50	\$ 4.72
1	SHARP MX-3070N	\$3600.00	\$ 60.00
1	MXFN28-FINISHER	\$1000.00	\$ 16.67
1	MXRB25-PAPER PASS	\$ 200.00	\$ 3.33
1	MXDE28-DRAWER	\$ 730.00	\$ 12.17
1	ARD5133NT-POWER FILTER	\$ 70.50	\$ 4.72
1	SHARP MX-3070N	\$3600.00	\$ 60.00
1	MXFN27-FINISHER	\$ 500.00	\$ 8.33
1	MXDE25-DRAWER CABINET	\$ 275.00	\$ 4.58
1	ARD5133NT-POWER FILTER	\$ 70.50	\$ 4.72
	TOTAL MONTHLY PAYMENT		\$268.97

NO MAINTENANCE CONTRACT REQUIRED

PURCHASE REQUESTED BY:
Martha Librock, Town Clerk
townclerk@townofaurora.com (716)652-3280



EAGLE SYSTEMS, INC.

2421 Harlem Road • Buffalo, NY 14225
Phone: (716) 893-0506 • Fax: (716) 897-3081
www.eagleny.com

ANNUAL SERVICE & SUPPLY MAINTENANCE AGREEMENT

PLEASE SIGN WHITE COPY AND RETURN TO:

Eagle Systems, Inc.
PO BOX 3302
BUFFALO, NY 14240

Contract No.

CUSTOMER No:

CUSTOMER PO No:

Eagle Systems, Inc. agrees to furnish service and install parts for the equipment under this agreement, subject to the conditions herein and on the reverse side hereof:

MODEL	SERIAL NUMBER	ID #	PAGES ALLOWED ANNUALLY		MIN. ANNUAL RATE
			PRINTS	SCANS	
MX-B402SC			100,000		1,000.00
mx-B402SC					
mx-3070N					
MX-3070N					
SERVICE & SUPPLY CONTRACT BILLED QUARTERLY					
AT \$ 250.00 FOR 25,000 BLACK PAGES, COLOR					
PAGES BILLED AT \$.0675 PER PAGE ON ACTUAL					
USAGE.					
BILLING: <input type="checkbox"/> ANNUAL <input type="checkbox"/> SEMI-ANNUAL <input checked="" type="checkbox"/> QUARTERLY color \$.0675					
EXCESS BILLED: <input type="checkbox"/> ANNUAL <input type="checkbox"/> SEMI-ANNUAL <input checked="" type="checkbox"/> QUARTERLY AT BLACK .01 <input type="checkbox"/> PER PRINT PAGE <input type="checkbox"/> PER SCAN PAGE					
Comments:					
INCLUDES: TRAVEL, LABOR, PARTS, DRUM & TONER					SUB TOTAL
EXCLUDES: PAPER & STAPLES					<input type="checkbox"/> EXEMPT TAX
TONER YIELD: 1 CARTRIDGE PER <input type="text"/> PAGES					TOTAL

INITIAL COVERAGE FOR THE ABOVE LISTED EQUIPMENT WILL BEGIN AT 8:00 A.M. ON AND END AT 5:00 P.M. ON . LISTED EQUIPMENT WILL BE MAINTAINED UNDER THE TERMS AND AND END CONDITIONS SPECIFIED ON THE REVERSE SIDE HEREOF. IF THE STATED VOLUME IS EXCEEDED DURING ANY ONE YEAR TERM THAT THIS AGREEMENT IS IN EFFECT, CUSTOMER SHALL BE INVOICED FOR A NEW AGREEMENT AT OUR THEN CURRENT RATES. MILEAGE FOR ZONE DESIGNATION WILL BE MEASURED FROM EAGLE SYSTEMS INC.'S CLOSEST SERVICE CENTER.

ZONE DESIGNATION: ZONE "A" 0-25 MILES ZONE "B" 26-40 MILES ZONE "C" 60+ MILES

Eagle Systems, Inc.
SERVICE DIVISION

BUFFALO EB
BRANCH LOCATION

SERVICE DEPARTMENT DATE

PRICING IN EFFECT UNTIL:

Rev. 12.13.05

TOWN OF AURORA

CUSTOMER

300 BLEED AVE

ADDRESS

EAST AURORA NY 14052

CITY STATE ZIP

AUTHORIZED SIGNATURE

TITLE

DATE

WS-4

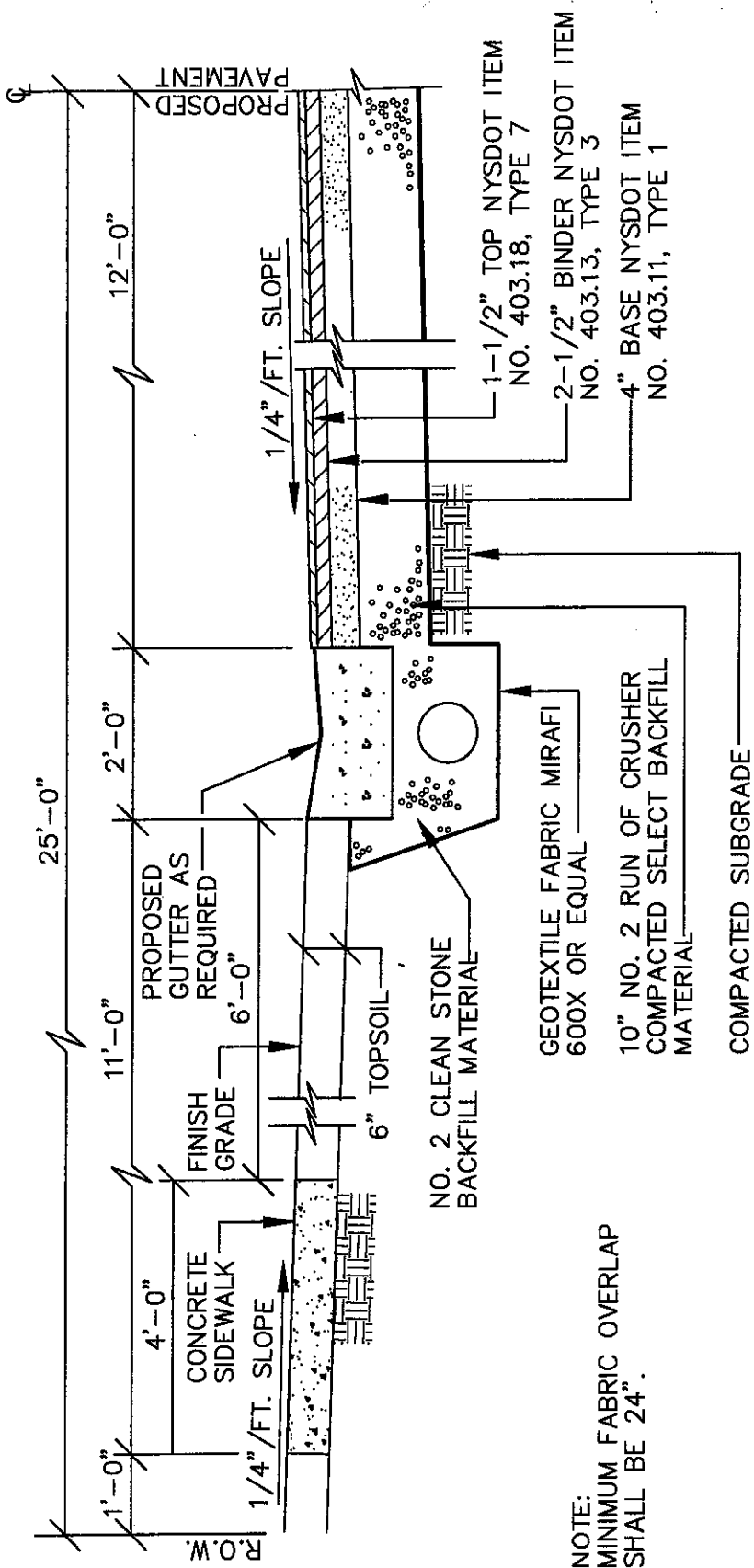
Jimmy Hasselbeck's Eagle Scout Project Idea

- ✓ I came up with this idea because many times I have seen people, myself included being caught in the rain and other hazardous weather conditions at Knox Soccer Complex with no shelter.
- ✓ I also thought this would be a good place for all to enjoy the outdoors
- ✓ The shelter would be there for all soccer players, spectators, runners, walkers, and people who just want to enjoy nature
- ✓ I am looking forward to working with you all to come up with an appropriate design and size that would fit in the park setting and be a positive addition to this section of the park.
- ✓ I plan on talking to the East Aurora Arsenal Board and Town of Aurora to get their support.
- ✓ I also have to do some fundraisers to be able to buy materials for this project and I have to organize Boy Scout volunteers from my troop to get the project completed.
- ✓ I was thinking of trying to build the project next summer.
- ✓ These are a couple designs that I thought would be a nice addition to the park.



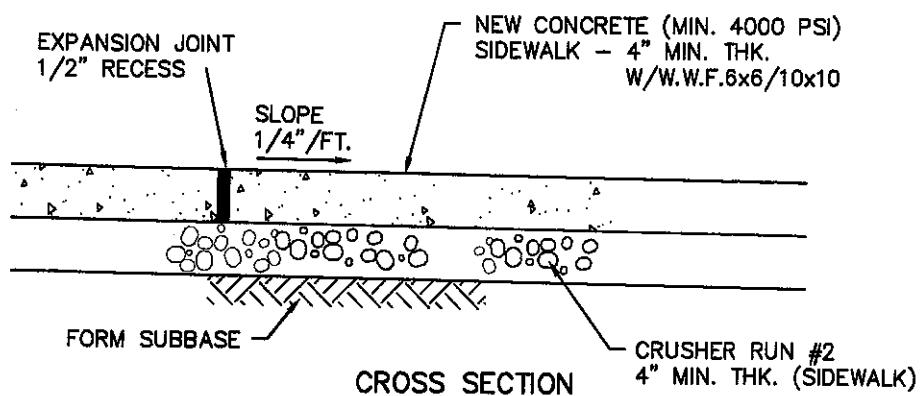
12'x12' OR 15'x15'

ANUX R017D



NOTE:
 MINIMUM FABRIC OVERLAP
 SHALL BE 24".

TYPICAL GUTTER CURB PAVEMENT SECTION



NOTES:

1. CONTROL JOINTS TO BE AT 5'-0" O.C. BOTHWAYS - SEE SPECIFICATIONS FOR FURTHER JOINT REQUIREMENTS NYSDOT 702-0700.
2. CONCRETE SIDEWALK MATERIAL SHALL CONFORM TO NYSDOT STANDARD SPECIFICATION 501 AND CONSTRUCTION METHODS SHALL CONFORM TO NYSDOT STANDARD SPECIFICATION 608-3.

CONCRETE SIDEWALK

N.T.S.



November 17, 2016

Aurora Town Board
300 Gleed Avenue
East Aurora, New York 14052

**Re: Aurora Mills Cluster Development, Town of Aurora, NY
HSR File 20132.01**

Dear Aurora Town Board:

This letter is submitted on behalf of our client, Aurora Mills, LLC, regarding its proposed cluster development on Mill Road. This letter shall address that width of the private road servicing the proposed cluster development.

An issue has arisen as to whether the proposed private road required a variance or modification regarding the 24 feet road width. This letter shall address as follows:

1. A variance or modification is not required due to the express language of the Town Cluster Development Ordinance and New York Town Law § 278; and
2. Alternatively, if the Town Board believed a variance or modification is required, then this letter shall constitute a request for a variance or modification pursuant to Town Code § 99-26(E).

**1. The Town Cluster Development Ordinance Allows
the Town Board to Authorize the Requested Road Width**

The Town Cluster Development Ordinance, a copy of which is attached as Exhibit A, expressly sets forth a different criteria for roads than traditional subdivisions where a 26 feet road width is required. Town Code § 99-26(D)(6) states as follows: "Private roads shall be built to the minimum standards approved by the Town Board."

HOPKINS SORGI & ROMANOWSKI PLLC
Attorneys at Law

26 Mississippi Street, Suite 400 • Buffalo, New York 14203
Office: 716-714-5699 • Fax: 716-424-2171 • www.hsr-legal.com

This rationale for not setting a specific road width dimensional requirement in the Town Cluster Development Ordinance is consistent with the intent of New York Town Law § 278(2)(b) which states:

The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

New York Town Law § 278, a copy of which is attached as Exhibit B, is an enabling statute which allowed towns to enact cluster development ordinances within their town codes consistent with the purpose set forth above. The primary benefit of cluster developments is preservation of greenspace through flexible design standards. This is accomplished not through set, rigid dimensional requirements, but rather by allowing towns to make determinations such as road width on a case by case basis.

Moreover, the 26 feet road width requirement in the Town Code is contained within Chapter A121, entitled "Street Acceptance" – see Chapter A121-3(D)(1). However, Chapter A121 only applies to roads proposed "to be dedicated [to the Town] for highway right of way purposes" (see Chapter A121-3) or for "roads or streets being built for use a private roads with the intent, at a later date, to be dedicated to the Town" (see Chapter A121-3(E)). The proposed private road is not proposed to be dedicated to the Town now, or in the future. Accordingly, the 26 feet road width requirement does not apply to the proposed cluster development. A copy of Chapter A121 is attached as Exhibit C.

Accordingly, there is no set dimensional requirement set forth in the Town Cluster Development Ordinance. Rather, there is recognition that infrastructure should be limited to the "minimum standards approved by the Town Board" in order to accomplish the primary benefit of preservation of greenspace. Moreover, allowing "minimum standards" decreases initial installation costs and ongoing maintenance costs which are ultimately the responsibility of the homeowners in the cluster development.

In support of the requested 24 feet road width, please note the following:

- a. The East Aurora Fire Department has approved the requested 24 feet road width – see letter from East Aurora Fire Department to Supervisor James Bach, dated November 13, 2016, attached as Exhibit D;
- b. The Town Board has previously issued a Negative Declaration pursuant to the New York State Environmental Quality Review Act, attached as Exhibit E, which made findings that there would be "No, or small impact may occur" regarding "Impact on Transportation"; and

- c. The Preliminary Plat has been amended to include sidewalks, thereby providing a better alternative to walking in the private road.

**2. Alternatively, the Town Board, not the Zoning Board of Appeals,
has Jurisdiction to Grant a Variance regarding Road Width**

While variances typically fall under the jurisdiction of the Zoning Board of Appeals, cluster developments are an exception. The New York State Appellate Division, Fourth Judicial Department, in Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd., 253 AD2d 342, 345-346 (4th Dept 1999), a copy of which is attached as Exhibit F, explained this in an analogous case regarding a cluster development where height requirements of the zoning code were required:

"In order to accomplish the clustering of development, a town board may authorize the planning board to approve an alternate development which deviates from minimum area, side and rear yard, depth, frontage, and similar requirements" (Rice, Practice Commentaries, McKinney's Cons Laws of NY, Book 61, Town Law § 278, 1999 Pocket Part, at 303). The Court of Appeals has held that, pursuant to Town Law § 278, a planning board has the discretion to "permit deviation from applicable minimum area, side and rear yard, depth, and frontage requirements" (Matter of Bayswater Realty & Capital Corp. v Planning Bd., 76 NY2d 460, 467). The issue raised on this appeal, which appears to be one of first impression in New York, is whether, pursuant to Town Law § 278, the Planning Board may permit deviation from applicable height requirements as part of cluster subdivision approval, or whether that determination must be made by the Zoning Board of Appeals, which otherwise is empowered to grant area variances.

We conclude that, pursuant to Town Law § 278, planning boards have the authority to allow deviation from applicable height requirements. There is no significant distinction between the authority to vary "outward" restrictions, such as setbacks, and the authority to vary "upward" restrictions. In both cases, the use of the property is not changed (see, Matter of Boyadjian v Board of Appeals, 136 AD2d 548 [fences are permitted uses, thus request for a higher fence requires an area variance, not a use variance]). The statute itself suggests that a planning board has the authority to vary height restrictions by the requirement therein that the applicant provide the planning board with a plat showing the cluster development, including "areas within which structures

may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required by the planning board" (Town Law § 278 [3] [d] [emphasis added]). The purpose of the cluster subdivision statute is "to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands" (Town Law § 278 [2] [b]). Allowing a planning board to consider deviations from height restrictions is no different from allowing it to consider deviations from other size restrictions and will not "authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands" (Town Law § 278 [6]). Thus, the court erred in granting the relief sought in the petition with respect to the second cause of action and remanding the matter to the Zoning Board of Appeals.

This case is consistent with New York Town Law § 278(1)(a) (see Exhibit B) which defines a cluster development as follows:

"cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

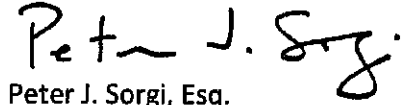
Consistent with the case set forth above and New York Town Law § 278(1)(a), the Town Cluster Development Ordinance empowers the Town Board to approve "Variances and modifications" – see Town Code § 99-26(E) at Exhibit A.

Accordingly, if the Town Board believes a Variance or Modification is required, it is respectfully requested that said Variance or Modification allowing the proposed road width be 24 feet for the reasons set forth above is Section 1(a-c).

Thank you for your consideration of this request. If you shall have any questions or require further information, please do not hesitate to contact me.

Sincerely,

HOPKINS SORGI & ROMANOWSKI PLLC

A handwritten signature in black ink that reads "Peter J. Sorgi". The signature is written in a cursive style with a large, stylized "P" and "S".

Peter J. Sorgi, Esq.

Enc.

cc: Ronald Bennett, Esq., Town Attorney
Martha Librock, Town Clerk
William Kramer, Town Code Enforcement Officer
Gary Eckis
Patricia Bittar, P.E., Project Engineer

Exhibit A

Town of Aurora Cluster
Development Ordinance

Chapter 99. Subdivision of Land

Article V. Cluster Development

[Added 7-9-2007 by LL No. 2-2007]

§ 99-19. Cluster development as open space design development overlay.

Cluster development shall mean a subdivision plat or plats, approved pursuant to this chapter, in which the subdivision of land is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping, in order to enhance the natural and scenic qualities of open lands. ~~Private roads to service clustered lots may be approved as part of the final plat, and lots along such private roads may be platted as legal lots. Such private roads must provide adequate access to existing public roads.~~

§ 99-20. Application.

The applicant shall comply with the provisions of this chapter for the proposed subdivision of land involving cluster development. Cluster development in the Town of Aurora shall require the final approval of the Town Board in accordance with this chapter. Approval will be granted when the Town Board has determined that it will achieve the intent of these regulations. The Town Board, at its discretion, may direct an applicant to pursue cluster development if, in the judgment of the Town, its application will benefit the Town.

§ 99-21. Permitted number of building lots or dwelling units.

- A. A cluster development in the subdivision of land shall result in a permitted number of building lots or dwelling units which shall in no case exceed the number which could be permitted if the land were subdivided into lots conforming to the minimum lot size and density requirements of the subdivision of land and zoning applicable to the district or districts in which such land is situated and conform to all other applicable requirements. In the event that the plat falls within two or more contiguous districts, the Town Board may approve cluster development representing the cumulative density as derived from the summing of all units allowed in all districts and may authorize actual construction to take place in all or any portion of one or more of such districts.
- B. However, prior to determining the number of dwelling units and/or building lots, the parcel to be developed shall be adjusted as follows:
 - (1) Lands utilized by public utilities or structures or recorded easements of right-of-way shall be subtracted from the total gross area.
 - (2) Water bodies, marsh areas, designated wetlands, woodlands, gorges, rock outcroppings, caverns, poorly drained, unstable soils and floodplains shall be subtracted from the total gross area.
- C. The adjusted gross area of the parcel shall then be used to compute maximum number of dwelling units and/or building lots permitted.
- D. Overall, the minimum amount of open space preservation shall be no less than 50% of the gross acreage of the parcel or parcels to be developed.

§ 99-22. Plat plan.

The plat plan showing such cluster development shall include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required of the codes of the Town. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the Town Board, detached, semidetached, attached or multistory structures.

§ 99-23. Approval procedure.

The approval of subdivision plats with cluster development shall be in accordance with all applicable provisions of this chapter.

§ 99-24. Minimum development area.

The minimum parcel size to be considered for cluster development shall be 10 acres.

§ 99-25. Service by utilities.

All cluster development shall be served by a system of public utilities, including the water supply systems and central sewage systems, within an existing or planned municipal system.

§ 99-26. Supplementary regulations.

- A. Minimum lot size. The minimum lot size may be reduced to no less than 5,000 square feet, provided that any and all such area that is not designated to serve as residential areas, roads or other public purposes be set aside and restricted on the subdivision plat for use by inhabitants as common open space, parkland or recreational purposes of an active or passive nature. When the required minimum lot area has been reduced in accordance with this article, the following yard requirements will be a minimum:
 - (1) Front yard setback: 40 feet from the boundary of the right-of-way.
 - (2) The minimum width of any side yard shall be five feet.
 - (3) The total width of both side yards shall not be less than 13 feet.
 - (4) Rear yard: 20 feet.
 - (5) Minimum lot width: 60 feet.
- B. Minimum habitable floor area. The required minimum habitable floor area shall be the minimum floor area of dwellings determined by Chapter 116, Zoning. The maximum height of buildings shall not exceed two stories or 35 feet.

C. Maintenance of common area.

- (1) Nothing herein shall prevent the Town Board from requiring that 10% or more of the entire subdivision be set aside for park and recreational purposes as common area, which area shall be separate and distinct from any lots within the subdivision intended for dwellings. Such areas shall not include the area or areas which are set aside for detention ponds.
- (2) Provisions, satisfactory in the sole discretion of the Town Board, shall be made to assure the proper maintenance of all nonpublic areas and facilities for the common use of occupants of any cluster housing development of any type without expense to the general taxpayers of the Town of Aurora. The instrument incorporating provisions for the proper maintenance of all nonpublic areas and facilities for the common use of occupants of any cluster development shall be approved by the Town Attorney of the Town of Aurora as to form and legal sufficiency before any approval action is taken by the Town Board.

D. Parking, roads, yards, screening and buffering. In consideration of the site plan for cluster development, the Town Board shall consider the following criteria:

- (1) Yard requirements and proposed screening of parking and active recreation areas from adjacent property lines.
- (2) Sufficient off-street parking: a minimum of two car spaces per unit, not including garage space. Community parking areas may be required by the Town Board during subdivision review.
- (3) Buffer and screening areas, which shall be landscaped, left in their natural state, or provided with additional evergreen foliage. Natural features such as streams, rock outcrops, marshlands, trees and shrubs shall be preserved and incorporated into the landscaping of the development. In addition, open vistas visible from existing public roads shall be preserved.
- (4) Surface water retention facilities shall be developed where required in order that the rate of stormwater runoff after construction is no greater than the rate of runoff prior to construction.
- (5) On-site lighting shall be directed downward and shall not reflect on adjacent properties.
- (6) ~~Private roads~~ shall be built to minimum standards approved by the Town Board and provided by the Town Engineer.
- (7) Final designs shall incorporate connectivity to surrounding areas and be developed with walkways, sidewalks and/or trails that provide access to public areas. Such connectivity shall be developed as part of the project.
- (8) Other conditions that the Town Board in its sole discretion determines to be appropriate for the specific development.

E. Variances and modifications.

- (1) Where the Town Board finds that, because of unusual circumstances of shape, topography or other physical features of the land or because of the nature of the adjacent developments, extraordinary hardships may result from the strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that no such variation shall be granted that will have the effect of nullifying the intent and the purpose of the Comprehensive Plan, Chapter 116, Zoning, or any other law or ordinance of the Town of Aurora.
- (2) ~~In granting variances and modifications, the Town Board~~ may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.

Exhibit B

New York Town Law § 278



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*** Current through 2016 released chapters 1-395 ***

Town Law
Article 16 Zoning and Planning

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NY CLS Town § 278 (2016)

§ 278. Subdivision review; approval of cluster development

1. Definitions. As used in this section:

(a) "cluster development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable zoning ordinance or local law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

(b) "zoning districts" shall mean districts provided for in section two hundred sixty-two of this article.

2. Authorization; purpose.

(a) The town board may, by local law or ordinance, authorize the planning board to approve a cluster development simultaneously with the approval of a plat or plats pursuant to this article. Approval of a cluster development shall be subject to the conditions set forth in this section and in such local law or ordinance. Such local law or ordinance shall also specify the zoning districts outside the limits of any incorporated village in which cluster development may be applicable.

(b) The purpose of a cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands.

3. Conditions.

(a) This procedure may be followed at the discretion of the planning board if, in said board's judgment, its application would benefit the town. Provided, however, that in granting such authorization to the planning board, the town board may also authorize the planning board to require the owner to submit an application for cluster development subject to criteria contained in the local law or ordinance authorizing cluster development.

(b) A cluster development shall result in a permitted number of building lots or dwelling units which shall in no

NY CLS Town § 278

case exceed the number which could be permitted, in the planning board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the zoning ordinance or local law applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Provided, however, that where the plat falls within two or more contiguous districts, the planning board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more of such districts.

(c) The planning board as a condition of plat approval may establish such conditions on the ownership, use, and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. The town board may require that such conditions shall be approved by the town board before the plat may be approved for filing.

(d) The plat showing such cluster development may include areas within which structures may be located, the height and spacing of buildings, open spaces and their landscaping, off-street open and enclosed parking spaces, streets, driveways and any other features required by the planning board. In the case of a residential plat or plats, the dwelling units permitted may be, at the discretion of the planning board, in detached, semi-detached, attached, or multi-story structures.

4. Notice and public hearing. The proposed cluster development shall be subject to review at a public hearing or hearings held pursuant to section two hundred seventy-six of this article for the approval of plats.

5. Filing of plat. On the filing of the plat in the office of the county clerk or register, a copy shall be filed with the town clerk, who shall make appropriate notations and references thereto on the town zoning map required to be maintained pursuant to section two hundred sixty-four of this article.

6. Effect. The provisions of this section shall not be deemed to authorize a change in the permissible use of such lands as provided in the zoning ordinance or local law applicable to such lands.

HISTORY:

Formerly § 281, add, L 1963, ch 963, § 1; renumbered § 278, L 1992, ch 727, § 3, eff July 1, 1993 (see 1993 note below); L 1969, ch 880, §§ 1, 2; L 1982, ch 412, § 1; L 1992, ch 230, § 2, eff July 1, 1992; L 1995, ch 417, § 2, eff Aug 2, 1995; L 1996, ch 235, § 9, eff June 26, 1996.

NOTES:**Prior Law:**

Former § 278, renumbered § 279, L 1992, ch 727, § 3, eff July 1, 1993.

Editor's Notes:

Although Laws 1992, ch 727, § 4, purported to amend the section heading of § 278, eff July 1, 1993, to read "Subdivision review; approval of plats; conditions for changes in zoning provisions", an earlier amendment by Laws 1992, ch 230, § 2 had deleted the previous section heading replacing it with "Planning board; approval of cluster development".

Laws 1992, ch 727, § 7, eff July 1, 1993, provides as follows:

§ 7. This act shall take effect July 1, 1993 and shall apply to all applications for preliminary or final subdivision plat approval submitted on or after such date.

PRACTICE INSIGHTS:**ESTABLISHMENT OF CLUSTER ZONING DURING SUBDIVISION PROCESS.**

By John Stockli, Esq., Stockli Greene & Stevin, Albany, NY.

General Editor, Alfred C. Tartaglia, Esq., New York, NY.

Exhibit C

Town Code Chapter A121

“Street Acceptance”

Town of Aurora, NY
Thursday, November 17, 2016

Chapter A121. Street Acceptance

[HISTORY: Adopted by the Town Board of the Town of Aurora 4-13-1992.^[1] Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 97.

Subdivision of land — See Ch. 99.

[1] *Editor's Note: This resolution superseded former Ch. A121, Street Acceptance, adopted 1-4-1951.*

§ A121-1. Purpose.

[Amended 10-27-2003]

The intent of this resolution is to establish a definite policy in the acceptance of land for right-of-way and highway properties. The following rules and regulations and specifications governing the laying out and construction of highways in the Town of Aurora be and are hereby adopted. Construction of highways shall be in accordance with the Standard Specifications and Details for Materials and Construction of the Town of Aurora.

§ A121-2. Minimum width; map required.

Formal acceptance of any parcel of land to be dedicated for highway right-of-way purposes shall not be consummated wherein the parcel tendered shall have a width of less than 60 feet, nor shall acceptance be consummated wherein any parcel tendered is not completely and accurately plotted and described by metes and bounds, on a map which shall bear the signature and seal of a licensed engineer or licensed surveyor, showing the exact location of such parcel of land with respect to property lines of the property of which the parcel may be a part and giving pertinent data concerning length, width and area of such parcel.

§ A121-3. Minimum specifications.

[Amended 10-27-2003]

Formal acceptance of any parcel of land to be dedicated for highway right-of-way purposes shall not be consummated unless and until a highway has been constructed thereon, with suitable access and intersections, in conformity with the following minimum specifications:

- A. Alignment of the pavement shall conform to the center line of the right-of-way as nearly as possible. Necessary angles or curves in the pavement, in conformity with angles in the right-of-way, shall be constructed according to the best engineering practices to facilitate safe negotiation by vehicles. Dead-end streets shall be provided at the closed end with a turnaround in the form of an "L" extending the full width from the end of the highway 50 feet, with the spur extending at approximately right angles to the highway. Construction details for turnarounds are outlined in the Standard Specifications and Details for Materials and Construction of the Town of Aurora. The Town Highway Superintendent shall specify which type of turnaround shall be constructed.
- B. Excavation of the road bed shall be held to a minimum depth of 10 inches and a minimum width of 26 feet, and the excavation shall be rough-graded to reasonably conform to the finished grades before installation of pavement materials, rolling subgrade fill with No. 2 run of crusher select backfill material and rolling with roller mentioned below. Where surface conditions through which a highway is to be constructed are such that, in the judgement of the Highway Superintendent, the subsoil should be removed, he may require the removal of the

- same to a depth specified by him, and stone or gravel of a grade specified by him shall be substituted for soil removed.
- C. Details for highway construction, including excavation backfill and material specifications, shall be in accordance with the Standard Specifications and Details for Materials and Construction of the Town of Aurora.
- D. Right-of-way and road dimensions.
- (1) The right-of-way shall be 60 feet wide. Pavement shall be 26 feet wide.
 - (2) Pavement. All road beds must have fabric before the stone bed is laid. Fabric shall be Mirafi 600X or equal.
 - (a) Base course: 10 inches of No 2 crushed run stone, rolled with a ten-ton roller or its equivalent.
 - (b) Second course: four inches of base course asphalt NYSDOT Item No. 403.11, Type 1, rolled with a ten-ton roller or its equivalent.
 - (c) Third course: 2.5 inches of binder course asphalt, NYSDOT Item No. 403.13, Type 3, rolled with ten-ton roller or its equivalent.
 - (d) Top course: 1.5 inches, after having been rolled with a ten-ton roller or its equivalent, top course asphalt, NYSDOT Item No. 403.18, Type 7.
 - (3) All culs-de-sac must be 150 feet right-of-way.
- E. On roads or streets being built for use as private roads but with the intent, at a later date, to be dedicated to the Town, inspection by the Highway Superintendent during construction must be made to assure that the Town highway specifications are being met.
- F. The pavement shall be crowned to a grade of at least 0.25 inch per foot, transversely, from center to the edges; provided, however, that the Highway Superintendent may specify a greater grade if, in his judgement, certain conditions exist to warrant it.
- G. Concrete gutters shall be provided on each side of the pavement and shall be two feet zero inches in width. The concrete gutters shall conform to the details outlined in the Standard Specifications and Details for Materials and Construction of the Town of Aurora.
- H. Underdrains shall be installed below all concrete gutters. The underdrain piping shall be six-inch-diameter perforated SDR 35 PVC piping. Concrete catch basins shall be installed at intervals not more than 300 feet spacing between catch basins. The underdrain piping shall be connected to catch basins. Catch basins shall be in accordance with the Standard Specifications and Details for Materials and Construction of the Town of Aurora. Installation of associated storm drainage and culverts shall be in accordance with the Standard Specifications and Details for Materials and Construction of the Town of Aurora.
- I. Lots shall be graded on the back side of all concrete gutters to provide positive drainage into the gutter. The finish grade behind the concrete gutter shall slope a minimum of 1/4 inch per foot to the gutter.

§ A121-4. Performance bond.

If, in the discretion of the Town Board, it is desirable to accept and dedicate any highway before construction has been completed, a performance bond, equal to 150% of the cost of completion, shall be furnished to the Town by the owners or developers. Such performance bonds shall be issued by a duly authorized surety company. Cash or municipal bonds are acceptable to the Town Board and may be used in lieu of a surety bond.

§ A121-5. Nonrefutability of Superintendent's decision.

If, in the judgment of the Highway Superintendent, any of the above-stated rules, regulations or specifications have not been fully complied with or any condition exists which may be detrimental to the ability of the Highway

11/17/2016

Town of Aurora, NY

Superintendent to maintain, repair, drain or keep clear of ice and snow any highway constructed upon any such right-of-way, the Highway Superintendent's decision shall not be subject to refutation.

Exhibit D

Letter from East Aurora Fire
Department to Supervisor
James Bach,
dated November 13, 2016

November 13, 2016

Supervisor Bach
Town of Aurora
300 Glead Avenue
East Aurora, NY 14052

Dear Supervisor Bach:

As we have discussed, the East Aurora Fire Department has reviewed the proposed plans for the Aurora-Mills subdivision. The department will approve moving forward on the project with the following amendments:

- 24' roadways with 2' concrete gutters on each side, creating a total of 28' drivable surface
- Parking is to be restricted to a single side only
- No parking in the cul de sac at any time
- Relocation of fire hydrants that best protect residents in the subdivision
- Downsizing of the center median at the subdivision entrance to allow for emergency vehicles

Please contact me as needed to clarify sizing and location prior to construction.

Sincerely yours,

Gregory E. Egloff, Chief
East Aurora Fire Department