

■ **Main Office**
445 Hamilton Avenue
White Plains, NY 10601
Phone 914.946.4777
Fax 914.946.6868

■ **Mid-Hudson Office**
200 Westage Business Center
Fishkill, NY 12524
Phone 845.896.0120

■ **New York City Office**
99 Madison Avenue
New York, NY 10016
Phone 646.794.5747

RICHARD L. O'ROURKE
Senior Counsel
ro'rourke@kblaw.com

April 28, 2023

James Horan, Esq.
Town Attorney
Town of Wappinger
20 Middlebush Road
Wappingers Falls, New York 12590

Re: CarMax Application for Site Plan Approval and Special Use Permit
Grid # 6156-02-664986

Dear Mr. Horan:

I write as a follow-up to our discussion on Wednesday afternoon concerning the suggestion, made at the Planning Board's April 3, 2023 meeting, that a sidewalk be installed along the south side of Smithtown Road as part of the proposed CarMax project. As related when we spoke, existing conditions at this location render the installation of such a sidewalk infeasible and entirely impractical. Under the circumstances presented, CarMax cannot be required to shoulder the burden of installing this suggested sidewalk.

The present property owner and CarMax have not and will not cause an increase in pedestrian traffic on Smithtown Road. The suggested sidewalk is thus unnecessary because the CarMax project will not create impacts warranting pedestrian improvements and, consequently, there is no legal basis to require CarMax to construct this sidewalk. *Sepco Ventures, Ltd. v. Planning Bd. of Town of Woodbury*, 230 A.D.2d 913, 646 N.Y.S.2d 862 (2d Dep't 1996). Indeed, any conditions attached to the approval and permit sought by CarMax must be directly related to its proposed use and imposed to minimize impacts resulting from this use. A sidewalk on the south side of Smithtown Road is the proverbial problem looking for a solution, rather than a genuine solution aimed at addressing true impacts posed by the CarMax project.

In sum, any condition of approval requiring this off-site improvement would most certainly be annulled in court.

Notwithstanding the above, CarMax is willing to donate Twenty Thousand and No/100 (\$20,000) Dollars to an escrow account to be held by the Town of Wappinger for its use in examining the feasibility of locating a sidewalk along the north side of Smithtown Road and constructing such a sidewalk, if determined feasible. It appears, based upon existing conditions, the most practical and effective

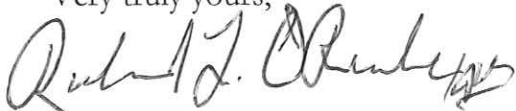
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location of a sidewalk would be on the north side. It is our understanding that the property adjacent to the right-of-way on the north side of Sullivan Road is owned by the same Trust that owns the property on which CarMax seeks site plan approval and a special use permit. It is possible that the Trust may consider cooperating with the Town if any additional property is necessary on the north side for sidewalk construction.

We are optimistic that this good faith effort to collaborate with the Town in addressing an issue not caused or exacerbated by CarMax will be carefully considered. Kindly communicate the substance of our discussion to the Planning Board Chairman, as you see fit.

Thank you for your consideration.

Very truly yours,



Richard L. O'Rourke
Senior Counsel

RLO/sb

cc: Steve Hudak
John Thatcher
Matt Squarzini
Paul Mercier
Caryn Mlodzianowski