June 24, 2022

Re: South Shore Marina PDD

Dear Town Board Members:

I am writing this letter to express my strong opposition to passage of a resolution that would deem the referenced PDD application complete and refer said application to the Planning Board. Such a resolution would be premature as the applicant has not addressed several requirements of the PDD Code. Failure to have these matters addressed and referenced in the application may preclude their introduction in the future.

While the Malta PDD Code lacks a definition of what constitutes a completed application, a survey of such definitions yields a common theme. According to Black’s Law Dictionary, something is complete when it is full or finished and is not lacking in any way.¹ A completed application means that the application form provided by the Town is completed, all requested information is provided and the application can be processed without additional information. An application which contains errors, omissions, or which requires additional or clarifying information is generally not considered to be a “completed application”. (Please see statutory examples attached.)

**THE APPLICATION FAILS TO ADDRESS THE MINIMUM LOT SIZE REQUIREMENTS**
Upon inspection it appears that the South Shore Marina PDD application fails to indicate that it meets the minimal lot size requirements for a residential PDD nor does the applicant demonstrate how any redeeming characteristics of his holdings meet the objectives of the town’s PDD Code. In the application on page 2, Step 1 Conformance with PDD Code and Comprehensive Plan at Question 2 the Applicant is asked directly, “Does the Proposed PDD meet the minimum lot size requirements?”. The Applicant fails to answer that question relative to the 10-acre minimum for a Residential PDD yet does answer the very next question relative to the 3 acres required for a Commercial PDD. How can a failure to respond to a direct question on a critical component such as lot size allow this application to be declared complete?

The Applicant is well aware of the fact that the PDD Code requires a minimum of 13 acres for this project. For the Town Board to consider a project with less than the minimum lot size, the PDD code requires that the applicant “must demonstrate that the characteristics of his holdings will meet the objectives of this article.” This application is completely devoid of any such demonstration or the slightest reference to the objectives of the PDD Code. Until this lot size question is answered in the negative and the required demonstration is included the application cannot be declared to be complete.

THE APPLICATION FAILS TO INCLUDE WORKFORCE/RETIREMENT HOUSING UNITS

The Town PDD Code states as follows: “The Town Board of the Town of Malta recognizes the need for housing available for persons of varying financial resources. Accordingly, all planned development districts approved after the effective date of this chapter which include residential uses shall set aside 35% of each type of residential unit (including, but not limited to, single-family houses, townhouses, condominiums and apartments) as work-force and starter/retirement housing.” The code goes on to specify the minimum and maximum dimensions of these set-aside units relative to the unreserved units in the project. Despite these explicit requirements, this application contains no reference whatsoever to this provision. It fails to indicate the number, dimension,
or location of these required housing units. Without any reference to these requirements, the application cannot be declared to be complete.

**THE APPLICATION FAILS TO INCLUDE A REVIEW OF LEED DESIGN**

The PDD Code states: “Every application for establishment of a Planned Development District shall contain a review of the possible construction design and management of all buildings within the Planned Development District in compliance with the U.S. Green Building Council’s (USGBC) Leadership in Energy and Environmental Design (LEED) Certification Standards.” This application fails to include this required review. Having failed to include this information the application cannot be declared to be complete.

**USE OF A NON-CONTIGUOUS PARCEL IS AN ABUSIVE USE OF A PDD**

A Planned Development District contemplates the use of a single tract of land to be developed in a unified manner. The resulting zoning district is parcel specific and cannot consist of two districts of disconnected lots with intervening, independently owned parcels. If the PDD Code intended to include several disconnected parcels, it surely would have specified proximity requirements to prevent multiple, disjointed lots with little or no connection to the main place and purpose of the PDD from being considered parts of a single PDD.

The Malta PDD code simply refers to “the site” as singular. Article VII Planned Development District 167-26A clause B reads as follows: *Minimum size requirements*. The site for a planned development district shall not be less than 10 acres for a residential development...” A district is contiguous if it is possible to travel between any two points in a district without crossing into a different district. This PDD application, however, includes a segregated lot designated for no development. That lot is not contiguous property but separated by both highway and intervening private property. This PDD, therefore cannot be considered to constitute a singular site of contiguous land under common ownership. Geographic contiguity is the characteristic in geographical land divisions, zones and districts not being interrupted by other land or water.
PDD’s are intentionally created to recognize minimum land requirements. Compactness and contiguity are both related to a district’s shape. A compact district represents a geographically consolidated area. To include 3.86 acres in this small footprint that is under-scaled but adds nothing to justify the density on the developed parcel is equivalent to capturing some plot of land in Luther Forest and claiming its development rights accrue to this PDD. Inclusion of this extraneous parcel solely for the purpose of approaching, but not meeting, minimum lot size requirements is clearly not within the framework of a PDD.

The current draft of the Town Comprehensive Plan discourages the use of Planned Development Districts (PDDs) that bring limited benefit to the Town or its resources, principally for the purpose of achieving higher density development. The draft Comprehensive Plan finds that: “PDDs can disrupt an otherwise predictable development pattern when used inappropriately. PDDs, when used correctly, are a form of negotiated development that allow the Town to encourage a higher quality product that meets the needs of residents. When applied incorrectly, PDDs can be used by unscrupulous developers to skirt zoning regulations. To achieve the higher densities that are often desired, the Town should instead encourage developers to utilize conservation subdivision regulations that already exist, and ensure community benefits are secured commensurate with the development density granted.”

There is no public benefit to this woodlot as it is completely extraneous to the PDD site. It is only being included to extract a higher density from a site that fails to meet even 50% of the required minimum lot size. Such an exercise constitutes the very practice the draft Comprehensive Plan condemns.

CONCLUSION

As outlined above the application fails to meet the specific requirements of the Town PDD Code. The Town Board is under no obligation to declare such a deficient document complete. By failing to object to these deficiencies, the Board may be precluded from raising them in the future as the applicant may rely on any acceptance as a waiver of those requirements. A local government exercising its zoning powers may be estopped when a property owner, (1) relying in good
faith, (2) upon some act or omission of the government, (3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights which he ostensibly had acquired.\(^7\)

Should the applicant make any decisions, commitments to investors, expenditures or engagements with engineers or consultants in reliance on this premature acceptance, or failure to object to deficiencies, the Town may be estopped from enforcing compliance with those requirements in the future. Some courts may grant relief if the owner merely incurred sufficient expenses and contractual obligations.\(^8\)

As the items above are either absent or in violation of the PDD Code, I respectfully request that the Board find the application incomplete and that no resolution to the contrary be issued.

Very truly yours,

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1. https://thelawdictionary.org/complete/
2. Sites proposed for development for two or more classifications shall consist of the aggregate gross land area required for each use. PDD Code Section 167-26 B.
3. Ibid.
4. PDD Code Section 167-26 C
5. PDD Code Section 167-26 E(5)
6. A Guide to Planned Unit Development, New York State Legislative Committee on Rural Resources (2005)
8. Ibid. at p.86
Examples of “Completed Application” Statutory Definitions

**Complete application** means an application submitted with all required information on the form completed and all appropriate fees, transcripts and documentation attached. Applications missing any of the listed items shall not be considered complete. [https://codes.ohio.gov/ohio-administrative-code/rule-3745-7-01](https://codes.ohio.gov/ohio-administrative-code/rule-3745-7-01)

**Complete application** means an Application that contains all information and/or data necessary to enable the Board or Zoning Officer to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact on the Town in the context of the permitted land use for the particular location requested. Town of Dryden, NY [https://ecode360.com/34391042](https://ecode360.com/34391042)

**Complete application** means a properly completed and executed application where all questions on the application itself were fully answered by the qualified building owner and that all supporting documents or information required in the application were fully furnished to review and approve the application. Applications include Forms A and B, as well as all other associated information necessary to process the application. NYS Division of Homeland Security and Emergency Services [http://www.dhses.ny.gov/oct/programs/documents/2018+Application+FINAL_4.pdf](http://www.dhses.ny.gov/oct/programs/documents/2018+Application+FINAL_4.pdf)

**Complete application** means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application as determined solely by the Planning Board. Adirondack Park Agency

**Complete**: a term that means something is full or finished and is not lacking in any way and is a complete copy or a complete legal title. Black’s Law Dictionary [https://thelawdictionary.org/complete/](https://thelawdictionary.org/complete/)