

MAARDU TOWN GOVERNMENT

ORDER

Maardu

18th June 2009 No. 239

Issue of Building Permits

Based on the application of the State Real Estate Ltd. of 8 June 2009, § 23 of the Building Act, the Government of the Republic Regulation No. 286 of 27 August 2004 “The Requirements for Building Design Documentation Submitted upon Application for Building Permits for Construction Works Related to State Secrets or National Defence”, in accordance with the effective detailed plan of the Vana-Narva Road 13 and the neighbouring area adopted by the Maardu Town Government with Resolution No. 139 of 30 October 2007 “Adoption of the Detailed Plan”, having verified the conformity of buildings to be designed and planned construction works with building norms, health protection, fire safety and environmental requirements, taking into consideration the risk analysis of the Tallinn Prison prepared by E-Konsult Ltd. (work No. E1184) and the expert assessment of preliminary design of the Tallinn Prison and the Detention House complex to be built at Vana-Narva Road 13 prepared by AS Telora-E Ltd.

1. To issue the building permit for the buildings of the Tallinn Prison and the Detention House that are designed on the Vana-Narva Road 13 registered immovable:

- 1) the entrance building
- 2) the main building
- 3) the living quarter for minors and women
- 4) the living quarters M1 and M2 for men
- 5) the living quarters M3 and M4 for men
- 6) the health centre
- 7) the production building of men
- 8) the production building of women
- 9) the technical maintenance building of women’s minimum-security prison
- 10) the building for looking after dogs
- 11) the detention house
- 12) the bore well – pump room
- 13) roads and squares
- 14) the football field
- 15) the basketball field
- 16) the water pipeline Vi1
- 17) the sewage pipeline K1
- 18) the rainwater pipes
- 19) the communication line 6S1
- 20) the medium voltage cable 2W2
- 21) the underground cable W1.1 of street lights
- 22) the heat supply line T1
- 23) the fuel pipe
- 24) the reinforced concrete barriers of the Tallinn Prison and the Detention House.

2. The order shall enter into force after the date on which the order is made public.

3. This order may be disputed by submitting within 30 days after the date on which the order was made public a corresponding appeal to the Tallinn Administrative Court pursuant to the procedure prescribed by the Administrative Procedure Act or a challenge to the Maardu Town Government pursuant to the procedure prescribed by the Administrative Procedure Act.

Reasons for the Order:

The comprehensive plan of Maardu Town, which was approved by the Resolution No. 170 of the Maardu Town Council of 25 March 2008 and which is currently effective, determines the land unit at Vana-Narva Road 13 as a national defence area pursuant to § 8, subsection 3, clause 15 of the Planning Act. The detailed plan approved by the Maardu Town Government Resolution No. 139 of 30 October 2007 “Adoption of the Detailed Plan” prescribes the construction of the Tallinn Prison complex of buildings on the land unit at Vana-Narva Road 13. The detailed plan of Vana-Narva Road 13 and its surrounding area is effective and it has not been contested. The State Real Estate Ltd. has filed an application to issue a building permit for the construction of the Tallinn Prison and the Detention House complex of buildings and has submitted corresponding building design documentation and in addition the expert assessment of construction project prepared by AS Telora-E Ltd and the risk analysis of the Tallinn Prison prepared by E-Konsult Ltd. (work No. E1184). Maardu Town Government, having assessed the conformity of submitted building design documentation to effective comprehensive plans and detailed plans and the Government of the Republic Regulation No. 286 of 27 August 2004 “The Requirements for Building Design Documentation Submitted upon Application for Building Permits for Construction Works Related to State Secrets or National Defence” is of an opinion that the submitted building design documentation conforms to the requirements established in the Government of the Republic Regulation No. 286 of 27 August 2004, the building design documentation has received the approval both from the Health Protection Inspectorate and the Rescue Board, and the risk analysis that has been prepared also considers the construction of the custodial institution in the mentioned location on the basis of the submitted project to be possible. Vopak E.O.S. Ltd., for whose benefit a personal right of use has been established on the pipeline crossing Vana-Narva Road 13, which has not been entered in the land register and covers an approximate area of 5m on both sides of the pipeline, has refused to approve the building design documentation. In its letter No. 1.1/65 from 9th March 2009 Vopak E.O.S. Ltd. has agreed to coordinate the project for shifting the heating pipeline, provided that the within-mentioned company will get a competent confirmation that no restrictions shall be established for the operation of the heating pipeline as a whole and any separate pipes belonging to it, and that an agreement of personal right of use shall be concluded that prescribes that Vopak E.O.S. Ltd. shall have unlimited right to use the pipelines for transporting products (incl. crude oil). Local government as the authority granting the building permit can only evaluate the conformity of building design documentation to established requirements and, therefore, the objections of Vopak E.O.S. Ltd. are not relevant and cannot serve as a basis for refusing the building permit. In subsequent letters No. 1.1.96 dated 6th May 2009 and 27th May 2009 Vopak E.O.S. Ltd. refers to the fact that the solution given in the project of Amhold Ltd. regarding the shifting of heating pipeline is not acceptable due to the related risks. At the same time, Vopak E.O.S. Ltd. discards the fact that if the related risks would indeed be essentially more dangerous than is referred to in the risk analysis and assessed in the project, the heating pipeline of Vopak E.O.S. Ltd. should be assessed to the full extent as not conforming to the requirements pursuant to §3 (4) of the Building Act because it is located substantially closer to already existing residential and industrial buildings than 100 m and the precautionary measures requested by Vopak

E.O.S. Ltd. should be adopted regarding the total length of the heating pipeline at the expense of the owner of pipeline. Neither is the consent of the owner of pipeline mandatory prerequisite for the issue of building permit because pursuant to §12 (2) of the Building Act a building permit does not grant the right to build without the permission of the owner of the land unit also in the cases when the building has been issued, thus, the State Real Estate Ltd. and Vopak E.O.S. Ltd. have to reach an agreement regarding the shifting of heating pipeline before the construction works are commenced. However, the absence of such an agreement is not an obstacle upon the issue of building permit because in course of proceedings for issuing a building permit the conformity of technical solution of the project to building norms, health protection, fire safety and environmental requirements is assessed. Ownership relations are not regulated upon the issue of building permit.

Taking into consideration the fact that this is an object for the construction of which there is predominant public interest pursuant to the Decision of the *Riigikogu* of 21 October 2003 “Estonian Guidelines for Development of Criminal Policy until 2010”, the submitted building design documentation conforms to the requirements for construction projects, including the safety of planned building, it is in accordance with adopted detailed and comprehensive plan, the risk analysis does not preclude the construction of the building on the basis of the project in the location prescribed by the detailed and comprehensive plan and it does not assess the danger of extraordinary events that may be related to the planned project to be excessive, that there are no reasons to refuse the issue of building permit prescribed by to § 24 of the Building Act, the Maardu Town Government considers it possible to issue the State Real Estate Ltd. the building permits for buildings belonging to the complex of the Tallinn Prison and the Detention House.

Georgi Bõstrov
Mayor

Tiiu-Ann Kaldma
Town Secretary