



ITEM 7

November 8, 2018

Erie County Water Authority
295 Main Street, Suite 350
Buffalo, New York 14203

Attn: Jerome D. Schad, Esq.
Mark S. Carney, Esq.
E. Thomas Jones, Esq.
Robert J. Lichtenthal
Ronald P. Bennett, Esq.

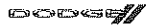
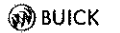
Gentlemen:

During its meeting on August 2, 2018, the Board of the Erie County Water Authority requested that West Herr seek a 10-year bond in connection with the water service provided at Auto Place Road in Clarence. That 12' water line currently serves dealerships owned by Northtown Automotive and West Herr. West Herr sought quotes for a 10-year bond, but the term of the longest bond available was either 3 or 5 years. As such, we are requesting approval of either a 3-year or 5-year \$300,000 maintenance bond, as no bonding company will offer a 10-year bond. Attached is the form of the maintenance bond in form we understand the ECWA has accepted before. We request this be approved at the next meeting of the Board of the ECWA on November 15, 2018.

By way of background, West Herr has completed renovations to its Nissan dealership at 8137 Main Street under plans approved by the Erie County Water Authority ("ECWA") which, among other things, included connection for fire service at the water main at Auto Place Road. Over the last 10 months, West Herr, with its engineers at Nussbaumer & Clarke, have worked with and met with the ECWA on the project. In early meetings, there were discussions for the ECWA to formally acknowledge its ownership of the 12" watermain that serves 8135 and 8137 Main Street, Clarence, New York depicted on the attached water line map (the "Auto Place 12" Watermain").

Following those discussions, Ron Bennett, Esq. became involved in April and prepared a Bill of Sale, an Easement and a Main-Extension Agreement to formally transfer the Auto Place 12" Watermain to ECWA, along with a 2-year bond requirement and some improvements to the fire hydrants on the Auto Place 12" Watermain. At that point, we were agreeable to that approach to resolve any uncertainties. When the matter was presented to the ECWA Board, we understand it was opined to the Board that the ECWA had no legal obligation to take over the Auto Place 12" Watermain. The Board indicated the bonding requirement should be increased from 2 years to a 10 year bonding commitment in the amount of \$300,000 in connection with the documents you prepared. We understand the current position of the ECWA is that it will formally take over the Auto Place 12" Watermain upon execution of the Bill of Sale, Easement and Main-Extension Agreement, along with a 10-year bond commitment in the amount of \$300,000 plus upgrades to the 2 hydrants.

Buffalo



Rochester



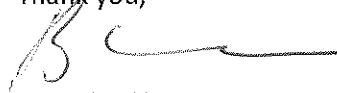
We have reviewed these items and respectfully continue to disagree with respect to the status of the Auto Place 12" Watermain. We believe the ECWA does own the Auto Place 12" Watermain for several reasons discussed below and therefore, a requirement for a 10-year bond for \$300,000 is inappropriate. Below is a summary of relevant facts and time line that we have put together which strongly support our position:

1. In the late 1980's, well before West Herr occupied the site, the Auto Place road was constructed and the Auto Place 12" Watermain was installed. To date, neither the ECWA or the Town of Clarence have been able to produce records as to the installation of Auto Place 12" Watermain, but the sizing of a 12" watermain strongly suggests it was installed as a public utility for the Town of Clarence to service numerous business customers.
2. In 1999, the Town of Clarence was granted an easement to extend the Auto Place 12" Watermain beyond the end of Auto Place road. Again, we believe this indicates all parties considered the watermain to be a publicly owned line that the Town was prepared to extend.
3. Under a Direct Service Agreement (copy attached) between the ECWA and the Town of Clarence effective October 1, 2000, and a Bill of Sale, the Town of Clarence deeded over to the ECWA ownership of the entire Town of Clarence water system, with only one enumerated exception around Goodrich Road. The map attached to that Agreement clearly shows Auto Place Road (highlighted by us in yellow). Therefore, it is likewise clear that the Auto Place 12" Watermain was included in the ownership transfer of the Town of Clarence water system to the ECWA. In the Agreement and Bill of Sale, the Town of Clarence represents that it is the owner of water system mains and appurtenances free and clear of all claims and encumbrances.
4. We acquired the Auto Place road in 2008. While we see from the Board minutes of August 2, 2018, that the Commissioners were concerned about subsidizing a private line, the Auto Place 12" Main has all the elements of a public line. There are multiple ECWA customers currently served by the Auto Place 12" Watermain and those customers have been and are currently directly billed by the ECWA. This includes our building at 8137 Main Street and the Northtown Automotive dealership at 8135 Main Street. Both services are separately connected and separately metered from the Auto Place 12" Watermain. There is also other undeveloped land on Auto Place that not owned by West Herr that may ultimately require water service. It would be unfair and unrealistic to place the burden on West Herr to become a water purveyor to multiple businesses as current or future customers of the ECWA.
5. It is also our understanding that the 2 fire hydrants on the Auto Place 12" Watermain have been historically maintained by the ECWA. These facts indicate that the ECWA has treated the Auto Place 12" Watermain as its own since it was transferred over by the Town of Clarence more than 18 years ago.

Erie County Water Authority
November 8, 2018
Page 3

For the foregoing reasons, West Herr believes a 5-year bond is more than adequate and will agree to a 5-year \$300,000 maintenance bond in connection with the execution of the agreements proposed by the ECWA and West Herr should be allowed to immediately complete their fire service connection pursuant to our pending application to the ECWA that is being held up by this issue and also preventing a Certificate of Occupancy from being issued by the Town of Clarence.

Thank you,

A handwritten signature in black ink, appearing to read "Bruce W. Hoover". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bruce W. Hoover

cc: Sean Hopkins, Esq.

MAINTENANCE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, THAT WE, _____, located at _____, herein called the PRINCIPAL, and _____ located at _____, herein called the SURETY, are held and firmly bound unto Erie County Water Authority, 295 Main Street, Room 350, Buffalo, New York 14203 herein called the OBLIGEE, in the penal sum of _____ DOLLARS (\$ _____), lawful money of the United States of America to be paid to the said OBLIGEE, its successors or assigns for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, THE Principal is required by the OBLIGEE to guarantee:

for the period from _____ to _____ against defective workmanship or defective materials.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall faithfully comply with the guarantee on its part, by replacing defective workmanship or defective materials and hold harmless the OBLIGEE against any cost, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that no suit shall be brought against this bond after six (6) months from the termination date herein stated.

SIGNED, SEALED AND DATED this _____ day of _____, 2018.

IN THE PRESENCE OF:

(Principal) (Seal)

By: _____

(Surety) (Seal)

By: _____

**DIRECT SERVICE AGREEMENT
BETWEEN
THE ERIE COUNTY WATER AUTHORITY
AND
THE TOWN OF CLARENCE**

The **ERIE COUNTY WATER AUTHORITY**, a public benefit corporation created and existing under the laws of the State of New York, with its principal office at 350 Ellicott Square Building, Buffalo, New York, 14203, hereinafter called the "Authority" and the **TOWN OF CLARENCE**, a municipal corporation with its principal office at One Town Place, Clarence, New York, 14031, hereinafter called the "Applicant" agree as follows:

1. This Agreement is made pursuant to Subdivision 10, Section 1054 of the Public Authorities Law and Title 10.00, "Extensions of Mains" of the Authority Tariff, and other applicable law.

2. Applicant desires to deed over the entire Town of Clarence Water System, with the exception of the Goodrich Road Property, as described in Exhibit "A" attached hereto, to the Authority in exchange for Direct Service effective October 1, 2000.

3. The Applicant, represents and confirms that Applicant is the sole and absolute owner and has the full right to sell and transfer mains and appurtenances; that said mains and appurtenances are fully paid for and are free and clear of all claims, mortgages, debts or other encumbrances or claims of any kind or nature; that there are no judgments existing against said applicant in any court; that there are no replevins, attachments or executions issued against said mains and appurtenances now in force; and that no petition in bankruptcy has been filed by or against said Applicant.

4. Applicant shall supply a Bill of Sale to the Authority (attached hereto as Exhibit "B") for water mains, hydrants, and appurtenances as shown on Exhibit "A". The Bill of Sale shall include a completed "Schedule of Inventory."

5. Title to all water mains, hydrants, and appurtenances referenced on Exhibit "A" shall vest in the Authority on October 1, 2000. The Authority shall then own, maintain, and operate said water mains, hydrants, and appurtenances.

6. Applicant shall provide the Authority with a certified copy of a Town Board resolution authorizing this agreement.


7. This agreement is subject to all provisions, rules and regulations of the Authority Tariff.

IN WITNESS WHEREOF, the parties have duly caused their seals to be affixed and this agreement to be signed by their duly authorized officers.

Dated: 9/20/00

(Seal)

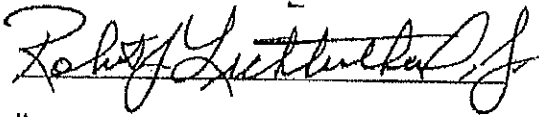
TOWN OF CLARENCE


DANIEL A. HERBERGER
Its: Supervisor

Dated: 9/21/00

(Seal)

ERIE COUNTY WATER AUTHORITY


Its:

STATE OF NEW)
COUNTY OF ERIE) SS.:

On the 20th day of September, in the year 2000, before me, the undersigned, a notary public in and for said state, personally appeared Samuel A. Herlihy, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Cynthia M. Rosel
Notary Public - State of New York
CYNTHIA M. ROSEL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires November 22, 2001

STATE OF NEW)
COUNTY OF ERIE) SS.:

On the 21st day of September, in the year 2000, before me, the undersigned, a notary public in and for said state, personally appeared Robert J. Lichtenhal, Jr., known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Patricia Graffeo (Fabrizi)
Notary Public - State of New York

PATRICIA GRAFFEO #4957688
Notary Public, State of New York
Qualified in Erie County
My Commission Expires October 16, 2001

TOWN OF CLARENCE

STATE OF NEW YORK
COUNTY OF ERIE SS.
TOWN OF CLARENCE

I, Nancy C. Metzger, Town Clerk of the Town of Clarence, Erie County, New York, do hereby certify that at an adjourned, regular meeting of the Town Board of the aforesaid town, on the 5th day of April, 2000 at the Clarence Town Hall, One Town Place, Clarence, New York, the following resolution was adopted, every member present voting therefor, to wit:

Motion by Councilman Love, seconded by Councilman McPherson to adopt the resolution authorizing the Supervisor to sign a Direct Service Agreement with the Erie County Water Authority which is hereby attached to and made a part of these minutes. Upon roll call - Ayes: All; Noes: None. Motion carried.

(See attached complete resolution dated April 5, 2000.)

I do further certify that I have compared the foregoing with the original minutes of the adjourned, regular meeting of the Town Board of the said Town held on the 5th day of April, 2000, and that the foregoing is a true and correct transcript from said original minutes and the whole thereof, and that the resolutions duly adopted by the said Town Board are on file in my office.

I do further certify that the following members of the Town Board were present at such meeting, namely,

Daniel A. Herberger, Supervisor
John F. Love, Councilman
Ian R. McPherson, Councilman
Thomas A. Sweeney, Councilman
Barbara A. Guida, Councilwoman

being all the persons constituting said Town Board of the Town of Clarence, Erie County, New York.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the said Town of Clarence, Erie County, New York, this 15th day of September, 2000.

Nancy C. Metzger
Town Clerk, Town of Clarence, New York

TOWN OF CLARENCE
RESOLUTION
AUTHORIZING THE SUPERVISOR TO SIGN A DIRECT SERVICE AGREEMENT WITH
THE ERIE COUNTY WATER AUTHORITY

April 5, 2000

WHEREAS, the Town of Clarence incurred operating deficits in its Water District for many years; and

WHEREAS, the Town negotiated unsuccessfully with the Erie County Water Authority for four (4) years regarding a favorable Bulk Sales Contract; and

WHEREAS, the Clarence Town Board thoroughly investigated all known options to alleviate the operating deficits without sacrificing service to its residents or raising rates; and

WHEREAS, the options which the Town Board investigated included privatization, raising water rates, continuing with the Town's Water Department and entering into an agreement with the Erie County Water Authority; and

WHEREAS, the Town had a water loss of at least thirty percent (30%) annually at an estimated annual cost to residents of approximately \$500,000 which could not be alleviated internally; and

WHEREAS, the Town determined that the most economical and efficient means of temporarily alleviating said problem was to enter into a management agreement with the Erie County Water Authority; and

WHEREAS, on August 11, 1999, the Clarence Town Board, acting as Commissioners of the Water District, authorized the Town Supervisor to enter into a MANAGEMENT AGREEMENT with the Erie County Water Authority for the period of October 1, 1999 through December 31, 2000 to operate, maintain and repair all Water District facilities for the residents of the Town of Clarence. Said agreement granted the Board the option to elect DIRECT SERVICE and/or LEASE-MANAGEMENT thereafter; and

WHEREAS, all equipment, machinery, tools, office equipment, and any and all personalty of the Clarence Water Department were declared as SURPLUS by the Clarence Town Board on January 26, 2000; and

WHEREAS, it appears that certain benefits would accrue to the Town with a DIRECT SERVICE AGREEMENT, namely, the Erie County Water Authority would assume responsibility for:

- a. The costs of future repairs for emergencies.
- b. All future expenses of maintenance, operation and improvements of the district;

and

WHEREAS, a resolution was duly adopted by this Town Board on February 9, 2000 calling a public hearing pursuant to Town Law Section 198-12(a) to consider the Direct Service Agreement and sale of certain real and personal property owned and not required for the purpose of the Water District; stating all other matters required by law to be so stated and specifying March 8, 2000 at 7:45 p.m. at the Clarence Town Hall, One Town Place, Clarence New York as the place where said Town Board would consider said matter and to hear all persons interested in the subject thereof, concerning same and to take such action thereon as is required or authorized by law; and

WHEREAS, notice of said public hearing was duly published and posted as required by law; and

WHEREAS, a public hearing on said matter was duly held by said Town Board on March 8, 2000 at 7:45 p.m. at the Clarence Town Hall, One Town Place, Clarence, New York and all persons desiring to speak either on behalf of or in opposition to said matter were afforded an opportunity to do so; and

WHEREAS, at said hearing, one individual spoke in favor of said sale and DIRECT SERVICE AGREEMENT and no one spoke in opposition to same; and

WHEREAS, since October 1, 1999 the Erie County Water Authority has invested considerable time and effort in improving the Water District; and

NOW, AFTER DUE DELIBERATION, IT IS RESOLVED AND DETERMINED:

- a. The notice of hearing was published and posted as required by law and is otherwise sufficient.

- b. It is in the public interest to enter into a DIRECT SERVICE AGREEMENT.
- c. That the Clarence Town Board acting as Commissioners of the Clarence Water District does hereby authorize the Town Supervisor to enter into a DIRECT SERVICE AGREEMENT with the Erie County Water Authority beginning no later than December 31, 2000 including the sale of certain real and personal property not required for the purpose of the Clarence Water District in exchange for the Erie County Water Authority's aforesaid investment, assumption of all operating and for maintenance costs and other valuable and reasonable consideration.
- d. Said agreement shall supercede all prior agreements.
- e. That said DIRECT SERVICE AGREEMENT shall be subject to the Town Attorney's approval.
- f. That said Direct Service Agreement shall be subject to all tariff, rules and regulations of the Erie County Water authority.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, THAT

The TOWN OF CLARENCE, a municipal corporation organized and existing under the laws of the State of New York, having

its principal office and business at One Town Place, Clarence, NY 14031
party of the first part, for and in consideration of the sum of TWO AND 00/100 DOLLARS and other good and valuable consideration (\$2.00) lawful money of the United States, to the party of the first part in hand paid, by the ERIE COUNTY WATER AUTHORITY, 350 Ellicott Square Building, 295 Main Street, Buffalo, New York 14203, party of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these present does grant and convey unto the said party of the second part, the heirs, executors, administrators, successors and assigns thereof

Exhibit "A"

TO HAVE AND TO HOLD, the same unto the said party of the second part, the heirs, executors, administrators, successors and assigns thereof forever. And the party of the first part does covenant and agree to and with the said party of the second part, to **WARRANT AND DEFEND** the sale of the said goods and chattels hereby sold unto the said party of the second part, the heirs, executors, administrators, successors and assigns thereof, against all and every person and persons whatsoever.

The party of the first part **FURTHER WARRANTS** that it is the sole and absolute owner of the property described in said Bill of Sale, and each and every part thereof, and it has the full right to sell and transfer the same.

That the said property, and each and every part thereof, is free and clear of any and all liens, mortgages, debts and other incumbrances or claims of whatsoever kind or nature.

That the party of the first part is not indebted to anyone and has no creditors in connection with said property.

That there are no judgements existing against said party, in any Court, nor are there any replevins, attachments, or executions issued against said party now in force; nor has any petition in bankruptcy been filed by or against it.

That this warrantee is given for the purpose and with the intent of inducing the party of the second part to purchase the property described in said Bill of Sale, Knowing that such party will rely thereon and pay a good and valuable consideration therefor.

Whenever the text hereof requires, the singular number used herein shall include the plural and all genders.

IN WITNESS WHEREOF, the party of the first part has duly executed this Bill of Sale on the 20th day of September, 2000.

In Presence of:

Daniel A. Herberger
DANIEL A. HERBERGER

Its: Supervisor

STATE OF NEW YORK)

COUNTY OF ERIE) SS.:

On this 20th day of September, 2000, before me personally came

DANIEL A. HERBERGER, SUPERVISOR

to me known and known to me to be the same person(s) described in and who executed the within instrument, and he (they severally) duly acknowledged to me that he (they) executed the same.

Cynthia M. Rouse
NOTARY PUBLIC



Town of Clarence Water System / Service Area

September 21, 2000







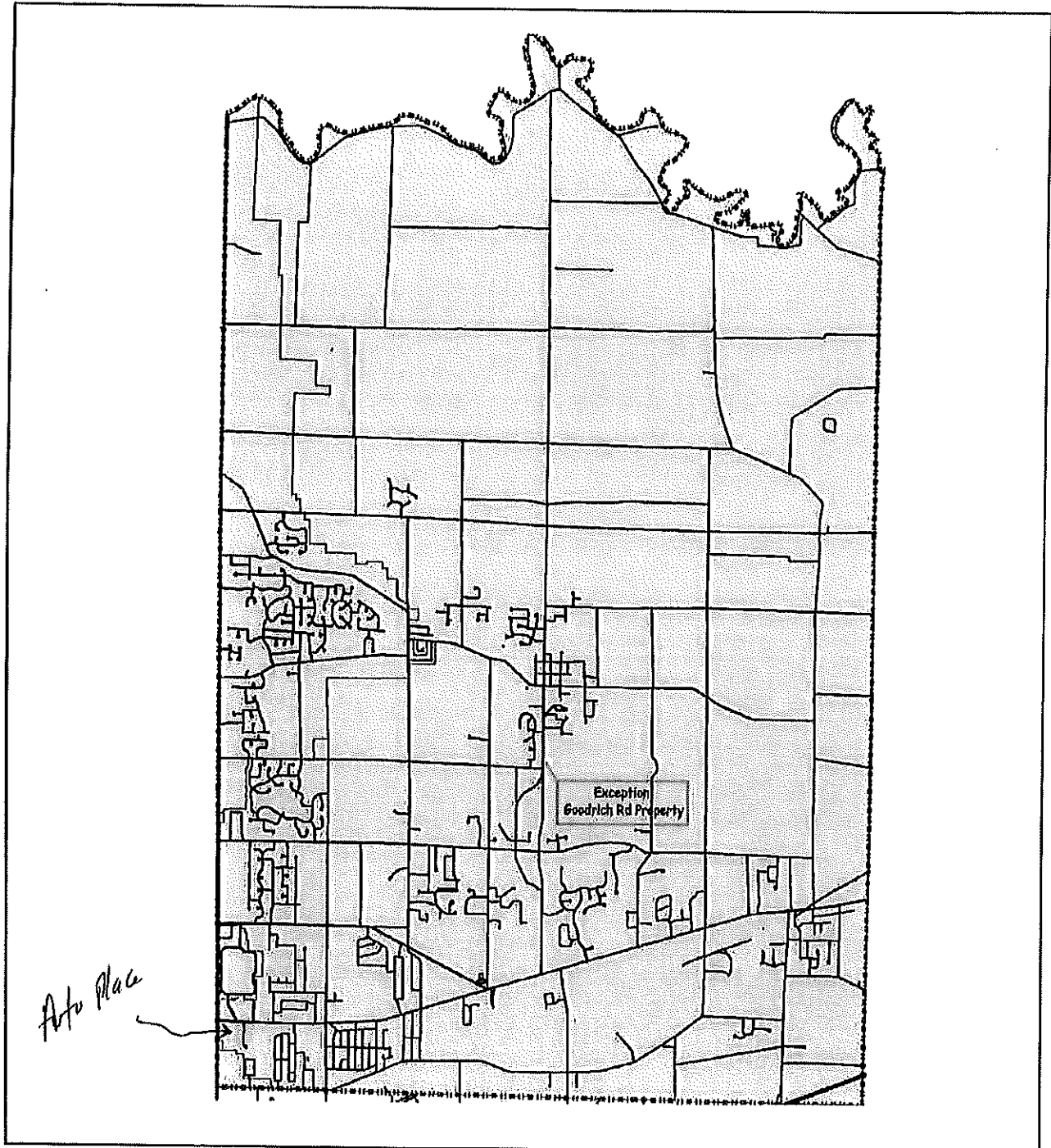
-  Municipal Boundaries
-  Pavement
-  Existing
-  Water Districts
-  E.C.W.A. Owned
-  Exception - Goodrich Rd. Property



EXHIBIT "A"



SCHEDULE OF INVENTORY

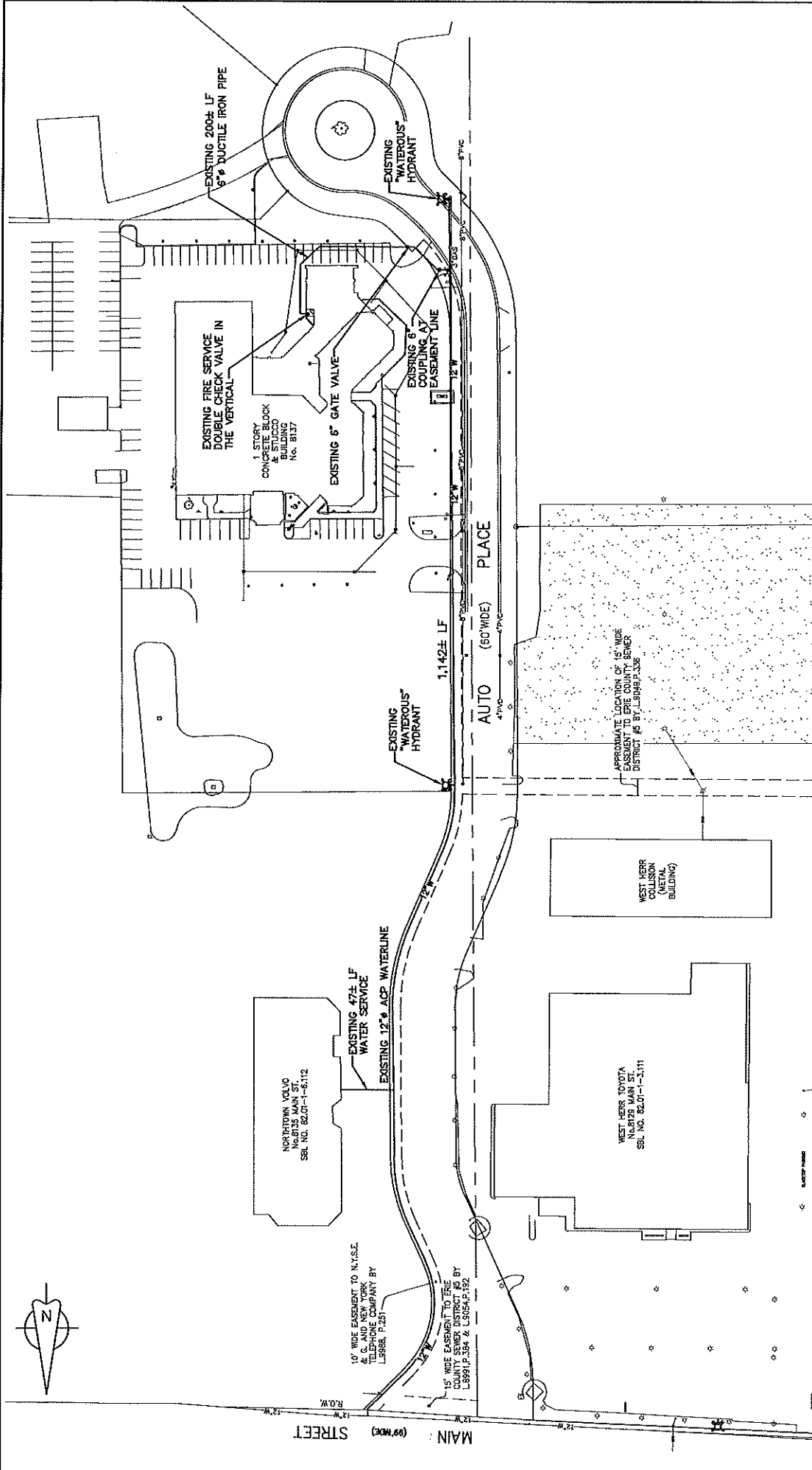
TOWN OF CLARENCE

Length and Type of Pipe

Size	Cast Iron	Steel Pipe Tarcoated	Galvanized Steel	Asbestos Cement	Ductile Iron	Plastic PVC	Total In Easements	Total In Public right-of- way
1"	400 ft. copper							
1 1/2"	3,050 ft copper							
2"			900 ft.					
4"								
4"			870 ft.					
6"	167,210 ft.	1,530 ft.		8,200 ft.		Repair sections		
6"								
8"	138,110 ft.			213,910 ft.	5,750 ft.	241,100 ft.		
8"						Repair sections		
10"	36,940 ft.			73,360 ft.		Repair sections		
10"								
10"								
12"	19,140			16,650 ft.		12,280 ft.		
12"								
16"					5,510 ft.			5,510 ft.

Existing roads without water mains - 63,550 ft. (12.03 miles)

FIRE HYDRANTS - 1600



1

NOT TO SCALE

AUTO PLACE WATERLINE EXHIBIT
TOWN OF CLARENCE
ERIE COUNTY, NY

NUSSEBAUMER & CLARKE, INC.
ENGINEERS

25061 Leno Centre Road, Suite 500
 Buffalo, NY 14228
 716.827.1900
 www.nussbaumer.com