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May 18, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : Proposed Retail/Restaurant Development
PROJECT MUNICIPALITY : Attleboro
PROJECT WATERSHED : Ten Mile River
EEA NUMBER : 13997
PROJECT PROPONENT : The Richmond Company
DATE NOTICED IN MONITOR : April 11, 2007

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed the **Expanded Environmental Notification Form (ENF)** and hereby **propose to grant** a waiver that will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project.

Project Description

As described in the Expanded ENF, the project entails construction of a 29,000 square foot (sf) mixed use development and demolition of existing buildings on a 5.5-acre site. Phase I of the project includes a 12,500 sf pharmacy with a drop-off window, a 2,000 sf tuxedo shop building, and 85 parking spaces. Phase II includes two restaurants (5,040 sf and 6,920 sf) and a 2,400 sf office/bank (with a two lane drive-up window) and 169 parking spaces.

MEPA Jurisdiction

The project requires a Sewer Extension Permit from the Massachusetts Department of Environmental Protection (MassDEP), an Access Permit from the Massachusetts Highway Department (MassHighway), and a U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Permit. The project is undergoing MEPA

review and is subject to a mandatory EIR pursuant to Section 11.03(6)(a)(6) because it involves generation of 3,000 or more new average daily trips (adt) on roadways providing access to a single location. The proponent is not seeking financial assistance from the Commonwealth. Therefore, MEPA jurisdiction applies to those aspects of the project within the subject matter of required, or potentially required, state permits that have the potential to cause damage to the environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to transportation, wastewater, land and stormwater.

Summary of Potential Environmental Impacts

The project will generate approximately 3,170 new vehicle trips per day (tpd), for a total of 3,300 tpd, and includes construction of 244 new parking spaces, for a total of 254 spaces. Water use and wastewater generation is estimated in the Expanded ENF at 15,465 gallons per day (gpd). The project will result in approximately 4 acres of new impervious area.

Summary of Proposed Mitigation Measures

The Expanded ENF includes the following mitigation measures:

- A stormwater management system for Phase I and any future development that will comply with MassDEP Stormwater Management Policy standards;
- Funding for roadway and intersection improvements to mitigate impacts associated with full build-out, which will be implemented prior to Phase I occupancy. Proposed mitigation includes modification of traffic signal phasing and timing for the Route 1/Route 1A intersection, and the Route 123 intersection with Route 1 and Route 1A. Route 1A will be restriped to provide an exclusive left-turn at the site driveway. The proponent will donate frontage through easements along Route 123 for potential future widening of the roadway; and
- The proponent will encourage tenants to implement a water conservation program.

Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR prior to implementation of Phase I of the project. Phase I includes demolition of existing buildings (approximately 3,000 sf), construction of new pharmacy and tuxedo shop buildings, and 85 parking spaces. Phase I will result in approximately 1,410 new vehicle trips per day. An Expanded ENF was submitted in conjunction with this request that identifies the environmental impacts of the project and describes measures to be undertaken by the proponents to avoid, minimize and mitigate project impacts.

Standards for All Waivers

The MEPA regulations at 301 CMR 11.11(1) state that I may waive any provision or

requirement in 301 CMR 11.00 not specifically required by MEPA and may impose appropriate and relevant conditions or restrictions, provided that I find that strict compliance with the provision or requirement would:

- (a) result in an undue hardship for the Proponent, unless based on delay in compliance by the Proponent; and
- (b) not serve to avoid or minimize Damage to the Environment.

Determinations for a Phase 1 Waiver

The MEPA regulations at 301 CMR 11.11(4) state that, in the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with Phase 1 of the project prior to preparing an EIR, I shall base the finding required in accordance with 301 CMR 11.11(1)(b) on a determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;
- (b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;
- (c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and
- (d) the agency action(s) on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

Findings

Based upon the information submitted by the proponent and after consultation with the state permitting agencies, I find that the Waiver Request has merit and that the proponent has demonstrated that the proposed project meets the standards for all waivers at 301 CMR 11.11(1). I find that strict compliance with the requirement to submit a mandatory EIR prior to implementation of Phase 1 of the project would result in an undue hardship for the Proponent because the Expanded ENF proposes measures to avoid and minimize Damage to the Environment, and commits to providing adequate mitigation for Phase I project impacts. In addition, I have conditioned this proposed Phase I Waiver on compliance with MassDEP and Executive Office of Transportation (EOT)/MassHighway requirements as further detailed below and in the comment letters received. Therefore, the requirement for completion of an EIR prior to Phase I is not necessary and would not serve to avoid or minimize Damage to the Environment.

In accordance with 301 CMR 11.11(3), the latter finding is based on my determination that:

- (a) the potential environmental impacts of Phase 1, taken alone, are insignificant;

Phase I alone does not meet or exceed thresholds that require the filing of an ENF. The proponent has committed to mitigation measures to address stormwater and traffic impacts associated with the project.

I am satisfied that Phase I impacts are insignificant provided that proposed mitigation is implemented and demolition activity complies with Solid Waste and Air Quality control regulations. As further detailed in the MassDEP comment letter, the proponent must submit an AQ-06 form to MassDEP and propose measures to alleviate dust, noise, and odor or nuisance conditions. The project may require an asbestos survey and notification to MassDEP prior to demolition or removal of asbestos containing materials. Asphalt, brick and Rubble must be handled in accordance with Solid Waste regulations. I refer the proponent to the MassDEP comment letter for further guidance on regulatory requirements.

(b) ample and unconstrained infrastructure facilities and services exist to support Phase 1;

Based on the information provided in the Expanded ENF and consultations with relevant state agencies, I am satisfied that adequate infrastructure facilities and services exist to support Phase I.

Wastewater

The project will connect to existing municipal water supply infrastructure located adjacent to the project site. Phase I will result in an increased wastewater flow of 725 gallons per day (gpd). According to the Expanded ENF, the City of Attleboro Wastewater Treatment Plant (WWTP) has adequate capacity to handle project flows at full build-out (15,465 gpd). The WWTP is designed to handle 8.6 million gallons per day (mgd) and currently has an average flow of 5.2 mgd.

Water Supply

The project will connect to existing municipal wastewater infrastructure located adjacent to the project site. According to the ENF, the proponent has been advised by the City of Attleboro Water Department that adequate capacity exists within the city's infrastructure to handle the project's water demand, which is estimated at 725 gpd for Phase I and 16,000 gpd at full build-out. The proponent should acquire a written statement from the Attleboro Water Department indicating that adequate water supply is available for the project with respect to the city's Water Management Act permit and/or registrations. A copy of the statement should be provided to MassDEP.

Transportation

The project site is bounded by several existing roadways, Route 1 (Washington Street) to the northwest, Route 123 (Newport Avenue) to the southeast, Angeline Street to the northeast and Route 1A to the southwest. Access will be provided via a driveway on Route 1A with left turns restricted from the site, a right-turn-in/right-turn-out only driveway on Route 123 and a full access driveway on Angeline Street. A MassHighway Access Permit is required for access onto Route 1A.

I am satisfied that adequate transportation infrastructure exists to serve Phase I provided that the project meets EOT/MassHighway requirements for monitoring and site access driveway design. As a condition of this proposed Phase I Waiver, the proponent should monitor the queues that develop along Route 1A as further detailed in the EOT comment letter and consult with EOT and MassHighway District 5 regarding monitoring results. If queues develop that hinder the through traffic on Route 1A and it is deemed necessary by MassHighway, the proponent should reconfigure the site driveway to operate as a right-in/right-out only access.

I expect that the proponent will provide additional information to MassHighway during the permitting process, as referenced in the EOT comment letter, including proposed Transportation Demand Measures (TDM) and complete plans for traffic signal modifications that meet current MassHighway Design Standards.

(c) the project is severable, such that Phase 1 does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated;

The proposed Phase I does not require that any future phase of the project be implemented. The Expanded ENF considers mitigation needs for the project at full build-out and proposes a Phase I design that facilitates mitigation of stormwater and traffic impacts associated with any future development on the site.

and,

(d) the agency actions on Phase 1 will contain terms such as a condition or restriction, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

The MassHighway Access Permit will be restricted to Phase I of the project. Any other phase of the project will require an EIR and a revised MassHighway Access Permit.

The proponent indicates that a waiver from the requirement for a Sewer Connection/Extension Permit for Phase I will be requested from MassDEP. Any permit

or approval from MassDEP will be restricted to Phase I. Any other phase of the project will require an EIR and a new or revised Sewer Connection/Extension Permit.

Conclusion

I have determined that this waiver request has merit, and I am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on May 23, 2007 in accordance with 301 CMR 11.15(2), which begins the public comment period. The public comment period lasts for 14 days and will end on June 6, 2007. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision within seven days after the close of the public comment period, in accordance with 301 CMR 11.15(6). I hereby **propose to grant** the waiver requested for this project, which will allow the proponent to proceed with Phase 1 of the project prior to preparing a mandatory Environmental Impact Report (EIR) for the entire project, subject to the above findings, and conditions, if applicable.

May 18, 2007

Date

Ian A. Bowles, Secretary

Comments Received:

5/11/07 Department of Environmental Protection, Southeast Regional Office
5/11/07 Executive Office of Transportation, Office of Transportation Planning

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