

APPENDIX N

Town of Forestburgh  
PDD Regulation

**LOCAL LAW FILING**

**NEW YORK STATE DEPARTMENT OF STATE**

41 State Street, Albany NY 12231

**Town of Forestburgh**

LOCAL LAW NO. 3 OF THE YEAR 2008

A Local Law entitled “Planned Development District Law of 2008  
of the Town of Forestburgh”

A local law amending Chapter 85 of the Town of Forestburgh Code (entitled “Zoning”) by repealing the provisions regarding Planned Unit Developments and establishing new provisions regarding Planned Development Districts.

**Be it enacted by the Town Board of the Town of Forestburgh as follows:**

**Section 1. Title:**

This law shall be known as the Planned Development District Law of 2008 of the Town of Forestburgh.

**Section 2. Amendment of Chapter 85 of Town of Forestburgh Code:**

Chapter 85 of the Town of Forestburgh Town Code (“Zoning”) is hereby amended by repealing Article V of said Chapter 85 (Sections 85-17 through 85-21) in its entirety and replacing said Article V with the following provisions to read as follows:

## **Article V. Planned Development Districts**

### **§ 85-17 Purpose, Effect, Authorized Uses, Applicability**

#### **A. Purposes.**

The regulations for Planned Development Districts (“PDD”) as set forth below are intended to provide a recognized and innovative zoning and planning technique for potential new development of relatively large areas located in the RR-1 and RC zoning districts within the Town of Forestburgh that are specifically chosen by property owners or developers for well-designed projects that incorporate a mixture of compatible uses, open space, economies of scale, environmental and community sensitivity, and creative architectural or planning concepts that are in accordance with the Town’s economic and land use policies and goals. It is the intent of the PDD to provide for flexibility of use, area and site development restrictions in order to encourage responsible and high-quality developments that will be a lasting asset to the Town and the community in which they are situated. Each application for a PDD will be reviewed in detail and approved on a case-by-case basis to ensure that the purposes and intent of these regulations are met. In this regard, the following Goals and Objectives shall be sought with each application:

1. Creation of a more desirable community environment than what would be possible via a strict application of zoning regulations set forth elsewhere in the Town’s zoning regulations.
2. Encourage the permanent preservation of open space for conserving natural areas and native wildlife habitats and for passive recreational use, including the provision of neighborhood parks and trails.
3. Preservation, enhancement and limiting the fragmentation of local natural resources such as water bodies, wetlands, forest, significant topographic and geologic features and other areas of scenic and ecological value.
4. Efficient use of a site to facilitate adequate and economical construction and maintenance of street and drainage facilities, water supply and sewerage systems.

5. Encourage a less sprawling and more efficient forms of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.
6. Meaningful integration of “green building” design and sustainable development practices to help mitigate the environmental, economic and social impacts of development and to prevent sprawl, provide greater choices in transportation and reduce reliance on the car.
7. Minimize the total amount of disturbance on the site and total new impervious areas.
8. Innovation and variety in the type and design of residential development, providing a wide choice of living environment, occupancy tenure and housing costs.
9. Further the policies and goals set forth in the Town of Forestburgh Comprehensive Plan.

**B. Effect of PDD Approval.**

The decision to approve a PDD is a legislative decision that amends the Zoning Map so that no PDD applicant is entitled to a proposed PDD project unless and until the Town Board approves it. The approval of a PDD will create a new zoning district on the parcel or parcels of property for which it is proposed that will be governed by the terms, restrictions and conditions of the Town Board’s approval for that particular PDD district.

**C. Authorized Uses within PDD.**

No use shall be established and no development shall be permitted in the PDD district unless specifically approved pursuant to the procedures and standards set forth in this Section. The specific uses to be allowed in the PDD shall be approved by the Town Board. No use shall be approved as an allowable use within a PDD if it is found by the Town Board to be contrary to the health, safety or general welfare of the residents of the Town. The general categories of allowable uses that can be incorporated in any PDD are as follows:

1. Commercial – including but not limited to lodging, sale of retail products and services (excluding wholesale)
2. Office – including professional and business (excluding large-scale medical clinics)
3. Single-Family Dwellings – including townhouses/condominiums
4. Multi-Family Dwellings – including apartments and condominiums
5. Recreational – including outdoor and indoor facilities
6. Mixed Uses and mixed-use buildings (including any combination of above uses)
7. Open space.

#### **D. Applicability**

1. PDD Required. All subdivisions or developments, which propose to create fifty (50) or more lots or units from the effective date of this Local Law, shall be required to apply for a PDD. Applicants proposing to create fifty (50) or more lots or units and are not seeking an increase in permitted density as set forth in §85-9 of this Chapter, shall not be required to apply for and receive PDD approval.
2. Minimum Area. A PDD is only allowed in the RR-1 and RC zoning districts and must comprise at least 20 contiguous acres of land. No application for a PDD shall be accepted or approved unless all of the property included in the application is under unified ownership and/or control by the applicant.

#### **E. Definition of Open Space**

1. For purposes of PDD applications, the term “open space” means an area of land set aside and designated in perpetuity for protection from development. Typically, such land is kept in its natural state or, in some instances, is improved for purposes of providing passive outdoor recreation, wildlife protection, and agriculture or forest management. In some cases, areas utilized for active outdoor recreation may be included as open space but any area of land where buildings, structures, impermeable surfaces, such as parking lots, are situated shall not be considered as part of an open space area. In addition, any lands that are part of a residential or non-residential building lot shall not be considered open space. In any PDD application, the area of land that constitutes open space is ultimately a determination of the Town Board taking into consideration all of the factors of the proposed PDD and the purposes of a PDD set forth in § 85-17 above.

## **§ 85-18 General requirements and design standards**

### **A. Development Density.**

The density of a proposed PDD development shall be set forth initially by the applicant as part of the PDD plan and application process and determined in the final instance by the Town Board as part of the approval process. Generally, density of structures, infrastructure such as roads and parking lots, and other developed areas shall be appropriate for the site and the neighborhood in which the site is situated taking into account availability, capacity and suitability of services, such as schools, emergency response, and public roads, community sewer and water systems, associated drainage, and ability to mitigate or contain environmental impacts. The following density standards and method of calculation shall be adhered to:

1. Calculation of Density. Density shall be calculated based on net acreage of buildable land according to the following requirements.
  - a. The Applicant shall identify and subtract all acreage exhibiting one or more of the following characteristics which shall be referred to as “Constrained Land:”
    - i. Steep slopes greater than 25%
    - ii. Within the 100-year floodplain
    - iii. Wetlands (both NYSDEC and ACOE)
    - iv. Lands covered by open water bodies
    - v. Lands under a pre-existing easement
  - b. The remaining acreage shall be considered the “buildable acreage.” The applicant shall then calculate the Initial Residential Development Density (IRDD) by dividing the buildable acreage by the parcel(s) minimum Lot Area requirements for the underlying Zoning District as set forth in §85-9 of this Chapter. All density values shall be rounded to the nearest whole number of dwelling units.
2. Increases in Permissible Density. The Town Board may award one or more density bonuses to increase the number of dwelling units beyond the IRDD for a PDD. Density bonuses may be awarded for the following density bonus elements.
  - a. Open Space: For each additional ten percent (10%) of the site (over and above the required 50%) set aside as open space, a density bonus may be awarded.

- b. Workforce Housing. A density bonus may be given for workforce housing units that are provided. To be eligible for this density bonus, the workforce housing unit shall be provided to residents at or below 80 percent of the median income as determined by the U.S. Department of Housing and Urban Development's current fiscal year median income for the region. The types of qualified housing units include single-family dwellings, townhomes, condominiums, and apartments.
- c. Additional Density Bonus Elements. The following density bonus elements are strongly encouraged by the Town Board for Applicants to incorporate into a PDD project design.
  - i. Green Building Design and Sustainable Development Practices. Applicants should incorporate meaningful green building designs and sustainable development practices that exceed mandatory relevant local code and state and federal requirements to improve the energy efficiency of a project, avoid, reduce and mitigate project-related environmental and social impacts, and ultimately result in positive environmental impacts. A density bonus may be given if the Applicant incorporates a combination of meaningful green building designs and sustainable development practices into the PDD. The bonus dwelling unit(s) must be constructed in a later phase after Town certification of compliance with proposed green building designs and sustainable development practices. Examples of acceptable green building designs and sustainable development practices include but are not limited to the following:
    1. Green roof/rooftop garden that covers at least fifty percent (50%) of the rooftop, of that thirty percent (30%) must be plants;
    2. The integration of renewable energy sources such as solar, small-scale wind turbines, geothermal or other alternative renewable energy sources;
    3. Pervious roads, driveways and parking lots; and

4. Construction of commercial, residential and other buildings that integrate or fully comply with federal EPA “Energy Star” program or LEED standards for basic certification.
- ii. Preservation of Significant Environmental Features and Habitats. A density bonus may be awarded when the preservation and or enhancement of significant environmental features and habitats (e.g., large unbroken tracks of forest, wildlife habitat and corridors; important scenic vistas and viewsheds; rock outcroppings and ledges; and other important environmental features and habitats) are proposed within a PDD project.
- iii. Recreational Space. The inclusion of land to be utilized as recreational space is strongly encouraged in the design of a PDD and may qualify for a density bonus as set forth below. Both active and passive recreational space that is in compliance with the Americans with Disabilities Act (“ADA”) is strongly encouraged and can take the form of but not necessarily be limited to:
  - > New bike or pedestrian trails
  - > Improvement to an existing bike or pedestrian trail or trails
  - > Swimming or wading pools
  - > Tennis courts
  - > Playground equipment
  - > Athletic fields
  - > Golf course
  - > Picnic areas
1. For the purposes of this Article, the following definitions apply:
  - a. Active Recreation: Those recreational activities which requires physical alteration to the area in which they are performed.
  - b. Passive Recreation Those recreational pursuits which can be carried out with little or no alteration or disruption to the area in which they are performed. Such uses include but are not limited to hiking, picnicking and fishing.



2. Open Space. A density bonus may be awarded for the addition of open space for active or passive recreation open to the public at the discretion of the Town Board within a PDD.
  3. Open Space Connections. A density bonus may be awarded when a PDD creatively designs open space to connect to existing adjacent or nearby open space areas in the Town.
  4. Location of Recreational Land. Land set aside for public passive or active recreational purposes in an effort to obtain density bonuses under this section does not need to be located on the parcel or parcels subject to the PDD application. The land must be accessible and located within the corporate limits of the Town of Forestburgh.
- iv. Public Transit Amenities. Applicants should attempt to provide for and facilitate connections or access points to existing nearby public transportation systems. This could be done in the form of but not limited to weather-protected transit stop or transit station or other amenities that would facilitate access for public transit. Such provisions must be located on a designate transit route. Adequate connections or amenities may be eligible for a density bonus.
  - v. Historic and Archeological Site and Structures. A density bonus may be awarded when a PDD proposes to restore or preserve a structure or site that is either “listed on” or “eligible for” the State and Federal Registry of Historic Places. Integration of these structures and sites into proposed open space and recreation lands is strongly encouraged.
  - vi. Public Facility or Services. A density bonus may be awarded when the PDD project proposes the inclusion of public facilities or services deemed appropriate by the Town.
  - vii. Additional Density Bonuses. There may be instances where aspects of the PDD or amenities not listed above are proposed that may warrant additional density bonuses. In such a case, the applicant may seek further density bonuses as follows:

1. Prior to seeking additional density bonuses, an applicant must demonstrate that all of the above listed density bonus elements have been considered and where applicable, utilized for additional density.
2. Only after the applicant has demonstrated in good faith to utilize the above listed density bonus elements, will the Town Board consider additional density bonuses for public and/or environmental benefits not already proposed.
3. An applicant proposing an increase in density over the IRDD shall provide sufficient documentation acceptable to the Town Board justifying why the PDD warrants the proposed density increase.
4. The Town Board shall determine the final density bonus increase over the IRDD based on the following:
  - i. An analysis of the environmental factors affecting the land and the projects' potential adverse and positive environmental/public impacts;
  - ii. Compatibility with surrounding land uses and impact on adjacent neighborhoods;
  - iii. The level of significance of the public and/or environmental benefits provided by the proposed density bonus element(s) in relation to the project type and size;
  - iv. Availability of public infra-structure and services; and
  - v. Additional elements the Town Board may consider relevant in making the determination.
5. A preliminary and approximate calculation of an eligible density bonus may be made during Sketch Plan review outlined in Section 85-19 of this Article but shall be reviewed and finalized as part of the PDD approval process pursuant to Section 85-19(B)(2) of this Article.

**B. Ratio of Mixed Uses.**

The proposed PDD shall have a ratio of mixed uses that is appropriate and sustainable for its location, Town needs and market considerations. The actual ratio of mixed uses shall be specified by the applicant as part of the PDD application and approved by the Town Board as part of the approval process.

**C. Preservation of Significant Environmental Features and Habitats.**

Significant environmental features and habitats of a proposed site for a PDD shall be preserved whenever possible for purposes of:

1. Enhancing the quality of development
2. Providing adequate screening and buffering between new development and surrounding properties
3. Preserving the character of existing neighborhoods or improving such character
4. Protecting important environmental resources
5. Providing for natural channels and water quality filters for storm water such as vegetation along stream corridors, wetlands, and permeable surfaces.

**D. Preservation of Historic Resources.**

Whenever a proposed site for a PDD has existing historic buildings, structures or sites of significance located thereon, such resources shall be preserved and incorporated in the design wherever possible.

**E. Integrated Architectural Design.**

If a mixture of uses is proposed, the PDD and the plan for its development should integrate the architectural design for buildings, structures, landscaping, infrastructure facilities and common areas so that the development is of a cohesive design and that such design is appropriate for the Town and the area where the proposed PDD site is located.

**F. Pedestrian System.**

Provision shall be made for a pleasing and accessible pedestrian system within the proposed site and access from without.

**G. Streets.**

The PDD and the plan for its development shall provide an appropriately designed traffic system that allows for ease of access to and circulation within the PDD. Such system shall take into account current traffic flows and volume as well as that which may be generated by the PDD. Access points shall be designed to provide smooth flow, controlled turning movements and minimum hazard to vehicular and pedestrian traffic.

**H. Off-street Parking and Loading.**

The proposed development shall comply with the off-street parking and loading standards set forth in Section 85-13 of this Code unless it is shown that a deviation from those standards is warranted and is specifically approved during the PDD approval process. Generally, adequate parking and loading facilities must be provided for on-site with minimum disruption to traffic circulation and with no increase to off-site parking.

**I. Utilities.** Underground on-site utilities are required including telephone, electric, cable, water distribution laterals and sewer collection laterals. The applicant shall provide the Town with approved drawings depicting the locations of all underground utilities. Applicants proposing to maintain their own infrastructure including but not limited to roads, sewer, water, electric and telecommunications infrastructure, may be required to join the Underground Facilities Protective Organization.

**J. Lighting.**

All lighting shall be arranged so as to prevent direct glare or hazardous interference from the lighting for the proposed development to adjoining streets or properties.

**K. Common Areas, Open Space, Recreation Areas.** Depending on the size of the proposed PDD and the number of residential units or square footage of commercial space proposed, provision shall be made for common areas, open space and recreational amenities for residents, tenants and invitees of the PDD. Pedestrian walkways, recreational buildings and facilities, natural open space areas, sitting areas, natural habitats, parks and playgrounds are considered suitable amenities depending on the density and mixture of uses of the proposed development. Integration of various amenities throughout the development plan is encouraged.

1. Not less than 50% of the gross area of the proposed PDD project site shall be devoted to open space.

2. Integration of open space in site and neighboring properties is strongly encouraged.
3. Integration of passive and active recreation areas and facilities compliant with ADA is also strongly encouraged.
4. Ownership & Maintenance. All common open space areas and amenities shall be owned and operated by an appropriate legal entity that will exist in perpetuity. The conveyance of individual parcels within a PDD may be acceptable provided provision is made for continuity of restrictions and controls in the form of deed covenants, restrictions and easements. The post-development ownership and maintenance plan shall be part of the application and approval process. Said post-development plan shall include a mechanism that will provide unified control and authority over the operations of the development so that there is one entity or individual that is responsible for enforcing the terms and conditions of the PDD approval for all tenants, homeowners, business owners and other users of the PDD.

**L. Development Phasing.** The development of a PDD may be proposed and approved in phases. However, the review of a PDD (including the SEQRA review) must take into account the entire project and shall not be segmented by phase. A phasing plan shall be submitted to the Town Board as part of the PDD application materials if development phasing is contemplated by the applicant. The Town Board shall have the authority to approve, with or without modifications and/or conditions, or deny the phasing plan based on the following standards. The Town Board, in its discretion, may delegate such authority to the Planning Board as part of the Planning Board's site plan review and approval.

1. Each phase must be related to surrounding areas and available public facilities in such a manner that failure to proceed to subsequent phases will not adversely affect those areas or facilities.
2. Each phase when completed must be able to fully function on its own or in conjunction with prior phases without dependence on subsequent phases and each phase shall be fully completed prior to the final approval of subsequent phases.

3. The infrastructure, as installed, shall be sufficient to accommodate each planned phase of development.
4. Where applicable, each phase shall have an appropriate ratio of the various uses (residential and non-residential) proposed for the development.

#### **M. Construction Schedule.**

The applicant shall propose and the Planning or Town Board shall review and approve a construction schedule for the development of an approved PDD. Generally, commencement of development of the PDD, or the first phase if a phased PDD is approved, must occur within three (3) years of the date that the final site plan of the PDD is approved. However, it is recognized that depending on the scale and complexity of the development, consideration may be made with respect to the reasonable time necessary for the applicant to obtain construction financing, insurance and bonds, executing construction contracts, and other such aspects involved in a development project. Thus, the Town Board may modify the time-period allowed for commencement of construction depending on the circumstances of each PDD. The applicant may request an extension of the time-period for commencement of construction by submitting such request in writing to the Town Board with the reasons supporting such request. The Town Board, in its sole discretion and after consideration of such request, may extend such time-period as requested or set such other time-period it deems appropriate under the circumstances.

#### **§ 85-19 PDD Application Procedures.**

**A. Sketch Plan.** An application for a PDD approval starts with submission of and review of a sketch plan by the Town Board pursuant to the requirements and procedures set forth below. If the Town Board determines that the proposal does not merit further review because it does not meet the objectives of this Article for a PDD, no further action on the application shall be taken.

- 1. Required submissions for sketch plan conference.** One original and six (6) copies of the following:
  - a. sketch plan drawn to at least approximate scale of the proposed PDD showing at least the following:
    - i. parcel or parcels to be included in PDD
    - ii. the location of the various uses and their areas

- iii. approximate location of significant natural and man-made features of land, such as wetlands, streets, easements, buildings, etc.
  - iv. proposed layout of structures, roads, stormwater drainage infrastructure, and other features
- b. current owners of parcel(s) to be included in PDD
- c. Written narrative or statement of what is to be proposed and the merits of such proposal. Said statement to be of sufficient detail and scope to provide a well-developed concept of the proposal and must include, at a minimum, the following:
  - i. Total number of acres proposed for the PDD
  - ii. Type of uses proposed and ratio of mixed uses
  - iii. Number of residential and commercial units
  - iv. Preliminary density calculations (dwelling units per acre/square footage of commercial space per acre)
  - v. If density bonuses are proposed, a detailed explanation of the density bonuses and related justification for the density being sought shall be provided.
  - vi. An explanation of how the developer's particular mix of land uses meets existing community needs and goals
  - vii. A summary of the operation and ownership arrangements during development and post-development phases
  - viii. A summary of the infrastructure needed and/or available with respect to transportation, roads, water, and sewer
  - ix. A general description of the provisions of other community facilities, such as schools, fire protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated
  - x. Recreational facilities and/or amenities that will be included in the PDD plan
  - xi. General description of type of architectural and planning design standards to be proposed as part of PDD plan

- xii. General description of existing land uses on parcels adjacent to proposed PDD site.
- d. A nonrefundable Sketch Plan Fee as indicated on the Schedule of Fees adopted by the Town Board.
- e. The above requirements are the minimum requirements necessary in order for the Town Board to schedule a conference. The applicant may provide more detail than that indicated above.
- f. The Town Board may require the applicant to meet with any Town staff and/or consultants that the Board deems appropriate in order to facilitate the submission of a complete and suitable application.

**2. Sketch plan conference.**

- a. In this initial stage of review the applicant must meet with the Town Board in order to discuss the proposed project and to allow the Town Board and the developer to reach an understanding on basic requirements prior to detailed design investment. The Town Board shall schedule a conference with the applicant within 31 days of the submissions as set forth above.
- b. The applicant shall attend the sketch plan conference and make a presentation to the Town Board describing the PDD proposal. The intent of this conference is to provide the Town Board with sufficient information and description of the proposal in order for the Board to preliminarily decide whether the proposal has merit for a PDD and whether to allow the applicant to proceed to the next stage of review.

**3. Sketch Plan Decision.**

The Town Board shall, within 62 days from the date of the conference, make a preliminary determination as to whether the applicant may move on to next stage of the application process and submit a PDD application pursuant to subsection B below. The Town Board may provide the applicant comments and direction in whatever detail it deems appropriate regarding the content, design, allowed uses, ration of mixed uses, project size and scope that the Board will find appropriate for the formal application stage. Although said preliminary determination will not commit the Town Board to any specific course of action on the PDD to be requested, the sketch plan process is intended to advise the applicant as to what may be generally acceptable and not acceptable to the Board so that the applicant has a general understanding of what is expected in the next stage of review. Generally, said preliminary determination may include the following:



- a. An identification of issues or PDD features that must be addressed in the PDD design and application materials such as specific infrastructure, design and environmental issues.
- b. A general assessment of what uses and ratio of mixed uses that would be acceptable in the location proposed.
- c. If density bonuses are proposed, the Town Board shall make a determination on the appropriateness of the density sought by the applicant in relation to the community and environmental benefits offered as part of the PDD.
- d. An identification of the types of supporting documentation and studies that will be required for submission and their general breadth and scope.
- e. An identification of involved agencies and the approval jurisdiction that each may have with respect to aspects of the proposal.
- f. A preliminary assessment of issues regarding compatibility or potential incompatibility with surrounding existing land uses and/or neighborhoods and proposed uses.
- g. The time in which the preliminary determination must be made may be extended upon consent from the applicant.

#### **4. Effect of Decision.**

If it is determined by the Town Board that the sketch plan proposal does not have merit for further review as a PDD, the applicant may submit a new proposal for another sketch plan conference but may not submit a formal PDD application. If it is determined by the Town Board that the sketch plan proposal does have merit for further review, the applicant may proceed to the next stage by submitting a formal PDD application that meets the submission requirements set forth below and is consistent with the preliminary determination of the Town Board pursuant to the sketch plan conference.

### **B. PDD Application.**

#### **1. Required submissions for a PDD application.**

The following is intended to set forth a comprehensive list of required submissions for a PDD proposal of significant complexity, size and scope. The Town Board shall have the authority to waive certain requirements that it deems unnecessary or inappropriate given the size, scope and complexity (or lack thereof) of the PDD actually proposed. It

is intended that the required submissions be tailored to the actual proposal so that unintended and/or unnecessary costs in preparing submission materials are eliminated in the application process to the extent practicable. The submission materials, however, are to be complete and comprehensive with respect to the particular PDD project proposed, so that the Town Board and Planning Board have the opportunity to make its decision on an appropriate record of information. One original and sixteen (16) copies of all application materials must be submitted.

- a. PDD Preliminary Site Plan. A schematic site plan, of one or more sheets, drawn to scale of not less than 1 inch to 100 feet which shall show at a minimum the following information:
  - i. Boundaries and total acreage of proposed area to be considered for the PDD
  - ii. Location of environmental features of land comprising the proposed PDD including but not limited to wetland areas delineated in accordance with NYSDEC and ACOE approved methodologies, ponds, streams and drainage ways, tree stands and hedgerows, topography depicted at 2 ft. contour intervals for proposed areas of disturbance and no greater than 10 ft. contour intervals for the remainder of the project site, and any other existing natural features with identification of what is to be preserved and/or removed
  - iii. Location and description of all existing man-made features on the site proposed for the PDD and on all properties adjacent to the proposed PDD such as land uses, structures, driveways or streets, wells, sidewalks, easements and common areas with identification of what is to be maintained, altered and/or removed
  - iv. Layout of proposed development including the location, areas and dimensions of proposed uses, structures, access and internal roads, parking areas and spaces, water and sewer system facilities and laterals, and all other site development features Location, area and features of each development phase if the development is proposed to be constructed in phases
  - v. Drawings/Guidelines: Proposed architectural drawings and guidelines applicable for all structures proposed within the PDD including a general narrative description of the type of architecture proposed and how it compares to the existing architectural features of nearby areas and proposed signage and/or signage regulations

- vi. Landscape Plan: a general but complete plan of the significant landscape features including buffer areas, screening and aesthetic features
- vii. Storm water drainage plan with supporting engineering documentation regarding the sufficiency of existing receiving channels or areas and/or mitigation measures
- viii. Traffic studies and plans
- ix. Lighting Plan
- x. Utility plan and report establishing either that existing capacity exists for the PDD or the required improvements proposed
- xi. A written description (written narrative and visual) that includes the following:
  - 1. request for PDD with signatures of all parties having an interest in the subject property or properties
  - 2. existing ownership of land proposed to be included in PDD
  - 3. proposed ownership of post-development PDD including description of organization(s) to be utilized to own, maintain and manage common areas, commercial space, residential units, and infrastructure improvements and whether certain structures or parcels within the PDD will be offered for sale or conveyance to third parties
  - 4. the proposed mixture of uses
  - 5. density calculations
  - 6. phasing plan, if any, including timing of phases proposed offers of dedication of land, improvements and/or easements
  - 7. post-development deed covenants, conditions and/or restrictions applicable to individual properties within the PDD or to the entire PDD
  - 8. schedule of general improvements to constitute a part of the development, including without limitation, signage, lighting, utilities, and features designed to address noise, visual

screening, drainage, etc., if not already addressed in other submission materials

9. an assessment of whether the proposed uses within the PDD are compatible with surrounding properties and uses (providing support for such conclusion) or, if not compatible, what measures or design features are included in the design of the PDD to enhance compatibility or mitigate incompatibility
10. an assessment of whether the proposed PDD is consistent or compatible with the overall character of the surrounding area and Town and, if not consistent or compatible, the reasons why or what measures are included in the PDD proposal to enhance compatibility or mitigate incompatibility
11. proposed local law that amends Town zoning map
- xii. Full EAF or draft Environmental Impact Statement
- xiii. Application fee.

A nonrefundable fee in the amount indicated on the Schedule of Fees adopted by the Town Board plus a deposit in an amount sufficient to reimburse the Town for reasonably estimated costs including fees of consultant(s) to be retained by the Town Board in order to assist the Town Board and Planning Board in reviewing the PDD application. Said amount shall be based on the specific fee schedule of the particular consultant or consultants retained as well as the scope of services to be provided by such consultant(s). The Town Board shall hold such deposit in escrow for the sole purpose of paying the costs and fees of the consultant(s) retained for review of the PDD proposal. The consultant retained shall provide the Town Board with detailed invoices showing the services rendered for the time-period billed and the Board shall provide the applicant with an opportunity to review said invoices prior to payment. Additional deposits may be required as the review process continues.

## **2. Procedures.**

- a. First Meeting. The Town Board shall review the application materials submitted and make a determination as to whether the application is complete for commencement of the PDD review process. In order for an applicant to be on the agenda of a special or regular Town Board meeting, all application materials must be submitted at least 10 days prior to the next scheduled meeting.

- b. Determination of Completeness. The Town Board shall have 62 days from the first meeting at which the PDD application is on the agenda in which to determine whether the submitted materials and documents constitute a complete application. The Town Board may forward the application submissions to the Planning Board for its review and recommendation on the completeness and adequacy of the application submissions. If the Town Board determines that the application is incomplete, it shall advise the applicant in writing as to what documents or materials are missing or what the deficiencies in the submitted materials or documents are. Upon resubmission of the application or missing materials, the Board shall have the same time-period as set forth above in which to determine completeness of the application materials.
- c. If the Board determines that the application is complete, it shall:
  - i. refer a complete copy of the application materials to the Planning Board for its recommendation and the Planning Board shall have 62 days of its receipt of the application materials in which to make a recommendation to the Town Board with respect to the proposal,
  - ii. refer a complete copy to the County Planning Board or Commission, if applicable, and any other agency that has approval jurisdiction over any aspect of the proposal,
  - iii. if not already performed, identify or retain a consultant or consultants in which to assist the Board in reviewing the application and advise the applicant as to the estimated cost of consultant fees, the fee schedule and scope of services of the consultants selected and the amount of deposit to be submitted for payment of such consultant fees.
- d. SEQRA Process.
  - i. Lead Agency. Within 31 days of the determination that the PDD application is complete, the Town Board and/or Planning Board shall determine which board shall act as lead agency over the proposed project for purposes of SEQRA review. Notice shall be sent to all other involved agencies so that the SEQRA review is coordinated.

Said notice shall state the Town's lead agency preference and that the lead agency must be agreed upon within 30 days of the date that the notice together with the EAF was transmitted to them.

- ii. Determination of Significance. Within 20 days of the date of its establishment as lead agency, the lead agency (if the Town Board or Planning Board) must determine the significance of the proposed PDD. If the determination is that the proposal does not have the potential for one or more significant environmental impacts, the lead agency shall issue a negative declaration which concludes the SEQRA process. If the determination is that the proposal may result in one or more potential environmental impacts, the lead agency shall issue a positive declaration and require a Draft Environmental Impact Statement (DEIS) before further PDD procedures are continued.
  - iii. Suspension of Procedural Time-Frames. If a positive declaration is issued, the PDD procedural time-frames specified herein shall be suspended until a DEIS is submitted by the applicant and accepted as complete as lead agency. Thereafter, the public hearing and comment period on the DEIS and PDD application may be coordinated and run concurrently. However, no decision on the PDD application shall be made by any Board or agency (including but not limited to the Planning Board recommendation) until the environmental impact statement process has been completed and a SEQRA statement of findings has been issued by the lead agency pursuant to the SEQRA regulations (6 NYCRR Part 617).
- e. Planning Board Recommendation. The date of Planning Board receipt of the application shall be the next regular meeting of the Planning Board. The applicant shall attend such meeting in order to explain the proposal and answer any questions the Planning Board may have. The Planning Board shall review the proposal and provide the Town Board with its recommendation as to whether or not the proposal should be approved as a PDD and any issues or concerns the Planning Board has on any aspect of the proposed PDD. The Planning Board shall forward its recommendation to the Town Board within 62 days of its receipt of the application referral. The Town Board shall consider the Planning Board recommendation but need not follow it.

- f. Public Hearing. The Town Board shall schedule a public hearing on the proposed zone change of the property to PDD in the same manner as a local law. The public hearing shall be scheduled within 31 days of its receipt of the Planning Board referral recommendations or within the time-frames specified in the SEQRA regulations after the acceptance of a DEIS, whichever last occurs. The public hearing may be scheduled prior to completion of the SEQRA process or in conjunction with the public hearing on the draft environmental impact statement if the lead agency finds that the public hearing may assist in its environmental review.
- g. Decision on PDD proposal. Within 62 days after the close of the public hearing the Town Board shall decide whether to grant approval of the proposed PDD pursuant to the reasonable terms, conditions and requirements it deems appropriate. The decision to grant approval of the PDD shall amend the Town Zoning Map as a PDD for the subject property subject to the terms and conditions of its approval. In rendering its decision on whether to disapprove or to grant approval of the proposed PDD, the Town Board may consider the following guidelines:
  - 1. The need for, or suitability of, the proposed land use or uses in the subject location
  - 2. The compatibility of the proposed PDD with the surrounding area or neighborhood and the existing uses located on the adjacent properties in which the PDD will be located
  - 3. The safeguards provided or conditions required so as to minimize possible detrimental effects or impacts that the proposed PDD may have on adjacent properties, the surrounding area in general and the Town at large.
  - 4. Adequacy of drainage, water supply and sewerage disposal facilities, traffic access and municipal services that may be required.
  - 5. Whether a positive or beneficial increase in tax base can be expected when compared with cost of municipal services

- (including but not limited to education, emergency response, highways, to be provided.
6. Whether the proposed PDD will further the general welfare of Town residents with sufficient protection for the health and safety of Town residents.
  7. Whether the proposed PDD is in accordance with the Town of Forestburgh Comprehensive Plan.
- h. Conditions. The Town Board, as part of its decision and approval of the PDD, may set forth any conditions that are reasonably related and incidental to the proposed project, to the mitigation of potential impacts and/or in furtherance of the guidelines set forth above or specified in rendering its decision.
  - i. Instructions for Final Site Plan review and approval. As part of its decision, the Town Board shall specify with sufficient detail, the modifications to the site plan, if any, that the Board requires, the construction drawings or engineering plans for the infrastructure for the project, the phasing of construction of the project and any other aspects of the project requiring further review. The Town Board shall delegate the further review and approval of the final site plan and other associated drawings to the Planning Board with specific instructions as to the scope of the Planning Board review.
  - j. Effect of Decision. The Town Board decision to approve the PDD has the effect of amending the Zoning Map with respect to the property approved for the PDD so that the conditions, restrictions and terms of the PDD decision replace the zoning regulations for that PDD district. Such terms, conditions and restrictions run with the land and are enforceable by the Town in the same manner as any other zoning regulations and approval conditions so that all future owners, operators, managers and occupiers shall be subject to same. Such approval and any of its terms, conditions and restrictions may only be amended or modified pursuant to an application for a PDD amendment which shall follow the procedures and guidelines set forth in this section. It is the intention of the PDD procedures that at the time of the Town Board's decision to approve the PDD and rezone the property as set forth above, the Town and the applicant has committed to the PDD in sufficient detail in which to review and administer the actual development of the PDD site pursuant to the terms, conditions and restrictions of the PDD approval.



## **§ 85-20 PDD Final Site Plan Procedures**

The final site plan review and approval process is to ensure that the planned construction and operation are in compliance with the PDD approval with respect to all of the development details.

**A. Submission requirements.** The applicant shall submit final plans, drawings and materials as defined by the Town Board as part of its PDD approval described in paragraph 2(i) above. Generally, these will include construction drawings and details for either the first phase or entire project as well as such other information that is specified by the Town Board or the applicant during the PDD application process. The applicant shall submit such final site plan within six months of the PDD approval. The time for submission may be extended at the discretion of the Town Board.

**B. Consultant fees.** The Town Board will specify that the applicant shall submit either the site plan review fees pursuant to the fee schedule for site plan review or shall reimburse the costs of Town consultants for the final site plan review and inspection fees, if any, as set forth in § 85-19(B)(1)(a)(xii) above.

**C. First Meeting.** The Planning Board shall review the application materials submitted and make a determination as to whether the application is complete for commencement of the final site review process. In order for an applicant to be on the agenda of a special or regular Planning Board meeting, all application materials must be submitted at least 10 days prior to the next scheduled meeting.

**D. Review Process.** The Planning Board shall review and approve, approve with modifications, or deny the final site plan and all of its components within 90 days of the complete submission. The applicant shall attend the meetings held on the final site plan. No public hearing is required but may be scheduled by the Planning Board in its discretion.

**E. Phases.** The final site plan may be reviewed and approved in phases pursuant to the standards set forth in § 85-18(L) and the specific requirements of the PDD approval.

**F. Approval.** The Planning Board shall approve the final site plan if the final site plan, for the entire project or a particular phase of the project, is in accordance with the PDD approval. Further reasonable conditions or modifications may be placed on the final site plan approval consistent with the PDD approval. Also, the Planning Board may approve minor changes to the site plan that are requested by the applicant, as necessary and/or appropriate, based on site conditions that are found subsequent to the PDD approval. Such minor changes may include the minor re-alignment of roads, infrastructure, and building sites and/or minor reduction in the number of residential units or commercial space. Any major modification or increase in residential units or commercial space will have to be referred to Town Board for its review and consent.

**G. Filing of Site Plan.** Once the final site plan is approved, it shall be endorsed by the Planning Board Chairman and filed with the Town Clerk and the County Clerk within 60 days of the Planning Board approval.

**H. Commencement of Development.** The construction and/or implementation of the PDD development shall not commence until the final site plan is approved and all conditions that are to be satisfied prior to construction are satisfied.

## **§ 85-21 Infrastructure**

**A. General.** All infrastructure improvements required or proposed pursuant to a PDD approval shall be constructed and completed to the standards set forth in all applicable state and local laws, rules and regulations as well as the standards or specifications, if any, specified by the Town of Forestburgh. For purposes of this section the term infrastructure improvements includes all roads, drainage facilities, water and sewer facilities, and any other aspect of a PDD for which an improvement will or is intended to benefit the public or the future occupants or users of the PDD. The construction or installation of any infrastructure improvement shall be completed pursuant to the schedule of construction for infrastructure that is approved by the Planning Board during the site plan review phase of the PDD approval. If no such schedule is approved by the Planning Board all infrastructure must be completed within two years of the site plan approval.

**B. Inspection fees.** At least ten days prior to commencing construction of required infrastructure improvements, the applicant shall pay to the Town Clerk the inspection fee

required to reimburse the Town for the cost of inspecting the construction and installation of the infrastructure improvements. Such fee shall be set during the site plan review phase of the PDD approval process. The applicant shall also notify the Town of the date and time when construction of infrastructure improvements is to commence by submitting written notification to the Town Clerk at least seven days before such commencement. The Town shall cause inspections to be made to insure that all applicable specifications and requirements are met in the construction and installation of such infrastructure improvements as required by the Planning Board or the Town Board during the PDD approval process.

**C. Completion or Required Financial Security.** All infrastructure improvements must be either completed prior to final site plan approval or must be subject to financial security as a condition of final approval in an amount sufficient to guarantee the installation of the infrastructure improvements. Acceptable financial security shall be provided to the Town in an amount equal to the cost of construction of the infrastructure improvements plus all necessary costs and expenses that may be incurred or expended by the Town in causing any all such work to be completed in one of the following ways: (1) by a bond executed by a highly rated security company acceptable to the Town in a form acceptable to the Town Attorney; or (2) the applicant shall present a certified check to the Town Clerk; or (3) the applicant shall present an irrevocable letter of credit payable to the Town in a form acceptable to the Town to be reviewed annually.

**D. Review and Acceptance of Financial Security.** For each of the options set forth in paragraph C above, the amount of the estimated construction costs shall be certified by a New York State licensed professional engineer. The proposed financial guarantee shall be reviewed by the Planning Board and its consultants for financial adequacy as a guarantee of construction and reasonable performance during any proposed period of construction. The Planning Board and the Town Attorney (or legal counsel retained by the Town for such purpose) shall jointly review the guarantee for sufficiency of form and execution and for the soundness of the financial guarantee offered by the applicant.

**E. Schedule of Improvements.** Prior to or simultaneous with the negotiation and acceptance of the financial guarantee, the applicant shall provide and the Planning Board shall review and approve a written schedule for the construction, installation and completion for all required and proposed infrastructure improvements as part of the final site plan process. Such schedule shall also include the estimated cost of construction and installation for each improvement. Whenever feasible, costs and schedule of completion shall be organized by logical phases of work completion in order to facilitate the partial release of financial security held by the Town to the applicant as work is satisfactorily completed. There shall be at least a 90-day period between the completion date of all improvements and the expiration date of any bond, deposit of money, or letter of credit. Said 90-day period shall give the Town the opportunity to collect the financial performance guarantee so that it will be able to complete the necessary improvements in case (a) the developer is unable to do so; and/or (b) the Planning Board denies any requests for an extension of time. Failure to complete all Improvements within the time allotted shall cause the Planning Board (a) to draw upon the financial performance guarantee in order to complete the Improvements; and/or (b) schedule a Public Hearing in coordination with the Town Board in order to rescind related previous approvals or extend the completion date.

**F. Stage Release of Guarantees.** At such times as the applicant wishes to have guarantee funds released in consideration of work performed and accepted, the applicant shall cause to be prepared an accurate statement of the work performed and accepted as of a given date together with a proposed amount to be released from the financial guarantee provided by the applicant. This statement shall follow the schedule of improvements as set forth in paragraph E above. The applicant shall submit such statement to the Planning Board for review and approval. The Planning Board may request review and comment from the Town Board or any of its consultants that it believes is appropriate to determine the accuracy of the statement. The Town's project inspector must also provide, in writing, proof that pursuant to inspections made, the improvement has been satisfactorily completed pursuant to the approved project plans. Once approved by the Planning Board, the Planning Board may direct the appropriate Town official to notify, in writing, the security company or financial institution having custody of the guarantee funds to release to the applicant the approved amount of those funds.

**G. Modification of Required Improvements.** If, at any time before or during the construction of the required improvements as set forth in the Town Board approved PDD, it is demonstrated to the satisfaction of both the Town Board and Planning Board that

unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Town Board shall, upon approval by the Planning Board, authorize modifications to the PDD approval. If such modification affects the scope of work covered by a performance bond, any agreement to modify the required improvements by the Town Board and Planning Board shall be contingent upon receipt by the third-party guarantor a written statement that the third-party guarantor agrees to the proposed modification of the required improvements and that such modification shall not relieve or affect the liability of the third-party guarantor.

**H. Extension of Bond.** The time period specified for the completion of all required improvements, as set forth in the financial guarantee, may be extended only by resolution of the Planning Board upon request in writing by the applicant, setting forth in detail the amount of work which has been completed, reasons for failure to complete the remainder of the work within the specified period, the maximum estimated time required to complete the remainder of the work and the time period extension which is requested. The Planning Board resolution agreeing to an extension shall be affixed to the financial guarantee. In the case of a performance bond, such an agreement for an extension shall not be effective until the third-party guarantor delivers to the Planning Board a written statement that the third-party guarantor agrees to the proposed alteration of the completion schedule and that such alteration shall not relieve or affect the liability of the third-party guarantor.

**I. Acceptance of Public Infrastructure Improvements.** When any infrastructure or other aspect of the PDD is to be offered for dedication to the Town as a public improvement, and the Town's project inspector, following final inspection of the completion of that improvement and the PDD project, the Town Board may act by resolution to accept dedication of the public improvements.

**J. Maintenance Guarantee.** Upon acceptance of required public improvements or upon certification that infrastructure improvements have been satisfactorily completed, the Town may require the establishment of a maintenance guarantee. All such guarantees shall be for a minimum of 10% of the financial guarantee originally required by the applicant or such amount required by the Town to sufficiently ensure that the improvements will be

adequately maintained for the period specified by the Planning Board. The maintenance guarantee shall be provided by one of the methods set forth in paragraph C above and reviewed and accepted pursuant to paragraph D above. All maintenance guarantees shall commence immediately upon acceptance of the public improvements or upon certification of completion of all other infrastructure improvements and be in place prior to release of the previous performance guarantees.

**Section 3. Severability of Provisions:**

Should any section or provision of this local law be declared null, void, voidable, or invalid, such finding of invalidity shall not affect the validity of the remaining portions of this local law.

**Section 4. Effective Date:**

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

**End of Law**