

# Municipal LAW

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## MEMORANDUM

To: Village Board  
Village of Fox Point

From: Eric J. Larson  
MUNICIPAL LAW & LITIGATION GROUP, SC

Re: Cobalt Partners Request to Submit PDO Rezoning Petition

Dated: April 6, 2022

As you know, Cobalt Partners has proposed certain redevelopment activities in the Village. The proposal includes sale of land the Village owns to Cobalt for their private redevelopment purposes. Many steps are required before the Cobalt proposal would be approved, but there is a threshold question coming before you at your meeting on April 12, 2022, namely: As owner of the property, will you permit Cobalt Partners to submit a Planned Development Overlay (PDO) rezoning application that includes rezoning Village property?

If you approve Cobalt Partners doing so, they then will be able to formalize their plans and submit them as required by the Village PDO ordinance (Section 745-21 of the Village Code). If you reject this request, on the other hand, the project cannot proceed to the next step.

Let me remind you of several things regarding this possible development:

1. First, importantly, if this proceeds you will eventually have a “quasi-judicial” role in consideration of this application. For that reason, it is important that you remain unbiased, so that you can fairly judge whether the standards of the Village ordinance are met when the application is eventually received, if it is. So, as you consider this threshold issue, keep in mind that this is not the time to discuss the merits, or lack thereof, of the development. For that matter, the development itself is only a concept, as many important details are not currently known or presented. Those details will be presented to the Board at a later date if you allow this to proceed. I recommend you remain neutral about the proposal, to fairly perform your quasi-judicial role when the issue is fully presented.

2. Second, let me remind you of the outline previously provided showing the many steps that this process will require if this proceeds:
  - a. Developer to hold public informational meetings. *The Developer has done so.*
  - b. Developer to seek Village Board approval to submit a PDO rezoning application. *This is what is coming before you on April 12.*
  - c. Developer to pursue PDO rezoning and companion comprehensive plan amendment. This process requires a pre-petition meeting with the Plan Commission, followed by a formal petition, Plan Commission review and recommendation, public hearing, and Village Board action. If it would be approved, it would be conditioned on the following issues being satisfactorily resolved.
  - d. The Village and the Developer would negotiate and enter an Exchange Agreement to exchange ownership of lands, which may or may not include monetary compensation along with the title exchange depending upon the relative values of the land. The exchange of lands would require a Plan Commission recommendation and Village Board approval.
  - e. The Developer would submit plans for new development, with financial modeling evidencing any financial gap, if any. In the event of such a gap, the Village would consider the possibility of providing Tax Incremental Financing (TIF) support for the development. If TIF funds would be used, the procedures include Joint Review Board action (including taxing entity representatives), and a TIF development agreement would be negotiated and entered between the Village and the Developer, if approved by the Village Board.
  - f. The Village would construct replacement facilities at the properties acquired through the exchange. The construction process would include all architectural work, public bidding and construction contracting necessary to do so. Contracts for the architect(s), all of the architectural plans, and the hiring of necessary contractors would be subject to Village Board approval.

Eric J. Larson