

Reply To: West Palm Beach

February 14, 2021

William Waters, Director of the Community Sustainability Department
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460

RE: APPEAL BY AFFECTED PARTY MARLIN INDUSTRIAL PARK OWNERS' ASSOCIATION INC.
PZB Project Number 20-01400035: Major Site Plan Approval, Bonus & Conditional Use Permit

Dear Mr. Waters:

We have been retained to represent the Marlin Industrial Park Owners Association and its representatives, George Garamy, President and Daniel Hiatt, Vice President ("Petitioner" and "Petitioners"). Mr. Garamy has filed for this appeal on behalf of Marlin Industrial Park, which is located at 2209 7th Avenue North in the City of Lake Worth Beach. Marlin Industrial Park is adjacent to the east side of the mixed-use project that is the subject of PZB Project Number 20-01400035 ("Project").

The Project was initially scheduled for a hearing on December 2, 2020 before the decision-making body, the City's Planning and Zoning Board ("Board"). Since the Board did not satisfy the quorum requirements for its December meeting, City staff postponed all items on the meeting agenda to the Board's next regularly scheduled meeting on January 6, 2021. The Petitioners were recognized by the City as affected parties and presented evidence at the January 6th hearing. The Board issued its written decision approving the Project on January 15, 2021. The Petitioner filed a Notice of Appeal within 14 days as required by the City's Code. This letter is the basis for the appeal, which is required 30 days after the Board issues its written decision.

As an initial matter, it must be noted that Umdasch Real Estate USA, Ltd. ("Applicant") has not met the requirements to do business in the State of Florida. Applicant is a foreign corporation based out of New Jersey. Section 607.1501(1), *Florida Statutes* requires all foreign corporations transacting business in Florida to obtain a certificate of authority from the state. There is no evidence in the record that the Applicant has received the required certificate of authority. It is a matter of public record that the Applicant is not listed as an active business on the Florida Division of Corporations website (Sunbiz.org). The Applicant submitted its application to the City on August 12, 2020. Therefore, the Applicant's communications with the City with respect to this application have exceeded 30 days and constitute the

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transaction of business within the meaning of the statute. Any further communications between the City and Applicant must cease until Applicant obtains a certificate of authority from the State of Florida. For this reason alone, this application should be remanded to the Planning & Zoning Board for a new hearing, but only unless and until Applicant has registered to do business in Florida, as required by the F.S. § 607.1501(1).

A summary of the basis of the Petitioner's appeal is as follows.

1. The Planning and Zoning Board's decision to deny the Petitioner's request for a continuance does not follow the essential requirements of the City's Code

The Board did not follow the required procedures for continuing a hearing as provided in section 23.2-16 "Quasi-judicial procedures" (as amended by Ordinance 2020-14). This section provides that the Board has the authority to continue a hearing and that hearings shall be continued by motion of the Board to a fixed time and place:

g) Continuance. The decision-making body may, on its own motion, continue the hearing to a fixed date, time and place. Also, the applicant or affected party shall have the right to one (1) continuance provided the request is to address neighborhood concerns or new evidence, or to hire legal counsel or a professional services consultant, or the applicant or affected party is unable to be represented at the hearing. The decision-making body will continue hearing to a fixed date, time and place. However, all subsequent continuances shall be granted at the sole discretion of the decision-making body. ...

On December 2, the Petitioner sent an email requesting a continuance of the hearing on this Project that was scheduled for the Board's December meeting. Petitioner is entitled to this continuance by right. Nevertheless, the City's Code requires the Board to continue hearings by motion. There is good reason for this requirement. When a board continues a hearing by motion, it creates a record of the requested continuance and provides notice to the public of the new hearing date.

Here, the hearing that was scheduled for December 2, 2020 did not take place because the Board did not meet the quorum requirements for its meeting. In response to its request for a continuance, the Petitioner received an email from the City Attorney advising the Petitioner that she consulted with Board members on their availability and that the hearing would be continued to the Board's regular January 6, 2020. (See e-mail attached as Exhibit A.) The City Attorney's e-mail does not meet the requirements for granting the Petitioner, an affected party, a continuance as required by the City's code as noted above. Furthermore, the letter does not include a fixed time and place as required by the City's code. The City Attorney's e-mail was merely an administrative rescheduling of the December 2 Board meeting which was cancelled for lack of a quorum. The fact that the hearing was postponed for lack of a quorum does not substitute for or satisfy Petitioners' right to a continuance under the City's Code.

However, despite the fact that the Petitioner was entitled to a continuance by right at the January 6th Board meeting, the Board made a motion to deny the Petitioner's request for a continuance. Thus, it did not follow the essential requirements of the City's code. In addition, the Board's failure to grant

Petitioner a continuance as provided by the City's Code was a violation of the Petitioner's due process rights. For this reason, the Project approval must be rescinded, and the Project application must be remanded to the Board for a new hearing, where Petitioner will be properly represented by Counsel.

2. Site circulation and building placement will result in significant adverse impacts to the Petitioners' property which will reduce its value

The Applicant failed to meet its burden to show by competent substantial evidence that it meets all site design qualitative standards as required by Section 23.2-31 of the Lake Worth Beach Code. Specifically, it failed to provide sufficient evidence that the site design met the development standards that loading and vehicular circulation areas be located, designed and screened to minimize the impact of noise, glare and odor on the Petitioner's adjacent property as required by Section 23.2-31(c)(11). It also failed to provide sufficient evidence that the site design would not have a negative impact on the value of Petitioner's property as required by Section 23.2-31(c)(13).

Daniel Hiatt testified that the site design, which directed all large truck traffic to the interior roadway on the eastern edge of the Project, would result in significant adverse impacts to the Marlin Industrial Park which is directly adjacent to this interior roadway. He also testified that the proposed screening material on the eastern property line of the Project was not a sufficient buffer to minimize the noise and odors emitted by the large trucks anticipated to be circulating on the site. In fact, the Applicant's operations manager, Jared Wright, testified that the number of trucks entering the site would be up to 10 a day, which means that trucks would be passing behind the tenants who are renting out bays on Petitioner's property on an hourly basis.

The Applicant provided no evidence as to how it intended to mitigate the noise and odor from the great number of trucks anticipated to be used in their operations. The Applicant's representative Lisa Reves testified that a buffer was not required on the eastern property line since the noise would not be an issue for the Petitioner's tenants. Ms. Reves statement was based on an engineer's report attached to the Applicant's December 18th letter to the City. (See attached as Exhibit B.) However, the engineer's report is limited to the sound of forklifts only. It does not address noise from the truck traffic. In fact, the noise thermometer attached to the engineer's report indicates that the noise resulting from a diesel truck accelerating is 114 dB, which is categorized as "extremely loud". Therefore, the Applicant's own evidence supports a finding that the site plan design does not provide sufficient buffer from the noise and odor anticipated from the truck traffic.

In addition, City staff did not provide sufficient evidence that the design of the site plan would help minimize the negative impacts to the Petitioner's property. City staff's analysis of the Project's impacts of noise, glare, odors, and property values was limited to the single-family and multi-family residences to the west and south of the Project. (See Staff report, Page 7.) City staff testified that a condition was added to the Project to require the Applicant to install fencing 6 to 8 feet in height made of opaque material on the eastern property line to screen the view of the outdoor storage area. However, City staff did not impose any conditions that would help buffer the noise and odor from the truck traffic, such as additional landscaping or a concrete wall consistent with screening materials added to the Project's western or southern property lines. The noise and odor from the constant procession of large trucks so close to the Marlin Industrial Park will significantly reduce the value of Petitioner's property.

3. Conditions imposed on the Conditional Use Permit are not sufficient to not mitigate the significant adverse impacts of the Project

The Applicant failed to meet its burden to show by competent substantial evidence that it meets all the required findings for approval of a conditional use permit as required by Section 23.2.-29 of the City's Code. The City's Code states that conditional uses are deemed to carry the potential for adverse impacts and can only be approved if all the required specific findings set forth in Section 23.2-29(e) have been met. Specifically, the Applicant failed to meet its burden to prove it met the required findings regarding the adverse impacts of noise and air pollution.

Code section 23.2-29(e)(3) requires that the conditional use will not produce significant air pollution emissions. Staff relied on the Applicant's statement that no fabrication or manufacturing would occur on site to conclude that the Project was not anticipated to produce significant air pollution emissions. (See Staff report, Page 11.) However, Petitioner George Garamy provided competent substantial evidence that the Applicant's operations are anticipated to produce air pollution in the form of excessive dust. Mr. Garamy testified that he had viewed satellite images of Applicant's similar operations in North America, including Pompano Beach, New Jersey, and Atlanta, and that these images showed that the pavement of the storage yards is covered with dust and that the dust is carried out to the surrounding roadways when the trucks leave the facilities. The fact that the dust was visible on a satellite image indicates that the amount of dust created by the Project operations is substantial. Neither City staff nor the Applicant refuted Mr. Garamy's testimony. In fact, the Applicant's operation manager, Jared Wright, admitted that its facility in Pompano Beach is "a mess". Instead of taking appropriate action to clean up the Pompano Beach facility, the Applicant simply stated that the proposed facility will be better. But in light of their poor performance in Pompano Beach, what assurance does the City have that operations in Lake Worth Beach will be any better? Absolutely none. Based on the testimony of Mr. Garamy and Mr. Wright, the Board could not have made a finding that the proposed use will not produce significant air pollution emissions.

Secondly, Code Section 23.2-29(e)(7) requires that the conditional use will not generate significant noise or will include conditions to mitigate the anticipated noise and meet all the requirements of the City Code related to unreasonable noise in Section 15.24. This section defines unreasonable noise as between 65 dba and 85 dba depending on the time and requires noise to be measured from the curb or property line closest to the source of noise with a 30-second reading using an A-weighted filter or a C-weighted filter, constructed in accordance with the specifications of the American National Standards Institute. The engineer's report provided by the Applicant regarding the noise impacts (see above) is limited to forklift operations only and does not state whether the study conforms to the City requirements. In its analysis, City staff concluded that the Project was appropriately conditioned to prohibit generating noise levels that exceeded the levels required for unreasonable noise. (See City staff report, Page 12.) Yet, without an appropriate measurement as to the general level of noise to be generating from all of the Project's operations, not just forklift use, it would be impossible for staff to define conditions adequate to mitigate the anticipated noise.

4. The Project is not consistent with the goals of the City's comprehensive plan or strategic plan

The Applicant failed to meet its burden to show by competent substantial evidence that the Project was consistent with the goals of the City's comprehensive plan to create a quality industrial park in the area or with the goals of the City's strategic plan to create jobs and a stable tax base.

Mr. Hiatt testified that in his opinion as a commercial landowner in Lake Worth Beach, the Project site was underdeveloped and ultimately deprived the City of potential tax revenue. In support of his opinion, Mr. Hiatt stated that he owns multi-unit buildings that are between 15,000 and 20,000 square feet each. Each one of these buildings has 10 to 15 small businesses which contribute to the City's tax base. He also testified that he owns several one-acre sites that contain buildings approximately 15,000 square feet in size. There are approximately 50 to 60 people working in each of these buildings. Based on Mr. Hiatt's testimony, ten acres of industrially zoned land in the City can create up to 600 jobs when developed to its full potential. In contrast, the Applicant testified that the Project, which consists of a ten-acre site, would create only 50 jobs. This is much less than the site's potential. Therefore, the Project is not consistent with the City's goals to create jobs and a stable tax base.

For the reasons noted herein, the City Council should 1) rescind the Board's denial of the Petitioner's request for a continuance, 2) rescind the Board's Development Order for the Project, and 3) remand the Project application to a new hearing before the Planning and Zoning Board, at which Petitioners may be represented by the undersigned legal counsel and retain experts to further support the basis to deny the subject application.

Sincerely,

Alfred Malefatto, Esq. and Janice Rustin, Esq.
Counsel for Petitioner

EXHIBIT A

From: [Pamala Ryan](#)
Sent: Friday, December 4, 2020 1:54 PM
To: [Erin Sita](#); [Daniel Hiatt](#)
Cc: [Sherie Coale](#)
Subject: RE: PBZ PROJECT #20-01400035

Good afternoon. I have consulted with staff who has consulted with board members on availability and the hearing will be continued to the regular January 6, 2020 meeting. Please feel free to advise staff (or me through your attorney, if appropriate) if you have any questions regarding your status as an affected party.

Have a good weekend.

Pamala H. Ryan
Board Certified in City County & Local Govt. Law

TORCIVIA, DONLON & GODDEAU, P.A.

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From: Pamala Ryan
Sent: Wednesday, December 02, 2020 6:05 PM
To: Erin Sita <esita@LakeWorthBeachfl.gov>; Daniel Hiatt <danielhiatt@bellsouth.net>
Cc: William Waters <wwaters@lakeworthbeachfl.gov>; Sherie Coale <scoale@lakeworthbeachfl.gov>
Subject: RE: PBZ PROJECT #20-01400035

Mr. Hiatt, so that there is no confusion, the city is looking at advertising the hearing for either December 16, 2020 or January 6, 2020. We will advise you tomorrow but that gives you time to hire legal counsel. Thank you.

Pamala H. Ryan
Board Certified in City County & Local Govt. Law

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From: Pamala Ryan
Sent: Wednesday, December 02, 2020 5:54 PM
To: Erin Sita <esita@LakeWorthBeachfl.gov>; Daniel Hiatt <danielhiatt@bellsouth.net>
Cc: William Waters <wwaters@lakeworthbeachfl.gov>; Sherie Coale <scoale@lakeworthbeachfl.gov>
Subject: RE: PBZ PROJECT #20-01400035

Mr. Hiatt,

The city is in receipt of your request. Are you stating that you did not get notice via US mail although courtesy notice was delivered in accordance with the city's code? It is my understanding that your property manager, Christina Morrison, was aware no later than November 25, 2020 when she sent an email to city staff requesting the staff report. Under the code, an affected party must give five days' notice.

Having said that the city will continue this case to no later than January 6, 2020. A date is being determined now and you will be notified expeditiously via email, mail and legal notice. The city will send you an affected party status form for either you or your attorney to fill out.

Thank you.

Pamala H. Ryan
Board Certified in City County & Local Govt. Law

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From: Erin Sita [<mailto:esita@LakeWorthBeachfl.gov>]
Sent: Wednesday, December 02, 2020 4:51 PM
To: Daniel Hiatt <danielhiatt@bellsouth.net>
Cc: Pamala Ryan <pryan@torcivialaw.com>; William Waters <wwaters@lakeworthbeachfl.gov>
Subject: RE: PBZ PROJECT #20-01400035

Thank you Mr. Hiatt, I received your request and have forwarded it onto our board attorney.

Erin F. Sita, AICP
Assistant Director | Community Sustainability Department



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Departmental Operating Hours

Monday – Friday 8:00 am – 4:00 pm

“We are LAKE WORTH BEACH. A hometown City that is committed to delivering the highest level of customer service through a commitment to integrity, hard work and a friendly attitude. We strive to exceed the expectations of our citizens, our businesses, our elected officials and our fellow employees.”

From: Daniel Hiatt <danielhiatt@bellsouth.net>

Sent: Wednesday, December 2, 2020 4:47 PM

To: Erin Sita <esita@LakeWorthBeachfl.gov>

Subject: PBZ PROJECT #20-01400035

Caution: *This is an external email. Do not click links or open attachments from unknown or unverified sources.*

Dear Ms Sita

I would like to apply for affected party status on the above named project (PZB # 20-01400035)

I also would like to request a minimum of a 30 day postponement on this matter.

My property is directly east of the subject property. Located @ 3599 23rd Ave South, Lake Worth Fl.

LOT # 7 MARLIN INDUSTRIAL PARK.

Thank You Daniel W. Hiatt. 561-389-1989

Sent from [Mail](#) for Windows 10

EXHIBIT B

December 18, 2020

William Waters, Director
Community Sustainability
1900 Second Avenue North
Lake Worth Beach, FL 33461

Mr. Waters,

Thank you for forwarding the comments and concerns received from business owners and residents regarding Umdasch/Doka's development application. Upon review of those comments and concerns, it is apparent that there is a misconception about the proposed use of the site and I appreciate the opportunity to clarify the issues.

USE OF SITE

Doka USA Ltd., is an international leader in developing, manufacturing and distributing formwork technology for use in all fields of construction. While the activities at our property have been outlined in our application, we appreciate the opportunity to elaborate on the activities proposed for the Lake Worth Beach facility. The proposed site utilization has three main components: office operations, yard operations and maintenance facilities.

The office operations houses our engineers, sales, operations, logistics and management staff. It is here that Doka engineers design formwork to accomplish our clients construction goals.

Once our engineers complete a design, yard operations utilize a forklift to gather and load the necessary equipment, from our storage yard onto trucks for transportation to construction sites. Trucks access the site from 7th Avenue North approximately 850 feet from the Oakwood Apartments to the south of the site and in excess of 510 feet to the properties to the west of the E-3 Canal. The loading and unloading of equipment can take up to an hour to complete. Therefore, truck engines are required to be turned off during the loading and unloading process. It is anticipated that this facility will load ten to fifteen trucks daily.

Once the construction is complete the equipment is received and inspected by yard operations. Items returning from a jobsite, are unloaded in a designated area near the warehouse where they are timely inspected and any maintenance, repair and/or cleaning of the formwork is performed within the warehouse before being returned to the storage yard.

This facility is not proposing a retail business, so there will be minimal foot traffic and vehicles accessing the site will be limited to employees and trucks transporting the formwork to and from jobsites.

POLLUTANTS

A number of comments and concerns received, included the concern that the chemicals used for cleaning the formwork will runoff into the pond and drain into the E -3 Canal. Cleaning of the formwork does not include the use of chemicals only water and a pressure washer. Moreover, formwork cleaning, runoff, and drainage of any water will be done in strict accordance with the rules and regulations of the City of Lake Worth Beach, the Lake Worth Drainage District, Palm Beach County and the State of Florida. Doka's operation does not use or generate any hazardous substances.

Doka takes pride in its operations and that pride includes the cleanliness of our sites. Our facilities generate very little debris or refuse and all refuse is collected in trash receptacles (as noted on site plan) and collected per local trash collection regulations. Contrary to some of the comments and concerns received by the city, Doka has not become the international leader in formwork by running a "junkyard". To the contrary, it is imperative for Doka to run its operation and storage yard in a clean and orderly fashion, so material can be readily identified and loaded onto trucks.

The storage yard has a paved surface which allows the forklifts to operate efficiently and will keep dust levels to a minimum. Additionally, the inventory stored outside is neatly stacked in rows so that it is easily accessible for future jobs.

The following photographs are aerial of Doka's Baltimore and Houston facilities, respectively and demonstrate the standard by which Doka maintains its sites.





NOISE

There should be very little noise intrusion from our operations. Forklifts will operate within required sound parameters set forth by the City of Lake Worth Beach. All maintenance is performed within the warehouse and will not impact surrounding properties. Further, attached hereto, is a memorandum from Jesse Cokeley, a licensed engineer, outlining his research regarding forklift operation and the noise created on site, all of which fall within the acceptable noise level range for the City of Lake Worth Beach.

SITE LIGHTING

Doka is proposing business hours from 7:30 a.m. until 4:00 p.m. Monday through Friday and if needed Saturdays 7:30 a.m. until noon. Since the hours of operation are daylight hours there is not a need for a large amount of site lighting but, Doka is working with both an engineer and the city to design a lighting plan that will not be disruptive to the surrounding properties and will be acceptable to the City of Lake Worth Beach.

CANOPY

The outdoor canopy area will be used for storage of items that require protection from inclement weather such as plywood and small parts. There will be some inspection of equipment that occurs in this area but, there will be very little work performed in the canopy area.

SUMMARY

As stated in the staff report, the Doka facility/use will be a relatively low level of intensity. We are not operating at all hours of the day, our projected traffic amount is a fraction of what is permitted, there are no heavy industrial or manufacturing uses being employed, there is little noise, no chemicals and, we are going to install a beautiful buffer with trees and shrubs surrounding the property. We have several existing facilities in the United States which border residential neighborhoods and Doka maintains excellent relationships with all of those communities. We consider our relationships with our neighbors and the towns we work in extremely important, since we are a family-owned business which emphasizes involvement in the communities. In fact, it is our experience that residents in the surrounding communities are often our future employees. Therefore, maintaining a good relationship with the surrounding community is of paramount importance to the success of our business.

Sincerely,

/s/ Lisa A. Reves

Lisa Reves, Esq.

sb

Enclosures



Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

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MEMORANDUM

To: Louis Goldberg

From: Jesse B. Cokeley, P.E.

Date: November 30, 2020

Re: Noise Attenuation Memo
MC Project No. 16002631A

Noise is typically measured in decibels. The noise level perceived by listener is related to the distance from the source of the noise. This is known as the inverse square law which simply means, for every doubling of the distance from a noise source the sound pressure will diminish by 6 dB.

The formula for Sound Attenuation is as follows:

$$SPL_2 = SPL_1 - \left[20 \log_{10} \left(\frac{R_2}{R_1} \right) \right]$$

Where:

SPL_1 = Known sound pressure level (dB) at the first location (typically measured data or equipment vendor data)

SPL_2 = Unknown sound pressure level (dB) at the second location

R_1 = Distance (ft.) from the noise source to location of known sound pressure level

R_2 = Distance (ft.) from noise source to the second location

The average noise level for a forklift is 87 dB at the source. Therefore, $SPL_1 = 87$ dB.

We assume the source point is at the center of a standard forklift. Therefore, $R_1 = 2$ ft.

Distance from Source (R_2)	dB Level (SPL_2)	Comparable Sound*
50 ft.	59 dB	Microwave Oven, Dishwasher
100 ft.	53 dB	Background Music or Rainfall
250 ft.	45 dB	Refrigerator
400 ft.	41 dB	Quiet Library/Office
500 ft.	39 dB	Quiet Library/Office

*Comparable sounds and forklift sound level were taken from Honeywell Noise Thermometer Poster.

\\maserconsulting.com\qmv\Projects\2016\16002631A\Project Information\Noise Study\201130_Noise Attenuation Memo.docx

Noise Thermometer

Sound Energy Doubles Every 3 dB
(Example: if a 90 dB noise is doubled, it measures 93 dB)

