

EXHIBIT **VIII.C.3.a.**

CURRENT ZONING/PROPOSED
REZONING OR VARIANCE



See attached for a memorandum from Greenberg Traurig, the Applicant's counsel.

Memorandum

TO: NYS Funding LLC
FROM: William A. Hurst
DATE: June 26, 2014

EXHIBIT VIII.C.3.a

8.1 N.Y. RACING, PARI-MUTUEL WAGERING AND BREEDING LAW

Section 1309.2 of the N.Y. *Racing, Pari-Mutuel Wagering and Breeding Law* states:

If any provision of this article is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this article shall prevail over such other provision and such other provision shall be deemed to be superseded to the extent of such inconsistency or conflict. Notwithstanding the provisions of any other law to the contrary, no local government unit of this state may enact or enforce any ordinance or resolution conflicting with any provision of this article or with any policy of this state expressed or implied herein, whether by exclusion or inclusion. The commission shall have exclusive jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of this article.

Specifically with respect to local zoning matters addressed in this Exhibit, § 1366 of the N.Y. *Racing, Pari-Mutuel Wagering and Breeding Law* states: “Zoning. Notwithstanding any inconsistent provision of law, gaming authorized at a location pursuant to this article shall be deemed an approved activity for such location under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations.”

8.2 PROJECT LOCATION

As shown on Figure 1, the Project location is the former site of the Rensselaer Junior and Senior High School, located at 555-575 Broadway, City of Rensselaer, New York.

A mix of industrial, commercial, institutional, and residential structures built over the past two centuries characterizes this portion of the City of Rensselaer. The railroad yard to the north and east of the project area operated by Amtrak, and the elevated portion of Broadway that carries traffic over this complex of tracks and railroad service facilities, dominate the landscape. The project site is currently vacant.

8.3. REQUIRED ZONING APPROVALS

In 2009, the City of Rensselaer Planning Commission accepted a Final Generic Environmental Impact Statement (FGEIS) under the State Environmental Quality Review Act (SEQRA), Article 8 of the N.Y. *Environmental Conservation Law*, in the course of its review of a mixed-use development proposal at the Project site. The FGEIS analyzed a potential build out consisting of approximately 515 residential units; 165,000 square feet of retail space; 250,000 square feet of office space; a 300-room hotel; and 1830 parking spaces. The FGEIS also analyzed the potential environmental impacts that a 30% variance of any of the above density allocations would cause. The City of Rensselaer Planning Commission adopted a SEQRA Findings Statement for the mixed-use development proposal on August 26, 2009, and then re-zoned the site as Planned Development District. The SEQRA Findings Statement also concluded that no further SEQRA compliance would be required if a subsequent proposed action at the site would be carried out in conformance with the conditions, thresholds, and mitigations established in the FGEIS or Findings Statement. A supplement to the FGEIS must be prepared only if the subsequent proposed action was not addressed or was inadequately addressed in the FGEIS, *and* the unaddressed elements of the subsequent proposed action have the potential for one or more significant adverse environmental impacts.

In 2012, the City of Rensselaer enacted far-reaching changes to its zoning code. The intent of the 2012 effort was to implement the land use recommendations contained in the City's adopted 2006 Comprehensive Plan, and those developed during the 2009 FGEIS process.¹ Among the land use goals set forth in the 2006 Comprehensive Plan were the "promotion of the Hudson Riverfront as a place to live, work, and recreate," and to enhance access and connections between downtown Rensselaer, the Hudson River waterfront, and residential neighborhoods. The City of Rensselaer has already determined that a mixed-use project at the site fully comports with these goals.

8.3.1. CURRENT LAND USE APPROVALS

The Project has not yet obtained any land use approvals, nor made any applications to local, state or federal agencies in that regard. However, as detailed more fully below, the City of Rensselaer has re-zoned the site as Planned Development District, and recently updated and modernized its local zoning code. The City has developed a comprehensive set of Planned Development District standards that will facilitate the permitting and development of the Project in a manner that is fully consistent with the City of Rensselaer Comprehensive Plan, and with the 2009 FGEIS and SEQRA Findings Statement.

8.3.2. PLANNED DEVELOPMENT DISTRICT APPROVAL

As part of the 2012 zoning code amendments, the City enacted § 179.22, titled "PDD Planned Development District." The purpose of the Planned Development District regulations is "to provide for the creation of a flexible zoning district to accommodate major new development or redevelopment efforts within the City of Rensselaer." [Code, § 179-22.A] A Planned Development District may be established within any area of the City, provided that the City of Rensselaer Planning Commission and Common Council find that the objectives and provisions

¹ N.Y. *Gen. City Law* §20(25) requires that local zoning laws be adopted in accordance with a comprehensive plan.

of the Planned Development District will be satisfied, and the proposed development is fully consistent with the spirit and intent of the adopted Comprehensive Plan. [Code, § 179-22.B]

The City of Rensselaer has already re-zoned the site as a Planned Development District.

The uses permitted within an area designated as a Planned Development District are determined by § 179.22.D of the City of Rensselaer Code, as supplemented by the approved site plan for the project. In particular:

- (1) Residential dwelling units, private garages, storage spaces, recreational and community facilities may be permitted;
- (2) Commercial, services, and non-residential accessory uses may be permitted where such uses are scaled to serve the residents of the PDD and the surrounding neighborhoods;
- (3) Commercial, service, industrial and other non-residential uses may be permitted as principal uses, as identified through market analysis, and when such uses are integral to and supportive of the PDD and surrounding neighborhoods in terms of work force, design and character, and when consistent with the City Master Plan.

The allowable densities at the site under the Planned Development District regulations are: 515 residential units; 165,000 square feet of retail space; 250,000 square feet of office space; a 300-room hotel; and 1830 parking spaces, with a 30% variance of any of the above density allocations being permissible. While such allowable densities are above what is contemplated for the Gaming Facility, in any event we believe that the development of the Gaming Facility could require an amendment to the Planned Development District zoning ordinance for the site.

8.3.3. SITE PLAN APPROVAL

The City of Rensselaer Planning Commission must grant both preliminary and final site plan approval for the Project.

8.3.4. PUBLIC WORKS APPROVALS

The Project requires certain permits/approvals from the City of Rensselaer Public Works Department including curb cuts, water line extension, sewer line extensions, and various water and sewer service connections.

The Project also requires approval by Rensselaer County Sewer District No. 1 for modifications to its sewer infrastructure.

8.3.5. BUILDING PERMITS

The Project will require Building Permits for each individual phase proposed for the proposed Project.

8.3.6. SCHEDULE OF SUBMISSIONS

Construction for the proposed Project is anticipated for 2015. The specific schedule of applications for zoning approvals and anticipated approval dates is addressed in Exhibit VIII.C.3.c.

ALB 1789539v1