

March 16, 2023

By First Class Mail and Electronic Mail
(fscalera@oysterbay-ny.gov)
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Town of Oyster Bay
Town Hall North
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(hbesunder@margolinbesunder.com)
Harvey B. Besunder, Esq.,
Special Counsel to the Town Attorney
Margolin Besunder, LLP
3750 Express Drive South, Suite 200
Islandia, New York 11749

**Re: Offer of right of first refusal in lieu of Town acquisition
of the Peninsula Golf Course via eminent domain**

Dear Mr. Scalera and Besunder:

I write on behalf of the Board of Directors of the PGC Holdings (hereinafter the “PGC Board”) owners of the Peninsula Golf Club (“PGC”).

The PGC Board urges the Town Board of the Town of Oyster Bay (“Town Board”) to reconsider the acquisition of the property known as the Peninsula Golf Course (“Golf Course”) via eminent domain.

The PGC Board has owned and successfully and profitably operated the Golf Course since 1947. The PGC Board remains steadfast in its dedication to providing an inexpensive and easily accessible, well-maintained facility for the general public to enjoy the great game of golf. The PGC Board had every intention of continuing to operate the Golf Course as a public golf course for the foreseeable future.

The PGC Board urges the Town Board to seriously consider its offer to the Town of a right of first refusal (“Right of First Refusal”). As previously discussed, in the unlikely event that the PGC Board receives a serious offer for the purchase of the Golf Course, the PGC would give the Town the ability to purchase the Golf Course for the price offered to the PGC. This proposal would guarantee the Town Board’s ability to preserve the current use of the Golf Course in perpetuity, when and if an offer for purchase is actually received by PGC.

It is respectfully submitted that by proceeding with the Right of First Refusal rather than a condemnation proceeding, the Town will avoid exposing the taxpayers to a damage award which will likely vastly exceed the sum previously contemplated by the Town Board. As you are aware, the laws and the Constitution of the State of New York require the Town to pay just compensation

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for the taking of the Golf Course valued at its highest and best use¹. It is also important to consider that the Town will also be taking over the operation of the Golf Course as a profitable business operated as a going concern, requiring additional just compensation to be paid to the PGC Board for the revenue of the Golf Course.

Please recall that the Town itself, in its Findings and Determinations justifying the condemnation, found that the deed covenant restricting the use of the subject premises to a golf course “allows for potential revocation...lending to an air of uncertainty to the future of the subject parcels....” Therefore, the Town admits on the record the potential for subdivision of the Golf Course for residential development. Given this admission on the part of the Town and the state of the law, the likelihood is that a court will find that “highest and best use” means the value of the Golf Course developed with single family homes. This likely outcome constitutes an extreme burden to the taxpayers of the Town, exposing them to paying for the property’s potential future use, which may never be actually realized.

It is also important to consider whether the taxpayers and voters of the Town will appreciate the use of eminent domain, an often-times unpopular tool of government expropriation of the private sector, solely to turn a privately owned and run public golf course into a municipally owned golf course with a more restrictive public access policy. The PGC remains open to the general public on a non-discriminatory basis at affordable fees. The forceful taking of the property will achieve no legitimate public function and will remove the subject premises from the County tax rolls to the detriment of the taxpayers of Massapequa.

The Town’s threatened forceful taking of the Golf Course and the PGC Board’s operation of the Golf Course as a going concern comes at great expense to the taxpayers in terms of the potential award, the attorneys’ fees and expert witness fees of both sides that the Town will incur. However, this great expense will result in little to no benefit to the taxpayers of the Town and is completely unnecessary in light of the Right of First Refusal, which will achieve the Town Board’s goal of insuring that the Golf Course continues to operate as a golf course for the benefit of the public in perpetuity.

The PGC Board and or its representatives are available to discuss the implementation of the offer of the Right of First Refusal with the Town at its earliest convenience.

Very truly yours,

Andrew M. Mahony

¹ We believe the PGC’s experts would value the subject premises for as much as \$75 million in its highest and best use.

cc: **By First Class Mail Only**
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