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March 14, 2008

DRAFT RECORD OF DECISION

PROJECT NAME : Boulderwood Subdivision
PROJECT MUNICIPALITY : Peabody & Lynn
PROJECT WATERSHED : North Coastal
EEA NUMBER : 14181
PROJECT PROPONENT : David Solimine, Jr., Trustee of the MJ II Realty Trust
DATE NOTICED IN MONITOR : February 6, 2008

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 from the requirement to prepare a mandatory Environmental Impact Report (EIR).

Project Description

As outlined in the Expanded Environmental Notification Form (EENF) and in supplemental materials provided by the Proponent, the project proposes to construct 110 single-family homes with parking for 220 vehicles on a 58.6-acre site located southerly of Bartholomew Street in Peabody and northerly of Sunset Road and Den Quarry Road in Lynn. The site is divided by an existing 240 to 250-foot wide parcel of land owned by New England Power Company.

Jurisdiction and Project Review

The project is subject to the preparation of a mandatory EIR pursuant to Section 11.03 (1)(a)2 of the MEPA Review Thresholds because the project will create ten or more acres of impervious area and it requires a state permits. The project is also subject to ENF MEPA Review Thresholds pursuant to Section 11.03(5)(b)3c and 11.03(6)(b)14 because it require construction of ½ or more miles in length of new sewer mains will generate 1,00 or more new

average daily traffic on roadways providing access to a single location and construction of 150 or more new parking spaces at a single location. The project requires a Sewer Extension/Connection Permit and a BRPWS32 Distribution Modification Permit from the Department of Environmental Protection (MassDEP). MassDEP has issued a Superseding Order of Conditions for this project, DEP File #55-0609, dated June 14, 2007. The project also requires a National Pollution Discharge Elimination System (NPDES) General Permit for Stormwater Discharge from the US Environmental Protection Agency (EPA).

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 permits with the potential to cause Damage to the Environment. In this case, MEPA jurisdiction on this project extends to land alteration, wastewater, water, wetlands and stormwater.

Summary of Potential Environmental Impacts

The proposed project will result in the disturbance of approximately 45 acres with a net impervious area of 14.2 acres. The project will generate an estimated 47,000 gallons per day (gpd) of daily wastewater flow. The proposed project does not alter any wetland resource areas and is a buffer zone project only. . The project requires a Sewer Extension/Connection Permit and a BRPWS32 Distribution Modification Permit from the Department of Environmental Protection (MassDEP). MassDEP has issued a Superseding Order of Conditions for this project, DEP File #55-0609, dated June 14, 2007. **The proposed project is expected to generate approximately 1,053 average trips per day.** The project, however, does not require any Access Permit from the Massachusetts Highway Department.

Summary of Proposed Mitigation Measures

The proponent is committing funding for infiltration and inflow removal at a rate of two gallons to be removed for every gallon of wastewater added. As explained in the EENF, funding would be provided to eliminate 96,000 gallons per day (gpd) of wastewater from the Peabody sewer system, based on and estimated 47,000 gpd of daily wastewater flow.

The site will be served by extended water from the City of Peabody's water distribution system. The proponent will provide water system improvements, including water main replacement, an upgrade to the water booster system, and a new water storage tank for the City of Peabody. The storage tank requires a MassDEP BRPWS32 Distribution Modification Permit, as indicated in the EENF. MassDEP has indicated that the City of Peabody acknowledges that it is necessary to implement an Enhanced Water Conservation Plan, because it has exceeded the performance criteria in its 2003 Water Management Act permit. Accordingly, the proponent has committed to provide funding to replace 100 medium-sized water meters, prior to obtaining a release certificate for the 75th lot in the subdivision.

Waiver Request

The proponent has requested a waiver from the requirement to prepare an EIR. 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 an EIR Waiver

The MEPA regulations at 301 CMR 11.11(3) state that, in the case of a waiver of a mandatory EIR review threshold, I shall at a minimum base the finding required in accordance with 301 CMR 11.11(1)(b) stated above on a determination that:

- (a) the project is likely to cause no Damage to the Environment; and
- (b) ample and unconstrained infrastructure facilities and services exist to support the project, or those aspects of the project within subject matter jurisdiction.

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 would result in an undue hardship for the Proponent 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 project is likely to cause no Damage to the Environment;
- (b) ample and unconstrained infrastructure facilities and services exist to support the project, when subject matter jurisdiction is broad in scope, or those aspects of the project within subject matter jurisdiction, when jurisdiction is limited to the subject matter of state agency permits.

- MassDEP has issued a Superseding Order of Conditions (SOC) for this project, DEP File #55-0609, dated June 14, 2007. MassDEP has stated in their comment letter that they do not require additional information on wetlands because the work proposed is within the buffer zone to wetlands resources.
- MassDEP has stated in their comment letter that the stormwater management system has been designed for compliance with MassDEP's Stormwater Management Policy. The proposed stormwater management plan includes six (6) stormwater management basins that result in approximately a 30% reduction in the peak rates of runoff. The on-site stormwater treatment chain will result in greater than 80% TSS removal rates and will comply with the Massachusetts Stormwater Management Policy Standards. The proponent must address the issues raised by the Lynn Water and Sewer Commission in their detailed comment letter prior to permitting
- The proponent has committed to provide a new 300,000 gallon elevated water storage tank, along with required water distribution system upgrades which will require a Water Distribution System Modification Permit from the DEP. The water distribution system improvements and new elevated water storage tank are needed for the existing system to improve fire flows and pressures for the existing system, as well as serving the new area developments. The proponent will fund these improvements and donate them to the City of Peabody upon completion, along with the parcel of land that the tanks will sit on.
- The applicant proposes to connect to the existing City of Peabody sewer system and has agreed to fund the upgrade of the existing sewer mains in the area in return for access to the municipal sewer system. The work will involve the replacement of 874 linear feet of 8-inch sewer main with associated manholes and sewer connections, along with 470 linear feet of curved-in-place lining of existing 8-inch sewer mains. The applicant will also provide sewer mitigation to the City of Peabody at a 2:1 ratio for an estimated sewer mitigation
- The proposed project will result in the disturbance of approximately 45 acres with a net impervious area of 14.2 acres. The preferred alternative will result in a site impervious area of approximately 24%, of which 15% is directly due to the mandatory roadway pavement and sidewalk requirements of the Peabody Planning Board Subdivision Rules and Regulations. The proponent has committed to creating permanent open space and a park on the site. The proponent will also use a crusher on site to minimize the amount of off site materials needed for the construction. This will result in significantly less traffic to the adjacent streets for processed materials as well as reduce the potential for hauling materials offsite. The site construction must also be done in strict compliance with the National Pollution Discharge Elimination System (NPDES)

General Permit for Stormwater Discharge from the US Environmental Protection Agency (EPA) that will be issued for this site.

- Although MEPA has no subject matter jurisdiction for traffic , the EENF contained a Traffic Impact and Access Study prepared based upon a larger 123-lot subdivision plan, not the final preferred 110-lot plan. It indicated that 72% of the traffic would use the Bartholomew Street access in Peabody and 28% of the traffic would use Sunset Road to Cannon Rock Road to Den Quarry Road in Lynn. The standard capacity analysis for the Bartholomew Street and Gedney Drive access in Peabody, as well as the Cannon Rock Road and Den Quarry Road access in Lynn all operate at a level-of-service "A" for all movements in both the AM and PM peak hours. The results of the analysis indicated that sufficient capacity is available to accommodate all turning movements to and from the proposed project.

Conclusion

I have determined that this waiver request has merit, and am issuing this Draft Record of Decision (DROD), which will be published in the next edition of the Environmental Monitor on March 26, 2008 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 April 9, 2008. Based on written comments received concerning the DROD, I shall issue a Final Record of Decision or a Scope 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, from the requirement to prepare a mandatory Environmental Impact Report (EIR), subject to the above findings, and conditions, if applicable.

March 14, 2008

Date

Ian A. Bowles

Comments Received:

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| 02/15/08 | State Representative Robert F. Fennell |
| 02/08/08 | Mr. Bernard F. Kallelis |
| 02/29/08 | Lynn Business Partnership, Inc. |
| 02/29/08 | Lynn Area Chamber of Commerce |
| 03/05/08 | City of Peabody Department of Public Services |
| 03/07/08 | Response to Mr. Bernard F. Kallelis's comments from the Proponent |
| 03/07/08 | Department of Environmental Protection, NERO |
| 03/07/08 | Lynn Water & Sewer Commission |

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