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Hon. Rasheed N.C. Wyatt
University District Councilmember
65 Niagara Street, Room 1508
Buffalo, NY 14202

Re: Request for Denial of New Queen City Landing Project at 975/1005 Fuhrmann Blvd.

Dear Councilmember Wyatt:

I am writing to you as a resident of the City of Buffalo, a supporter of the goals of the Our Outer Harbor coalition, and an advocate for the integrity of the zoning and development process.

What follows is a summary of the legal and factual reasons I respectfully ask the Common Council to keep in mind when considering Gerald Buchheit/QCL's application:

A. There is one basic reason that Mr. Buchheit has applied for a rezoning to create a PUD at 975/1005 Fuhrmann Blvd.: he is desperate to find a way around the UDO's maximum 6-story, 90-foot height standards in an N-1S zoning district. His sophisticated legal team knows that obtaining the very substantial variances he would need from the Zoning Board of Appeals for a 20-story tower *should* be extremely difficult, if not impossible.

B. Ironically, Mr. Buchheit had the proverbial "bird in hand" - the 23-story tower project which was approved in 2016 and early 2017 – but his desire for greater profit has caused QCL to release the 23-story "bird in hand"¹ and overreach for the evasive "two in the bush" by applying for this flawed and inappropriate PUD.

C. Mr. Buchheit's need for a drastic change from the vision and requirements of the Green Code/UDO is self-created,² and perpetuates his fickle and ever-evolving approach to developing the former Freezer Queen site.³

¹ Pursuant to §511-151 of the former zoning ordinance, QCL's site plan became invalid when no building permit was obtained within one year of the 01/03/17 amended site plan approval. The UDO now governs. [UDO, §1.3.3B]

² Litigation challenging the city's approvals for QCL's 23-story tower project ended nearly a year-and-a-half ago, on *June 29, 2018*, when the Appellate Division, Fourth Department, issued its *order dismissing the appeal* in Wooster et al. v. Queen City Landing, LLC, et al. And, it was more than a year ago, *December 14, 2018*, that the NYS Department of Environmental Conservation issued its "*Certificate of Completion*" for QCL's Brownfield Cleanup Program.

³ The 20-story tower project is, by my count, the sixth different proposal Buchheit has presented for the Outer Harbor parcel that he purchased in 2007. His plans have included the following projects approved by the City of Buffalo, and then abandoned: a 2008 project to convert the then-existing Freezer Queen structure into condominiums; a 2015 plan to convert the Freezer Queen building into 120 luxury apartments with a penthouse; and, the \$60 – 80 million, 23-story tower approved by the Common Council and Planning Board in 2016/2017.

D. QCL’s factually-unsupported plea, that the *project would not be feasible or economically viable* without removal of the UDO’s height restriction, is not a relevant or proper consideration under the Green Code when reviewing the pending PUD/rezoning request.⁴

E. The Common Council and the public must not be distracted by QCL’s misleading claims that the pending proposal represents a “significant reduction to the overall size of the project” and a much smaller “building footprint.”⁵ While there is a modest reduction in the number of stories and building height, in many significant ways this is a substantially larger project:

(1) The 2019 proposal more than triples the non-residential space, from 2017’s 16,615 sf to 54,000 sf, which includes 35,000 sf of commercial space on the ground floor, and a 19,000-square-foot banquet/event space on the sixth floor.

(2) To accommodate the vastly increased commercial/non-residential activities, the 2019 project proposes a 61% increase in parking spaces – from 355 to 572 - including a 222-vehicle surface parking lot covering more than an acre-and-a-half of land.⁶

(3) The square footage of the tower they have proposed – that is, its mass - is 67,000 square feet larger than the 2017 version.⁷

(4) The “footprint” of the 2019 tower – its width times its length - is twice the footprint of the 2017 tower.⁸ Notably, the proposed 2019 tower’s length is 100 feet longer than the 2017 version, which would greatly decrease the quality of existing waterfront views, and pose a significantly increased threat to migrating birds.

(5) Even the number of residential units has increased by 4% (198 to 206).

F. Contrary to what Queen City Landing would like the Common Council and public to believe, the 2019 project provides no significant increase in greenspace or decrease in impervious surfaces, and no dramatic change in opportunities for public access to the site, when compared to the abandoned 2016/2017 project:

(1) The sites greenspace and other permeable surfaces increase a mere 0.14 (one-seventh) acre,⁹ which translates to less than 3% of the 7.7-acre site.

⁴ See UDO, Sections 11.3.8H, 11.3.2A and 11.3.2E.

⁵ QCL’s claim of “reduction in *building footprint* of approx. 20,000 sq. ft.” is based, not on a comparison of the 2017 tower with 2019 tower, but on a comparison of the proposed 2019 tower’s footprint (92’ x 190’) with the combined footprints of the 2017 23-story tower (92’ x 190’) plus 3-story garage (129’ x 305’). However, the opposition against the 2017 project was primarily based on the scale of the 23-story tower, not the 3-story garage.

⁶ The approved 2017 project had 244 covered and 111 surface parking spaces. The 2019 version increases the covered spaces 43% (from 244 to 350), and surface spaces 83% (from 111 to 203).

⁷ The total square feet of the 2017 tower was 403,000 sf; the total area of the 2019 version is 470,444 sf.

⁸ The dimensions of the 2017 tower are W92’ x L190’ = 17,480 sf; the dimension of the 2019 tower are W120’ x L290’ = 34,800 sf.

⁹ According to the 11/13/19 FEAF, the 2017 plan had 4.92 acres of greenspace and pervious areas, and the new proposal has 5.06 acres.

(2) Depending on which figures provided by QCL in 2016 and 2019 are accurate, impervious surfaces (such as the building roof and pavement) either increase by as much as 0.25 (one-quarter) acre, or decrease by no more than 0.14 (one-seventh) acre.¹⁰

(3) The site plans for both the 2016/2017 project and the 2019 proposal connect the QCL site to the public bicycle/pedestrian path that adjoins 975/1005 Fuhrmann Blvd. Both provide a path which loops around the tower and returns to Fuhrmann Blvd.¹¹ While this form of public access is, therefore, not a new feature, it is worth noting that the public may find utilization of the 2019 “path” less attractive than the earlier version, requiring the public to walk or bike between a significantly longer tower structure and a substantially larger paved parking lot, while they endure an increase of on-site traffic of 50% or more.¹²

(4) Both the abandoned 2016/2017 project and Buchheit’s 2019 proposal include “new boat slips ... approximately 300 feet in length along the property.”¹³

G. Throughout QCL’s 2016/2017 application process, site plan documents consistently and accurately referred to the main structure proposed for the 975/1005 Fuhrmann Blvd. parcel as a “23-STORY TOWER.” Now, curiously, QCL refuses to use the dreaded “T-word” – TOWER when describing its proposed 20-story building. The reasons for the change in nomenclature are obvious, despite the fact that what is being proposed here is unquestionably a tower:¹⁴ First, a tower is a “building type” which is not allowed in the N-1S district.¹⁵ And, most importantly, under the Green Code, the Common Council lacks the power to waive “Building Type” requirements when establishing a PUD.¹⁶ So we have Buchheit’s proposed 20-story tower now masquerading as a 20-story “loft building”.¹⁷

H. With all due respect, what is “creative” or “innovative” about QCL’s pending application is not its “use of land” or the “physical development of the property”.¹⁸ The inclusion of residential and commercial uses in the same building is hardly creative when it is a prominent feature of Buffalo’s Green Code. However, what is creative or innovative (or, perhaps, more accurately, “disingenuous”) is QCL’s highly suspect characterization of Mr. Buchheit’s 20-story tower as a “loft building,” and its use of the rezoning and PUD process to circumvent the 6-story and 90-foot height limitations in the N-1S zone.

¹⁰ According to QCL’s November 2016 FEAF (submitted by Marc Romanowski, Esq.), the approved project had 3.6 acres of impervious areas. According to QCL’s 11/13/19 FEAF, the 2017 plan included 3.88 acres of impervious surfaces, and the 2019 proposal has 3.74 acres. Note, however, that QCL’s Nov. 13, 2019 site plan indicates 3.85 total acres of impervious area.

¹¹ QCL’s April 4, 2016 FEAF describes “a new roadway looping out toward the end of the pier and an extension of the public bike path providing public waterfront access.”

¹² Compare the “baseline site generated trips” found at page 6 of QCL’s recently submitted Transportation Demand Management Plan” with the “projected vehicle trips” listed in its May 3, 2016 traffic analysis.

¹³ Compare, for example, “Page 5 of 13” in 11/13/19 FEAF with 04/28/16 FEAF.

¹⁴ *Buffalo News* wasn’t fool, calling it a tower in its 11/19/19 article; the UDO describes “tower” at §3.2.12A;

¹⁵ See UDO Section 3.1.3B, and Table 3A (Building Types).

¹⁶ See UDO, Section 11.3.8E(1)-(9); “Proposed Waivers/Modification” section of City’s PUD application form.

¹⁷ See description and image of a “Loft Building” at UDO Section 3.2.8A, and note 6-stories, 90-foot height limitations for loft buildings in all zoning districts. UDO Section 3.2.8E.

¹⁸ “Creative” and “innovative” use of land and development of the property are, respectively, an important “objective” and “approval standard” for a PUD district. See UDO, Sections 11.3.8A(2), 11.3.8H(2).

I. The Green Code/UDO, when describing a PUD, states, “A planned unit development allows for a defined area to be developed in a unified and integrated development...,” and requires submission of a plan that contains, along with other information, a “general layout of the proposed project including maps, plans, or drawings relating to proposed land uses, location and dimensions of buildings...” By proposing a one-building PUD development, and acknowledging that it currently has no redevelopment plans for the remaining 12 acres of the 20-acre site, Buchheit’s proposed PUD is neither “planned,” “unified,” nor an “integrated development”, as required by the UDO.¹⁹

J. Approval of a PUD application constitutes both a zoning map amendment and UDO text amendment.²⁰ Under the UDO, zoning map amendments and text amendments are intended as a response to changed conditions or changes in city policy. To the extent there have been changes at the Outer Harbor, those changes call for lesser, not greater, density at the QCL site. Also, it should be noted, under the UDO, a zoning amendment is a matter of legislative discretion, and not a matter of right.²¹

K. According to the UDO, when reviewing a zoning map or text amendment application, the Common Council must consider the following criteria: whether the proposed amendment (here, a rezoning from N-1S to PUD) is consistent with the spirit and intent of the UDO and city’s comprehensive plan, is compatible with the existing form, pattern, use and zoning of nearby property, is consistent with the trend of development, if any, in the general area of the property in question, and whether it promotes the public health, safety, and welfare of the City (rather than primarily the interests of the applicant).²²

L. It would be inconsistent “with the spirit and intent of the UDO” to allow Buchheit/QCL to construct a 20-story building at 975/1005 Fuhrmann Blvd. given the following standards established by the Common Council for the N-1S zoning district: the exclusion of “Tower” as a permitted building type; the 6-story limit for a “loft building” and “civic building”; and, the 90-foot maximum height for a “loft building” and “civic building”. These standards clearly demonstrate the intent of the UDO to exclude buildings of such substantial height and density from all districts other than N-1D, the downtown district where towers are a permitted building type.²³

M. QCL’s December 4, 2019 Letter of Intent overlooks the stark contrast between the character of the waterfront in the vicinity of the QCL site – that is, its close proximity to the Small Boat Harbor, Tift Nature Preserve, Buffalo Harbor State Park, Times Beach

¹⁹ A leading zoning law treatise, *New York Zoning and Practice* (4th Ed., by Patricia E. Salkin, at p. 24-4), describes a planned unit development zoning district in the following fashion:

... [T]he planned unit development district is placed on the zoning map by a zoning amendment. The procedure commonly includes a plan, submitted by the developer, for the development of the entire district. It may show a mix of residential uses; single-family, multiple dwellings, town houses, etc. It usually will show commercial uses designed to serve the area included in the district. And it may include a industrial uses expected to employ persons who live in the area...

²⁰ See UDO, Section 11.3.8G(5).

²¹ See UDO, Sections 11.3.2A, 11.3.1A.

²² See UDO, Section 11.3.2E(1)-(5).

²³ See UDO, Table 3A (Building Types).

Nature Preserve, etc. – and other, more densely developed and urban areas of Buffalo. QCL’s disconnect is reflected in the LOI’s expressed goal of creating “signature waterfront development ... echoing similar successful developments at Canalside and along Ohio Street” The Outer Harbor is simply not Canalside or Ohio Street.

N. As defined in the Green Code, the city’s comprehensive plan is much more than any one document (as implied by QCL’s cherry-picked quotes from one source, the 2006 “*Queen City in the 21st Century*”). The “comprehensive plan” includes the materials, written and graphic, including maps, charts, studies, resolutions, reports, and other descriptive materials that identify the goals, objectives, principles, guidelines, policies, standards, devices, and instruments for the immediate and long-range protection, enhancement, growth, and development of the City of Buffalo.²⁴ Buffalo’s LWRP (Local Waterfront Revitalization Program) clearly falls within this definition.

O. The QCL parcel at 975/1005 Fuhrmann Blvd. is included within the Local Waterfront Revitalization Area (LWRA) and the UDO’s C-W Waterfront overlay zone. For that reason, the Common Council is obligated to consider whether Buchheit’s proposed PUD is consistent with the policies and objectives of the City’s LWRP.²⁵

P. According to the LWRP, “A proposed action or project is deemed consistent with the LWRP when it will not substantially hinder the achievement of ANY of the policies and, where practicable, will advance one or more of the policies.”²⁶ (Emphasis added.)

Q. Given the proposed PUD’s environmentally sensitive location, the Common Council needs significantly more information from QCL in order to determine whether the proposed project will substantially hinder any one of the following LWRP objectives:

- Protect and enhance features (such as marinas, piers, wharfs, sunsets, and unique waterfront landscapes) which contribute to the LWRA’s scenic quality
- Protect significant fish and wildlife coastal habitats
- Protect the Niagara River Globally Significant Important Bird Area
- Maximize coastal resiliency
- Consider potential impacts of climate change on Buffalo’s coastal area
- Minimize property damage and risk to humans from flooding and erosion

Thank you for your kind consideration of this correspondence. And, please feel free to contact me at (716) 436-2646 if you have any questions, comments, or require additional information.

Respectfully submitted,

Arthur J. Giacalone

²⁴ See UDO, Section 2.2, definition of “Comprehensive Plan”; also see GCL Section 28-a(3)(a) definition of “city comprehensive plan.”

²⁵ See UDO, Sections 5.3.1, 5.3.2.

²⁶ According to the LWRP, “A proposed action or project is deemed consistent with the LWRP when it will not substantially hinder the achievement of any of the policies and, where practicable, will advance one or more of the policies.”