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Wilfrido Castillo, Jr., Chairman
Town of Plattekill Zoning Board of Appeals
PO Box 45
Modena, NY 12548

Re: 153 Freetown Road – Drag Strip Proposal

Dear Chairman Castillo and Members of the ZBA:

This firm represents a large group of residents who own property and reside in close proximity to the proposed drag racing strip (the “Project”) at 153 Freetown Road. As this letter will describe, the Project poses substantial harm to the environment, the local community, and my clients’ enjoyment of their homes.

There is a history of racetracks in Plattekill, and they have been closed down. In the 1990s, construction and operation of a motorcycle racetrack also paved the way for an illegal campground where music festivals were held, involving long weekends of round the clock loud music, and inadequate security and sanitary facilities. Laws have since been enacted to avoid repeating this problem. Racing and amplified music noise were disturbing residents and businesses miles away at that time. An automobile drag strip would likely be even louder.

Residents will not accept this destructive proposal in a quiet, residential area. We call on the ZBA to either engage in the necessary study and analysis before considering the requested variance, or deny the variance outright.

The Project poses substantial impacts to the neighborhood and environment

The applicants are attempting to site a project that is too large and intense for the parcel they have chosen. As a result of this choice, they are asking the ZBA to facilitate the oversized project by granting a variance from the 150-foot minimum setback required of all outdoor recreation uses.

First, please note that the code actually requires *at least* a 150 foot buffer:

Unenclosed amusement and recreation uses, parks and playgrounds and associated facilities shall be located *not less than 150 feet* from any property line,

except when greater distances are otherwise required due to the unique characteristic of the use, facility, proximity of homes, topography, etc.¹

A project with unique characteristics (e.g. extreme noise) must provide even greater setbacks. 150 feet is the bare minimum for a simple park or playground. This Project violates even the 150-foot minimum setback both in the placement of the race strip itself as well as the contestant staging area and parking areas. The race strip would lie a mere 35 feet from the property line.

The Board should note that the variance is not requested simply to move the project farther toward one end of the site. The fact is that the Project cannot fit within the basic confines of the site, including the wetland boundaries and minimum setbacks. The variance is not about the location of the drag strip on the site but whether a drag strip can fit onto this site at all. It cannot.

The impacts of squeezing a commercial drag strip facility into this undersized space are obvious. In fact, the applicants have recognized them and have advised the board that they have retained various engineers to study traffic, noise and stormwater impacts. Yet none of these studies have been provided to the board.

We note the following as just a few of the anticipated impacts of the Project:

a. Noise

Drag racing is well known to be among the loudest activities measured. The article attached as Exhibit A describes the extreme noise, which has been measured at levels in excess of 140 decibels. For comparison, New York State Department of Environmental Conservation (NYS DEC) guidance indicates that a jet take-off at 200 feet is 120 decibels.²

The applicants have provided no information on projected noise levels or made any showing of how they might be mitigated, including, at minimum, how they would manage to achieve the town's limits of 65 decibels during the day and 55 db at night. It's likely they cannot be mitigated to any reasonable level.

In addition to the Town limits, NYS DEC guidance points out that increases of just 5 decibels above ambient levels can be "intrusive."³ Given the high levels of noise inherently associated with a drag strip, the ZBA must carefully consider the Project's impacts on the neighborhood.

¹ Zoning Code § 110-45(B) (emphasis added).

² See, NYS DEC Assessing and Mitigating Noise Impacts at 19: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/noise2000.pdf

³ *Id.* at 15.

b. Traffic

The applicant has also acknowledged that the Project poses traffic impacts that require study. The Project would feature frequent evening and weekend events. Parking for 246 vehicles is proposed, indicating that the events will attract hundreds of vehicles, which are likely to enter and leave during concentrated time periods, creating heavy traffic. The local roadways are narrow, unmarked, and not suited for this level of traffic.

c. Water pollution

Stormwater runoff is a serious concern, with the introduction of a racing strip and acres of parking directly uphill from sensitive, state-protected wetlands and the Platte Kill stream. The Platte Kill is a Class B(T) trout stream.⁴ NYS DEC has observed the high water quality in the Platte Kill, rating it “no known impact” and observing that the stream hosts diverse fauna.⁵

A toxicant called 6PPD-quinone, which leaches out of the particles that tires shed onto pavement, would very likely wash into the wetlands on the property of the proposed drag strip and create an environmental hazard. Additional chemical and contaminant hazards would result from accidents and spills associated with the operation of the track along with the use of the proposed parking lot. The plans appear to show culverts collecting runoff from the parking areas and discharging it directly to the wetland areas.

Wetlands and water quality are to be protected, but this proposed area has already been damaged by the extensive earthmoving and excavation work that began without any environmental review or approval from the Town. It is our understanding that the applicant has already paid \$7,500 of a \$22,000 fine and has been forced to do remedial work. We are currently gathering documents from NYS DEC to determine whether the conditions of that remediation have been met.

In addition to damaging water quality, disturbance of the natural forest and wetland complex on the site poses a threat of flooding to downstream neighbors.

d. Wildlife habitat

The land where the Project is proposed is covered with wetlands and forest. Residents have reported an array of wildlife in the area. Sightings of bald eagles (NYS Species of Greatest Conservation Need) along Route 44/55 in the late summer and fall suggest eagles may nest in the area. The forest on the site has been mapped as a “core forest” by the New York Natural

⁴ See, Hudson Valley Natural Resource Mapper: <https://gisservices.dec.ny.gov/gis/hvnm/>

⁵ See, NYS DEC Waterbody Inventory: <https://www.dec.ny.gov/data/WQP/PWL/1306-0044.pdf>

Heritage Program. “Core forest is especially important for sensitive wildlife including many forest songbirds...”⁶

To construct the Project, the applicants would need to clear cut acres of forest, destroying the forest habitat. Runoff would flow toward the wetlands, affecting habitat by changing water levels and water quality. Noise and light from the drag strip also pose impacts to the surrounding wildlife habitat. Furthermore, as an unsanctioned track without standard safety requirements, there is the risk of fire that could damage the surrounding forests.

Before any more destruction of the site occurs, a complete wildlife habitat field study should be conducted.

e. Light

The Project’s events are projected to occur on evenings until 10:00 PM. Significant lighting can be anticipated, to light the track and parking areas until 10 PM and until the site clears for the night. This lighting has not been designed or modeled. It certainly poses the potential to affect the night sky, impacting neighboring properties.

f. Community character

The introduction of a commercial facility in this rural location would, itself, change the character of the community. Residents’ ability to walk and bicycle on the road would be damaged. The introduction of heavy traffic at event times, along with noise and light pollution, would forever change the neighborhood environment and damage property values.

g. Conflict with community plans

The approved Town of Plattekill Master Plan encourages diversification of entertainment options, specifically moving away from additional race track facilities.⁷ This project is, therefore, in direct conflict with the Master Plan.

Further, the zoning code states that the purpose of the BD-60 “Light Business” zoning district is “to provide reasonable standards for the orderly expansion of general retail and commercial uses and to contribute to the soundness of the Town's economic base, but limiting the intensity and range of uses to those compatible with surrounding uses and districts.”⁸ This Project is not at all compatible with the surrounding residential uses.

⁶ See, Hudson Valley Natural Resource Mapper, <https://gisservices.dec.ny.gov/gis/hvnrm/layerInfo.html#hvf>

⁷ Town of Plattekill Master Plan, 2003, at 44.

⁸ Zoning Code, Schedule of District Regulations.

It is premature to consider a variance for the Project

At this time, granting a setback variance for the Project would be premature for several reasons.

a. SEQRA

Although an EAF Part 1 has been submitted, there has not yet been any environmental review conducted for this Project pursuant to SEQRA. As described above, the Project poses the potential (if not the certainty) of multiple significant impacts on the environment. “No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of SEQR.”⁹

The Planning Board minutes do not reflect any SEQRA review. The Planning Board will need to conduct a SEQRA review before considering site plan and special permit applications. If the Project is deemed to be a Type I action, a coordinated review is necessary, involving all permitting agencies in a single SEQRA review. Here, the Project may qualify as Type I if ground disturbance exceeds 10 acres.¹⁰ (The applicants have not produced any mapping of the areas of disturbance.) Even if the Project is not Type I but is rather “unlisted,” the Planning Board may decide to conduct a coordinated review.

If ZBA opts instead to conduct its own SEQRA review, it should issue a positive declaration based on the multiple substantial environmental impacts outlined above. SEQRA regulations require a positive declaration and preparation of an environmental impact statement (EIS) if “the action *may* include the potential for *at least one* significant adverse environmental impact.”¹¹

The Project presents many of the indicators of significant impact listed in 6 NYCRR § 617.7(c), including but not limited to the following:

- (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels . . .
- (ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species . . .
- (iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
- (v) the impairment of . . . existing community or neighborhood character . . .

⁹ 6 NYCRR § 617.3(a).

¹⁰ 6 NYCRR § 617.4(b)(6)(i).

¹¹ 6 NYCRR § 617.7(a)(1) (emphasis added).

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action

Again, even one impact requires a positive declaration. We urge the ZBA to issue a positive declaration or to refer the Project back to the Planning Board for SEQRA review.

b. 239-m review

General Municipal Law section 239-m mandates county referral for any variance request on property within 500 feet of a state thruway.¹² The subject property borders the New York State Thruway. Accordingly, the project, including any variances, must be reviewed by the Ulster County Planning Board prior to ZBA action.¹³

c. Additional information needed

If the ZBA decides to move forward with review of the area variance request, it will need to weigh the “benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.”¹⁴ In order to fully understand the Project’s detriment to the community, the ZBA will need to analyze noise, traffic, water, and other impacts as described above.

The applicants have not yet provided even a complete site plan, let alone the technical information that would allow the ZBA to evaluate off-site impacts. To grant an area variance on the current record would be arbitrary and capricious.

The ZBA should deny the variance

We encourage the ZBA to deny the variance outright because of the severe negative impacts of the Project, which are readily apparent even without further details.

The statutory balancing test weighs overwhelming in favor of denial. The “benefit to the applicant if the variance is granted” is limited to the ability to build a drag strip at this desired location, but the applicants could simply choose a more suitable location for their project. In contrast, the “detriment to the health, safety and welfare of the neighborhood or community by such grant” is immense.

With regard to the five factors the ZBA must consider for an area variance, we offer the following analysis:

¹² GML § 239-m(3)(b)(iii).

¹³ GML § 239-m(2).

¹⁴ Town Law § 267-b(3)(b).

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance

Allowing the construction of a drag strip in this location would bombard the surrounding residential areas with unacceptable levels of noise from Thursdays to Sundays, 8 am to 10 pm, from April to November. These are times that residents are likely to be home trying to enjoy their homes and properties. The Project would cause excessive amounts of traffic on narrow town roads, including late night crowds leaving the facility. It also threatens to pollute sensitive waterbodies and damage wildlife habitat. Between noise, light, traffic and other impacts, the Project would irrevocably change the character of the quiet, residential neighborhood.

It would also permanently reduce homeowners' property values. My clients are currently researching this impact. They have found that other communities have noted property value loss from drag strip or race track projects, representing an undue hardship for neighboring land owners and residents.¹⁵

(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance

The applicants could simply find another location that offers adequate space without the need for a variance. There is no reason that the community should be forced to suffer the effects of a poorly sited project for decades because of a poor location choice.

The ZBA should also note that there is no merit to the assertion that the drag strip would solve the non-problem of "street racing." This is an invented problem and cannot justify the Project.

(3) whether the requested area variance is substantial

Instead of the 150-foot minimum setback, the applicant proposes only 35 feet. That is a variance of 77%. ZBAs have routinely found much smaller deviations to be substantial, as little as 15%, and those determinations have been upheld by courts.¹⁶ The 77% variance requested here is unquestionably substantial.

¹⁵ See, e.g., <https://stoptheracetrack.com/market-value;>
<http://www.niagaraexecutivehomes.com/wordpress/369>

¹⁶ See, e.g., *Pecoraro v Bd. of Appeals of Town of Hempstead*, 2 NY3d at 614 (33.3% deficiency in lot area and 27.3% deficiency in frontage width deemed substantial); *Matter of Allstate Properties, LLC v Bd. of Zoning Appeals of Vil. of Hempstead*, 49 AD3d 636, 637 (2d Dept 2008) (20% less area and frontage deemed substantial); *Heitzman v Town of Lake George Zoning Bd. of Appeals*, 309 AD2d 1126, 1128 (3d Dept 2003) (exceeding maximum allowable lot coverage by 15% deemed substantial); *Matter of Robbins v Seife*, 215 AD2d 665 (2d Dept 1995) (43% and 19% variances in building and lot coverage substantial).

Variances may be appropriate for minor adjustments, for example, a pool or shed. Here, not only is the 77% variance substantial in itself, but the ZBA must consider that the purpose of the variance is to accommodate a high-impact drag strip in a space where it simply cannot legally fit.

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district

As described in detail above, the Project will:

- destroy several acres of forest
- create noise and light pollution
- damage sensitive water resources and wildlife habitat
- create heavy traffic on narrow roads

These substantial adverse impacts weigh heavily against granting a variance.

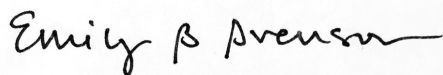
(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance

The applicants purchased this property with the intention of constructing a drag strip without doing proper due diligence. Their consultant offers the excuse that NYS DEC wetlands were more extensive than mapped, but NYS DEC maps show a “check zone” covering much of the property, putting any purchaser on notice that wetlands may exist. The applicants could have investigated the wetlands, reviewed town setback requirements, and sought permits before finalizing their purchase. If they had, they would have known that the Project would not fit on the site. That lack of planning does not justify the requested variance.

Conclusion

For all the foregoing reasons, we urge the ZBA to either deny the variance or table the request until SEQRA and 239-m review are complete and the effects of the project have been studied.

Respectfully submitted,



Emily Svenson

Exhibit A

Wednesday, November 3, 2010
Updated: November 5, 10:50 AM ET

Drag racing: The loudest sport

By Ryan McGee
ESPN The Magazine

THREE OLD LADIES ARE RIDING ON A BUS.

The first says to her friends, "It sure is windy."

The second says, "It's not Wednesday, it's Thursday."

The third yells, "I'm thirsty too. Let's get a drink!"

This is pretty much the conversation that I'm having with "Big Daddy" Don Garlits,



This is a common sight for spectators of drag racing.

the man considered to be the greatest drag racer ever to wrap his legs around a 7,000-horsepower engine and ride it down the strip like a pony. We're standing in the middle of his museum in Ocala, Fla., surrounded by dozens of his signature black Swamp Rat dragsters. These machines hurtled him through milestones of speed -- Garlits was the first to surpass 170, 200 and 270 mph -- but besting barriers took more power, which created more noise, which robbed Big Daddy of some of his ability to hear.

"I need you to speak up," the 78-year-old shouts, turning his head to face me with his "good ear," which isn't really. "Sorry, son, the Swamp Rats have gnawed off a bit of my eardrums over the years."

"Well, that's what I want to talk about," I say, instinctively tilting my head to favor my left ear. After nearly 20 years of chasing race car drivers for a living, I too have been gnawed on a bit. The top-end hearing in my right ear is shot.

"About what?"

"About how loud drag racing is."

"Oh man, I'm real proud of drag racing."

"No sir, not proud. Loud."

"Yeah, it's loud as hell. People don't know what to expect the first time. It's a trip."

I shift a little. "On the strip?"

"No, it's a trip."

WHEN *THE MAG FIRST* raised the possibility of a Loud issue, I immediately offered drag racing as the loudest sport on the planet. Nothing's even close, to be honest. But within minutes, e-mails and phone calls from doubting editors trickled in. What about Cameron Indoor Stadium in the middle of a Duke-North Carolina game? What about Neyland, Bryant-Denny or Autzen stadiums in the fall? Or the vuvuzela horns during the World Cup in Johannesburg? I fielded these queries and volleyed a few of my own: Have any of those ever been so loud they made you cry? Or split your eardrum like a Tylenol Safety Seal? Or sent people storming, ears covered, into city hall to protest?

"I've been coming to the drag strip since I was in kindergarten," says Antron Brown, a pilot of the NHRA's loudest machine, an exposed-engine, winged beast known as the Top Fuel dragster. "Even after three decades, if I don't know that an engine is about to be fired I will physically jump. It literally scares me off the ground."

For four seconds -- the length of a 1,000-foot, 300 mph run -- anyone within a quarter-mile of the NHRA's starting line surrenders their entire body to the experience of loud. As the Christmas tree of lights runs through its cycle, the most powerful internal combustion engines on the planet run through a cycle of sound that moves from the world's largest popcorn popper, POP-POP-POP-POP, to the ramping up of a fighter jet, WHIRRRRRR, to, ultimately, the atomic-breath scream of Godzilla. It is a cacophony of noise and flame. The concussion of air physically staggers everyone in the area, and even the most grizzled hot rod veterans cover their ears, while the uninitiated recoil into instinctual poses of survival. An NHRA media relations person says they once let ESPN bring some seismologists out to the starting line. Two Top Fuel dragsters off the line registered a 2.3 on the Richter scale.

A Top Fuel dragster is built on a foundation of earthshaking numbers. One of its eight cylinders creates as much horsepower as an entire NASCAR Sprint Cup car; its fuel pump delivers 500 pounds of line pressure; its 17-inch-tall rear tires create g-force loads equal to those of a space shuttle launch; and the rear wing manufactures 8,000 pounds of downforce, enough to run the car upside down in a tunnel, assuming you could get it up there.

Yet the NHRA has never conducted a formal study to measure the sport's most startling by-product: noise level.

And that's no accident. Requests have been politely turned down because the lack of hard numbers adds to the mystery that surrounds the sport's biggest drawing card. "If I can get you to the drag strip and get you to watch one run, then I have made a fan for life," says Don "The Snake" Prudhomme, winner of 49 NHRA races across Top Fuel and its full-bodied nitro cousin, Funny Cars. "Loud isn't a strong enough word. It's so overwhelming your brain can hardly compute what it's hearing and seeing. It's damn near a religious experience."

"Your bones literally rattle," echoes NASCAR driver [Kurt Busch](#), who raced in one of NHRA's lower-level divisions earlier this year, "and the drag racers get a sick pleasure in taking rookies to the starting line and putting us between the two nitro cars. If you aren't ready, it hurts. It feels like someone is sticking a Taser into your ear canal."



Two Top Fuel dragsters register a 2.3 on the Richter scale off the line.

I pulled that cruel but exhilarating trick on my wife back in mid-September. It was the opening night of the Carolinas Nationals at zMAX Dragway, which sits adjacent to the Charlotte Motor Speedway. Even a 12-year marriage to a motorsports writer, during which she has been dragged from fairground infields to the Daytona 500, had not prepared her for the NHRA. Hammered by the shock wave, she turned to me with tear-filled eyes and clutched her chest. Okay, I thought, I have to get some numbers on this.

The next day, determined to take down some sort of measurement, I purchased a \$99 handheld noise meter at the local RadioShack and snuck it out to the starting line. John Force's Funny Car rolled up to the line and idled beside me. The meter read 115 decibels. Force punched it, blasting away from me as he hit 291 mph. A "129 dB" popped up, blinking, on the display. I scrambled for the instruction manual, which explained a blinking number indicates that the noise exceeds the meter's maximum.

I returned to RadioShack, where a salesman named Howie scratched his head: "That's the strongest model I carry, bro. But my buddy who installs custom car sound systems might have something stronger. Let me call him."

Two hours later I was back at zMAX in time for some Top Fuel runs, this time with a \$2,000 professional sound meter that went to 140 dBs. Antron Brown rolled by. I waved the meter at him, and he gave me the thumbs up. One minute later he broke off a 315.93 mph run. I looked at my new meter -- 140 dBs. And it was blinking. "Dude, what the hell are you measuring?" Howie sheepishly asked when I called back again.

Well, it certainly wasn't Cameron Indoor, where a Duke student pegged the home crowd at around 116 dBs during a game against Wake Forest in 2009. And it wasn't Oregon's Autzen Stadium, which was recorded at 127.2 dBs during an '07 home date with USC (about the same as the 127 dBs recorded for the sea of vuvuzela horns at this past summer's World Cup). On paper, my NHRA measurement didn't seem much louder. But decibels are recorded on a logarithmic scale, which means that increases are not one-to-one in terms of intensity. Each three-decibel increment represents a 100% change in sound pressure. In other words, assuming Top Fuel dragsters landed somewhere in the 150-dB range, they are over 100 times louder than the Cameron Crazies.

EVEN A MILE AWAY, in a suburban cul-de-sac near zMAX, decibels reach into the 90s when the NHRA is town. "By the time it reaches us, it's pretty dumbed down," says Charles Connor, a new resident with a clear view of the Dragway from his backyard. "Honestly, the cicadas and frogs are more annoying. But when we first moved here my wife was like, 'Did a plane just crash in the woods?' I can't imagine how loud it is being in the middle of it."

I can. Ears still ringing, I took my maxed-out meter to a higher authority. Brian Fligor is the director of diagnostic audiology at Children's Hospital in Boston and an instructor in otology and laryngology at Harvard. By night, the former rock club guitarist works with music acts on acoustic design and proper balance with their in-ear monitors. "Those numbers are ridiculously high," Fligor says after I explain how close I was to the NHRA action. "If someone is that close and doesn't have any kind of protection, they're going to walk away injured. You did have protection, right?"

"YOUR BRAIN CAN HARDLY COMPUTE WHAT IT'S HEARING AND SEEING. IT'S DAMN NEAR A RELIGIOUS EXPERIENCE."

Fligor explains the varying degrees of noise the human ear can withstand, dependent on factors ranging from peak sound level to length of exposure to distance from a source to good old genetics. "Keith Richards is a legend in the world of audiology," he says. Constant prolonged exposure to high levels of noise, like a NASCAR Cup race, is bad. "From a seat 20 feet from the track, a NASCAR race averages 106 decibels over four hours," Fligor explains. "That person is at risk for acoustic trauma or an immediate loss of hearing. Some of it will return, but likely not all."

Those numbers are comparable to today's average rock concert, which Fligor pegs in the 104-dB range. Unlike a concert, though, drag racing action happens a few seconds at a time, with lengthy pauses to clean the track after engine failures and oil downs. "But when you are reaching the kind of levels they are," Fligor says, "length of time is kind of irrelevant. The 145-165 range is when you cross over to physical damage. Get above 165 and you're talking about total structural destruction of the eardrum."

For fans, the good news is that ear protection, even over-the-counter foam earplugs, can cut sound by 20 dBs or more when used properly. But for Big Daddy and guys like me, there's little to be done to reverse damage. "I bet when you first started, you were too cool to wear earplugs, weren't you?" Garlits shouts, slapping me on the shoulder. "And I bet after this, you'll be jamming those suckers down in there with a hammer."

He smiles and points to a picture of one of his Swamp Rats leaving the starting line at night. Flames are 10 feet high from the chrome header pipes and the front wheels are off the ground. The grandstand is visible in the background, packed with slack-jawed drag racing devotees. All but a small handful are wearing ear protection. "See?" Garlits says. "They know. You don't hear a dragster with your ears, you hear it with your bones. Look at those folks. Their bones will still be shaking after they're six feet underground."

I hear that.
