

SHAW & PERELSON, LLP
ATTORNEYS AT LAW
2-4 AUSTIN COURT
POUGHKEEPSIE, NEW YORK 12603
(845) 486-4200
FAX (845) 486-4268

STEPHEN A. PERELSON (1941-2002)
DAVID S. SHAW
MARGO L. MAY
MICHAEL K. LAMBERT
MARCE E. SHARFF
LISA S. RUSK

GARRETT L. SILVEIRA
BETH L. SIMS
STEVEN M. LATINO
JILLIAN E. CASS

MARK C. RUSHFIELD
OF COUNSEL
JOHN E. OSBORN, P.C.
OF COUNSEL

HIGHLAND OFFICE
40 SOUTH ROBERTS ROAD
HIGHLAND, NEW YORK 12528
(845) 691-8100
FAX (845) 691-8246

WESTCHESTER OFFICE
115 STEVENS AVENUE
VALHALLA, NEW YORK 10595
(914) 741-9870
FAX (914) 741-9875

PLEASE RESPOND TO: POUGHKEEPSIE

December 13, 2005

DELIVERED VIA FACSIMILE AND UPS OVERNIGHT

Mr. Christopher Ellis, Chief Examiner
Office of the State Comptroller
Division of Local Government Services
and Economic Development
33 Airport Center Drive, Suite 103
New Windsor, New York 12553

**RE: VALHALLA CENTRAL SCHOOL DISTRICT
 FILE NO. 2005-MR-8**

Dear Mr. Ellis:

This is the District's final letter response to the Report entitled "The Greenburgh, Valhalla and Eastchester School Districts' and the Town of Eastchester Acquisition of Athletic Fields". The scope of this letter will be to address certain points made by your office in commenting upon the District's initial letter response dated February 3, 2005 (at pages 35-54).

To begin, the Board of Education and Superintendent of Schools commend the efforts demonstrated in the Report to promote student safety, assure legal compliance with the public finance initiatives set forth in the General Municipal Law and ensure that proper procedures are followed with the State Education Department (SED) when undertaking Capital Projects.

Engaging the Department of Environmental Conservation (DEC)

The Note 1 Comment that the District should have submitted a "Letter of Intent" to the DEC at the inception of the project is a point well made and one that will be implemented in all future

capital projects involving building construction, site work requiring a building permit from SED and whenever top soil will be placed upon District premises.

While the District did contact DEC when the project began, it was not done via a Letter of Intent. The DEC personnel involved were from the Storm Water Run-Off Unit and not from the Soil Waste Management Department.

DEC Fill and Soil Safety Assurances

The Note 2 Comment challenges the District's representation that its diligence in supervising the delivery of fill materials to District sites evidenced that the materials were uncontaminated. First, the District acknowledges that it did not have assurances from the DEC that fill and top soil delivered to the project site were free from contaminants. However, the District was in receipt of all of the manifests from the NYS Thruway Interchange Site and White Plains City Center Site (Macy's), indicating that the fill materials were virgin rock and soil, not C & D materials. As a first site testing initiative, the District authorized sampling and received a report from its Engineer Geologist (Gannett Fleming) in January 2005, that indicated "the sampling data on the top cover placed on the athletic fields at the field renovation project is similar in quality to background soil surrounding the Kensico School." This data supported the recommendation that the athletic fields at the High School/Middle School could be used in the Spring of 2005. Most recently, at the direction of the Board and its new Superintendent of Schools, Gannett Fleming conducted further site testing, gathering samples in excess of DEC sampling standards, to analyze field safety where rock, fill and soil were placed on the High School/Middle School athletic fields. In summary, the fall 2005 testing revealed:

- X C & D materials at trace levels
- X PCBs and Pesticides detectable but below NYSDEC Recommended Soil Clean Up Objectives (RESCO) levels
- X Heavy metals below RESCO levels, except for mercury which existed at levels slightly above the RESCO level¹
- X Semi-Volatile PAHs slightly above RESCO levels²

Additional Costs for Environment Assurances

¹ Testing showed levels of .08 to 2.4, measured against the RESCO standard of .1. The Engineer Geologist reported that background levels were .05 - 2.0 and that levels of .5 were common in Westchester, N.Y.

² The levels at the Athletic Fields were 300-400 parts per billion at twice background sample levels. The Engineer Geologist reported that Urban Soils in N.Y. and the Industrial Northeast are often in the 1000-2000 parts per billion range.

The Note 5 Comment that the District will expend additional monies to resolve Environmental Issues is correct. To assure that the fields will be safe to play on, professional Engineer Geologist services have been and will be contracted for until DEC and Department of Health Officials are satisfied that human safety concerns are resolved. The District is committed to following whatever DEC recommendations are made to address field and environs issues.

Page 3

Bid Law Requirements for Artificial Turf

The Note 6 Comment asserts the applicability of Section 103 General Municipal Law bidding requirements to the acquisition of “recyclable” products pursuant to Section 104-a of the General Municipal Law. For any future project purposes involving the purchase of recyclable materials, the

District accepts the Comptroller’s current interpretation of this statutory provision. It is noted that there is no guiding case law precedent.

The Fill as a Barter Transaction

The Note 9 Comment disagreed with the District’s characterization of the receipt of the fill as a gift pursuant to Section 1709(12) of the Education Law. Rather, the Comment views the dirt deliveries as a barter, whereby the dirt vendor received a significant economic benefit for being permitted to deposit the fill at the School District project site. Simply stated, the District’s actions in entering into the arrangement were well intentioned; namely, to receive a gift of a synthetic multi-use sports field for football and uncontaminated fill to build up other athletic playing fields at the High School/Middle School premises. No District monies were to be expended under that plan. Unfortunately, the gift of the synthetic playing field failed, leading the District to purchase the playing surface at a cost of \$215,000.00 plus interest for installment payments.

Action Plan In Response to Comptroller’s Recommendations

As stated above, the District will diligently address site safety concerns by closely coordinating activities with the DEC and Westchester County Department of Health. The District will implement corrective action necessary to assure compliance with DEC standards and shall implement SEQRA process, as the lead agency, in future capital projects.

To the extent that remediation efforts are required, the District will seek to recover the costs of monetary damages incurred by reason of breach of contract and/or tortious acts by contract vendors, grantors, etc.

The District acknowledges and shall adhere to the following principles in conducting future financial activities:

- ☐ Whenever a building permit is required (e.g.: site work that exceeds simple site work) SED process will be followed.
- ☐ Voter approval will be sought for capital projects that require public financing in whole or in part.
- ☐ Written contracts will be prepared and executed for all purchases, true leases and installment purchase agreements for goods in excess of \$10,000 and public works contracts in excess of \$20,000, with such agreements being subject to the bid law requirements of §103 General Municipal Law, etc.

Page 4

- ☐ Alternative financing means will be considered before entering into purchase contracts of significant dollar values.

Policies and regulations addressing the matters set forth about shall be modified or prepared to guide future actions.

Sincerely yours,

SHAW & PERELSON, LLP

BY: _____
DAVID S. SHAW, ESQ.

DSS/sb

cc: Hon. Richard Mills, Commissioner of Education
Board of Education Members
Dr. Diane Ramos-Kelly, Superintendent of Schools