



March 23, 2016

Hand Delivery

Town of Aurora Zoning Board of Appeals  
Attn: Martha L. Librock, Town Clerk  
Town of Aurora Municipal Building  
East Aurora, NY 14052

Re: West Herr Vehicle Storage Lot [Case #1235]  
591 Olean Road - Town of Aurora Zoning Board of Appeals

Dear Acting Chairman Aubrecht and Members of the Zoning Board of Appeals:

This letter along with the enclosed ten (10) full size copies of the updated plans being submitted to the Zoning Board of Appeals (“ZBA”) in connection with West Herr’s (“Project Sponsor”) proposed use of the property at 591 Olean Road (“Project Site”) as a vehicle storage lot consisting of the following:

1. Lighting Plan prepared by the Niagara Frontier Automobile Dealers Association (NFADA)/ LSI Industries, [Date: 03/22/16];
2. “Night” Lighting Plan prepared by NFADA/LSI, [Date: 03/22/16]; and,
3. Landscape Plan, prepared by Frank T. Brzezinski, RLA, [Date: 03/22/16]

As the ZBA is aware, the Project Sponsor is seeking a permit for a storage yard pursuant to the Table of District Regulations along with an area variance from the requirement that a storage yard be completely enclosed by suitable fence or stockade at least six feet in height.

During the meeting of ZBA held on March 17<sup>th</sup>, input was provided relative to the proposed project. Additionally, an e-mail was also provided by Acting Chairman Aubrecht to the Project Sponsor’s representatives on Friday, March 18<sup>th</sup> with additional comments from both Mr. Kramer and Acting Chairman Aubrecht.

For purposes of convenience, the comments/ input received during the ZBA meeting on March 17<sup>th</sup> as well as the e-mail issued by Acting Chairman Aubrecht on March 18<sup>th</sup> are listed below in Part 1 of this letter in *italics* followed by the Project Sponsor’s responses:

**HOPKINS SORGI & ROMANOWSKI PLLC**

Attorneys at Law

5500 Main Street, Suite 343 • Williamsville, New York 14221

Direct: 716-510-4338 • Fax: 716-242-0606 • shopkins@hsr-legal.com

**I. RESPONSES TO COMMENTS/INPUT:**

**Comment #1:** *A question has been raised regarding the property maintenance of the mitigated area of the flood plain. There is a need for the volume of the mitigated area to be maintained after the project is completed, and to be verified and reconstructed should a flood event alter the topography. Further, it would be appropriate for that area to be seasonally maintained as an open field and seasonally mowed to prevent the intrusion of tree growth. This obligation should be a part of the deed as a covenant or similar requirement which runs with the property ownership. (This is beyond the requirement of the SWPPP maintenance).*

**Response to Comment #1:** In order to address the ZBA's request for the creation of an obligation to maintain the mitigation area to be constructed pursuant to the fully engineered plans, the Project Sponsor proposes that a Declaration of Restrictions be recorded at the Erie County Clerk's Office stating that on an annual maintenance that all dead vegetation and large debris will be removed from the mitigation area. Consistent with the above, it would be acceptable if the ZBA imposes a condition stating as follows:

“Simultaneous with the closing, the Project Sponsor shall be required to record a Declaration of Restrictions at the Erie County Clerk's Office including language creating an obligation for the property owner to annually maintain the floodplain mitigation area as depicted on the fully engineered plans prepared Nussbaumer & Clarke, Inc. by removing any dead vegetation and large debris. The Declaration of Restrictions shall contain language stating that the maintenance obligation is permanent and that the Declaration of Restrictions shall not be amended, modified or rescinded without the express written consent of the Town of Aurora. A copy of the recorded Declaration of Restrictions along with the recording receipt shall be provided to the Town Clerk's Office and Building Department immediately after the Declaration of Restrictions has been recorded at the Erie County Clerk's Office.”

**Comment #2:** *Regarding the enclosure of the storage lot, the District Regulations obligate a complete enclosure (fence). If a berm and sufficient plantings for screening the roadside of the parking area is to be considered for a variance from the required fence, it would be appropriate for some landscaping to be installed on the remaining sides of the paved area, i.e. not left bare and completely open. Perhaps this is accomplished with trees and/or shrubs spaced to provide snow removal of the lot.*

**Response to Comment #2:** Based on input from the ZBA, Frank Brzezinski, RLA, has updated the Landscape Plan to include additional plantings along the entire Olean Road frontage of the Project Site in order to increase the density of the landscape screen to be provided for vehicle display lot. Spacing between the spruce trees has been reduced from 15 ft. to 12 ft. on center and shrub spacing has been reduced from 12 ft. to 6ft. on center. Landscaping has been “wrapped” around the north and south sides of the vehicle display lot. Fifteen (15) native ornamentals have been added along the rear of the parking lot and arranged in five groups to allow for snow storage west of the parking area. In addition, at those locations at which grading has permitted, a two (2)

ft. high berm has been added along the north side of the vehicle lot. The total number of proposed plantings has doubled as compared to the Landscape Plan presented to the ZBA on March 17<sup>th</sup>.

**Comment #3:** *A review of the lighting levels was discussed at the ZBA meeting. The current 32 light standards have a level of light of mid 20's foot candles immediately under the fixture. A reduced lighting level to produce perhaps 2-5 foot candles on the lot, on fewer and shorter poles could reduce the lighting impact.*

**Response to Comment #3:** The Project Sponsor has reduced the total number of light poles from 32 to 25, resulting in 14 less lights. The 25 poles will use low intensity bulbs that emit less light than standard commercial bulbs. The lighting levels have been reduced directly under the light poles to a maximum of slightly twenty foot-candles and the average light level on the vehicle display lot has been dramatically reduced from 8.82 to 4.02 foot-candles (a 55% reduction). The lighting levels will be reduced during nighttime hours per the enclosed Night Lighting Plan such that from dusk to dawn the lighting levels will be only be an average of 1.13 foot-candles, which is the absolute minimum necessary light levels during nighttime hours for security purposes.

**Comment #4:** *Has there been consideration of a horizontal bar gate across the entry to limit "off hours" visitors?*

**Response to Comment #4:** A horizontal bar gate is not being proposed due to the Project Sponsor wanting make sure that both the fire department and police have immediate access to the Project Site in the event of any emergency or potential theft or vandalism.

**Comment #5:** *There has been no mention of signage to date. It is assumed that, being a storage lot, none is required.*

**Response to Comment #5:** There will not be any signage installed in connection with the project.

## **II. ENVIRONMENTAL REVIEW OF PROJECT PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT:**

The Project Sponsor is requesting that that ZBA issued a negative declaration pursuant to SEQRA during its upcoming meeting on March 29<sup>th</sup>. My letter to the ZBA dated February 16<sup>th</sup> summarizes the results of the lengthy coordinated environmental review conducted by the ZBA and the justification for the ZBA's issuance of a negative declaration.

As was discussed during the meeting of the ZBA held on March 17<sup>th</sup> and its previous meeting on January 21st, in order for a lead agency to fulfill its substantive obligations pursuant to SEQRA, it is required to:

- 1.) Identify the relevant areas of environmental concern;
- 2.) Take a "hard look" at the identified potential adverse environmental impacts; and

- 3.) Issue a SEQRA determination supported by a “reasoned elaboration.”<sup>1</sup>

Below is an updated summary of the extensive documentation that has been provided to the ZBA demonstrating the proposed project will not result in any potentially significant adverse environmental impacts.

**A. Archaeology and Cultural Resources:**

A Phase IA/IB cultural resource investigation of the Project Site was conducted by Robert J. Hanley of Panamerican Consultants based on it being located in an archaeologically sensitive area per consultation with the NYS Office of Parks, Recreation and Historic Preservation (“SHPO”).

A copy of the report prepared by Mr. Hanley along with detailed information regarding the cultural resource investigation was submitted to SHPO for review. Based on its review of the Phase IA/IB report prepared by Panamerican Consultants and discussions with Mr. Hanley, SHPO determined that a small portion of the Project Site contains archaeological resources and that as such this area needed to be evaluated further or avoided. The Project Sponsor decided to avoid the relevant area on the Project Site based on input received from Mr. Hanley. Based on this decision, the project plans were updated by Nussbaumer & Clarke, Inc. to avoid this area and the location of this small area that will be permanently preserved is labelled on the fully engineered plans as “Existing Indian Artifact Area (Not to be Disturbed)” [See Grading, Paving and Drainage Plan – Drawing 3 of 8].

On September 21, 2015, a “No Impact” determination was issued by Nancy Herter of SHPO. A copy of the written “No Impact” determination issued by SHPO has previously been provided to the ZBA and SHPO’s determination demonstrates the project will not result in any adverse impacts to archaeological or cultural resources.<sup>2</sup>

**B. Drainage and Stormwater Management:**

The letter issued to the ZBA by Gregory Keyser of GHD Consulting Services (“GHD”) on February 24, 2016 confirms that all technical related aspects of the project including review of the fully, engineered plans, SWPPP and Engineer’s Report prepared by Nussbaumer & Clarke, Inc. has been completed by GHD. A copy of the letter issued by Mr. Keyser on February 24<sup>th</sup> is provided at Exhibit “A” and the relevant portions of this letter stated:

“Pursuant to your request, we have completed a review of the site plan drawings and Stormwater Pollution Prevention Plan (SWPPP) for the proposed vehicle storage lot at the above-referenced address. The documents were presented by Nussbaumer & Clarke, Inc. and revised based on comments from GHD in a memo to the Zoning Board of Appeals dated January 14, 2016.

Based upon our review, we have concluded that our comments have been adequately addressed. Furthermore, the SWPPP is in substantial conformance with

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<sup>1</sup> See, 6 N.Y.C.R.R. 617.7(b).

<sup>2</sup> See Attachment “3” of Part 1 of the Full EAF dated September 30, 2015.

the standards and policies set forth in the New York State Stormwater Management Design Manual.

This constitutes the completion of our review.”

The stormwater management system for the project as designed by Nussbaumer & Clarke, Inc. complies with the applicable stringent stormwater quantity and quality standards of the NYSDEC. The ZBA has been provided with extensive documentation demonstrating the project will not result in any potentially significant drainage or flooding impacts.

**C. Greenspace and Landscaping:**

The Project Sponsor is proposing to install extensive landscaping along the Olean Road frontage as depicted on the enclosed updated Landscape Plan prepared by the Project Landscape Architect, Frank Brzezinski, dated March 22, 2016. The landscaping to be provided in the greenspace buffer area along the Olean Road frontage will include 72 new trees consisting of a combination of White Spruce and Colorado Spruce, which were selected since they will provide screening on a year round basis. The extensive landscaping to be provided along Olean Road provides justification for the pending requested area variance since the landscaping will clearly be much more attractive than a six foot fence along the entire Olean Road frontage.

**D. Federal Wetlands:**

The EAF Mapper Summary Report utilized to generate answers to questions in Part 1 of the previously submitted Full EAF indicated that wetlands or other water bodies adjoin the project site including possible streams and federal wetlands.

Scott Livingstone of Earth Dimensions, Inc. (“EDI”) conducted a site investigation of the Project Site and determined that approximately 5.21 acres of the overall approximately 25.8 acre Project Site qualifies as a federal wetland. A copy of the letter issued by Mr. Livingstone on June 4, 2015 based on his site investigation has previously been submitted to the ZBA.<sup>3</sup> Mr. Livingstone’s letter included an attached map confirming that the 5.21 acres of the Project Site that qualifies as a federal wetland is not located within the portion of the Project Site to be developed and his letter also states that it is EDI’s professional opinion that the proposed project may move forward without the need for any coordination with the USACE or NYSDEC so long as the identified federal wetland area is not impacted.

The analysis of potential wetland impacts conducted by EDI demonstrates the project will not result in any adverse wetland impacts.

**E. Access to Olean Road:**

Olean Road is a NYS Highway (Route 16) subject to the jurisdiction of the New York State Department of Transportation (“NYSDOT”). Nussbaumer & Clarke, Inc. consulted with

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<sup>3</sup> See Attachment “2” of Part 1 of the Full EAF dated September 30, 2015.

**Correspondence to Acting Chairman Aubrecht and Members of Zoning Board of Appeals**

**March 23, 2016**

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NYSDOT relative to the driveway location on Project Site connecting to Olean Road as well as the driveway specifications.

On September 29, 2015, Brendan Simon, Resident Engineer, of the NYSDOT, sent an e-mail to Terrence Boyle of Nussbaumer & Clarke, Inc. indicating that NYSDOT did not have any substantive comments on the fully engineered plans prepared by Nussbaumer & Clarke, Inc. based on its consultations with NYSDOT. Additionally, based on input received early in the project review process, Nussbaumer & Clarke, Inc. modified the project layout to include a designated area for tractor trailers to access the Project Site for the on-site delivery of vehicles.

**III. CONCLUSION:**

The Project Sponsor is requesting that the ZBA take the following action during its upcoming meeting on March 29<sup>th</sup>:

1. Issue a negative declaration pursuant to SEQRA;
2. Issue an area variance from the requirement that the vehicle storage yard be fully enclosed by a six foot fence; and,
3. Issue a permit for use of the Project Site as a vehicle storage yard.

If there are any questions regarding the enclosed updated plans of this letter, please feel free contact me at 510-438 or via e-mail at shopkins@hsr-legal.com.

Thank you for your anticipated cooperation.

Sincerely,

HOPKINS SORGI & ROMANOWSKI, PLLC



Sean W. Hopkins, Esq.

Enc.

cc: William Kramer, Code Enforcement Officer and Asst. Building Inspector  
Gregory Keyser, GHD Consulting Services Inc. [Via e-mail]  
John Wabick, VP, West Herr Automotive Group  
Bruce Hoover, Esq., West Herr Automotive Group  
Andrew H. Gow, P.L.S., Nussbaumer & Clarke, Inc.  
Frank Brzezinski, Registered Landscape Architect  
Peter Sorgi, Esq., Hopkins Sorgi & Romanowski PLLC

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**EXHIBIT A – CORRESPONDENCE ISSUED  
BY GREGORY KEYSER OF GHD  
CONSULTING SERVICES INC. TO DONALD  
AUBRECHT, ACTING CHAIRMAN OF THE  
ZONING BOARD OF APPEALS,  
DATED JANUARY 14, 2016**

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February 24, 2016

Reference No. 11119205

Mr. Donald Aubrecht  
Chairman, Zoning Board of Appeals  
Town of Aurora  
Town Hall  
300 Gleed Avenue  
East Aurora, New York 14052

Dear Mr. Aubrecht:

**Re: Site Plan Review  
591 Olean Road – West Herr Automotive Group  
Vehicle Storage Lot**

Pursuant to your request, we have completed a review of the site plan drawings and Stormwater Pollution Prevention Plan (SWPPP) for the proposed vehicle storage lot at the above-referenced address. The documents were prepared by Nussbaumer and Clarke, Inc., and revised based on comments from GHD in a memo to the Zoning Board of Appeals dated January 14, 2016.

Based upon our review, we have concluded that our comments have been adequately addressed. Furthermore, the SWPPP is in substantial conformance with the standards and policies set forth in the New York State Stormwater Management Design Manual.

This constitutes the completion of our review. Please call if you have any questions or concerns.

Sincerely,

GHD Consulting Services Inc.

A handwritten signature in black ink, appearing to read "Gregory Keyser", is written over a faint, larger version of the same signature. The signature is fluid and cursive.

Gregory Keyser  
Environmental Planner

GDK/jap/1

cc: Zoning Board  
Town of Aurora Building Department