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March 3, 2010

REC'D MAR 03 2010

****HAND DELIVERED****

Mr. L. Clifford Van Wagner, Chairman
Planning Board
City of Saratoga Springs
City Hall, 474 Broadway
Saratoga Springs, New York 12866

RE: 66 White Farms Road

Dear Mr. VanWagner and Members of the Planning Board,

When the authority to review applications for Special Use Permits under Article VI of the Zoning Code of the City of Saratoga Springs (the "Code") was transferred to your Board from the Zoning Board of Appeals it placed each of you in a Quasi-Judicial position having the control over an individuals use of his/her land. This responsibility required you to look at the reality of the existing land use and not to ignore its present status in regard to its requested future use.

The City Planner and some members of the Board are suggesting that your only authority is to review an application on the representation of its future use while disregarding its present undenied utilization. The theory seems to be that if a land use is illegal and without required approvals those facts have no bearing on your review of a proposed use.

I submit that the flaw in this theory is that it confuses prior illegal uses that have stopped and been mitigated with those that exist at the time of the application. As an example, if a site had a historic hazardous waste problem that had been remediated with a Department of Environmental Conservation sign off then that prior defect, in and of itself, would not have a bearing on Special Use Permit criterion #5 in §240-6.4 Standard for Special Use Permits pertaining to environmental suitability for the Special Permitted Use, but if that hazardous waste problem continued to rage on the site at the time of the application, that present issue could not and

should not be ignored in your review and determination based on a representation that it may be remediated at some point in the future.

The situation which you are facing with this application is exactly the same. You are faced with three presently existing illegal uses of this property and those present existing conditions are what the property is today and must be a part of your determination. In opposition to this Application factual and up to the minute proof has been presented as follows:

A. A video business is presently being operated at the site ostensibly under the cloak of a Home Occupation. The Code is clear that for a Home Occupation there can only be one non-residential employee (Code § 240-1.5 Terms Defined and §240-12.4(B)(i)). In this case there are two 18 wheel tractor trailers and 2 vans that arrive on the site at random hours, days and nights (testimony of immediate neighbor Karrie Steuer) and a website that advertises job opportunities and internships. It is not rational to believe that all of this is being done by Mr. Cromer and one non-residential employee. I would ask that Mr. Cromer be asked about the people who are involved with this video production operation. Please recognize that the limiting term for "one non-occupant" employee does not suggest that the employee's primary workplace has to be 66 White Farms Road for this use to be illegal, but merely that he/she is employed by the enterprise.

B. There is absolute proof of an illegal Bed and Breakfast Operation on this site from at least 2004 when Mr. Cromer was sited by Michael Biffer, the Zoning Code Enforcement Officer. If that illegal use had stopped, much like the remediated hazardous waste site, it would not be an issue, but that is not the present situation. This property, on at least two different web sites is being advertised as a Bed and Breakfast. Mr. Cromer's explanation that it has only been done over the years to assist in the marketing of his house for sale is ludicrous. Please review the Roohan Realty website, as demonstrated in the submitted proof and you will see photos and a virtual tour of this property without reference to the Longshot Mansion website. Then look at the website for Longshot Mansion and there is no reference to the property being for sale. As I believe one of the Planning Board members said the explanation does not pass the "smell test".

C. As much as Mr. Cromer may wish to hold himself out as the Robin Hood of parking on White Farms Road, it is a fact that his on site paid parking use is illegal and that the Applicant has not said that it will stop. As a result, the only facts that the Planning Board can assume is that presently there is an illegal seasonal parking business going on on this site that places 75-125 cars on this property and in this neighborhood. The undisputed facts are that people are going back and forth from SPAC to drink on this property, that they are publically urinating in close proximatey to Ms. Steuer's home where she has two small children, that people utilizing this paid parking lot are throwing up in the woods, breaking down privately owned and publically owned fences and in at least one case being chased by the police. Please recall that at least two times during testimony at the February 24, 2010 Planning Board Meeting, Mr. Cromer said he was gone for the month of August to video horse related activities in Lexington, Kentucky. As a result, this paid parking business is not being operated by an on premises owner, but by what we have to assume are paid employees.

These three independent activities are what define the present characteristics of this site. The introduction to Article VI-SPECIAL USE PERMIT § 240-6.1 Intent, of the Code states "The intent of this Article is to set forth additional requirements which shall apply to certain land uses and activities which due to their characteristics, or the special characteristics of the area in which they are to be located require special consideration" (emphasis added)

One of the "special characteristics of the area" in which this Applicant is asking for permission to operate this Bed and Breakfast is what is presently going on at 66 White Farms Road.

With regard to the proof that is required for the Planning Board to grant a Special Use Permit, the Applicant on the record, with a factual presentation, much address the six (6) criterion set out in 240-6.4 of the Code. This has not been done and it is not within the Planning Board's purview to fill in the missing proof on behalf of the Applicant.

Conversely, proof that many of the points within the Special User Permit test have not been met are already contained within this Project's public record as follows:

1. This proposed use is not in harmony with and does not promote the general purpose and intent of the Comprehensive Plan and the Zoning Code in that multiple improper and illegal uses are not anticipated or allowed within either documents for this site. There is no proof in this record that the illegal uses will immediately stop upon the granting of a Special Use Permit.

2. The combined uses presently existing on this property are not compatible with this neighborhood. Paid parking lots, a pathway for drunken show attendees to navigate in the dark, known trespass on neighbor's property, the vandalism of public and private property, the operation of a none Code compliant Home Occupation are not compatible with the neighborhood and again there is no proof that they will immediately stop.

3. The introduction of 75-125 cars in a paid parking lot, immediately adjacent to my clients and Ms. Steuer's home presents a huge imposition and presents obvious vehicle congestion and parking problems that would not exist along our client's property line if the paid parking lot was not in operation.

4. These uses, based on their actions and illegality, can only have a negative effect on the long term economic stability on the surrounding properties.

It is clear to me that the Applicant's intention with regard to this application is to be able to market his house for sale as an approved 5 Bedroom Bed and Breakfast and not for its implementation. For example, who is going to be the resident manager when Mr. Cromer is gone for the month of August.

If the Special Use Permit is allowed it seemed that some members of the Planning Board believed that conditions places on the approval could eliminate the illegal uses. However, I do not believe that to be true. Section 27-b(4) of the General City Law of the State of New York states:

> *"4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the city."*

In the City of Saratoga Springs, the "permit" that is referenced in the above stated section comes from the Accounts Department and that does not have to be applied for for twelve (12) months (Code §240-6.5). As a result the granting of the Special Use Permit does not address the present and existing operation on White Farms Road.

I do not believe that a Special Use Permit can be issued based on the record before your Board. However, in light of what has been presented to the Board, if the members believe the Applicant is being candid, then grant him a Renewable Special Use Permit that must be renewed in one year on upon his sale or transfer of the property, whichever comes first, with the following conditions:

1. That the video production business end within thirty (30) days.

2. That the present website advertising the rental of his home by the room and staging of wedding for pay, immediately be removed until such time as the required permits are obtained from the City of Saratoga Springs.

3. That all paid parking operations on the site end both for now and for the future and that repairs to breaks and damages in the surrounding fences be complete within thirty (30) days, at the Applicant's expense.

Very truly yours,

Michael J. Toohey

MJT/cb

cc: Mrs. Marylou Whitney
Mr. John Hendrickson