

## Decision

### Town of Douglas Planning Board

#### Definitive Subdivision Plan for Douglas Business Park Cliff Street, Douglas, MA

Decision of the Douglas Planning Board (“Board”) on the petition of K. M. Linder & JEMS Realty, L.L.C., 512 Central Turnpike, Sutton, MA 01590 (“Applicant”) for property located on Cliff Street and shown on Douglas Assessor’s Map 106 as Parcels 3, 4, 6 and 7 (“Site”).

#### **I. BACKGROUND:**

The decision is in response to an Application for Approval of a Definitive Plan (“Application”) by the Applicant to be allowed to construct an 11-lot industrial subdivision at the Site. This application was formally received on August 15, 2002 and was thereafter reviewed for general completeness. The submittal was made by Guerriere & Halnon, Inc., 1031 Providence Road, Whitinsville, MA 01588-2121 (“Engineer Representative”) and was comprised of the documents listed in Exhibits 1, 2 and 3, below.

The Board caused notice of the time and place of its public hearing and the subject matter thereof to be published, posted and mailed to the Applicant, abutters and other parties of interest. After causing notice of the time and place of its public hearing and the subject matter thereof to be published, posted and mailed to the Applicant, abutters (within 300 feet) and other parties of interest as required by law, the Board Chairman called the meeting to order on September 10, 2002 in the Community Development Meeting Room, Douglas Municipal Center, 29 Depot Street, Douglas, MA. The following Board Members were present during the Hearing: Chairman Richard Vanden Berg, Ernest Marks, Josiah Burch, Joel Rosenkrantz, Eben Chesebrough, Linda Brown and Daniel Heney. Applicants K. Martin Linder and Michael Dufresne (K. M. Linder & JEMS Realty, L.L.C.) were present as well as their Engineer Representative Mark Allen, P.E. (Guerriere & Halnon, Inc.). The hearing was continued to September 24, 2002; October 8, 2002 and then to November 12, 2002 at which time, following public input, the hearing was closed. The record of the proceeding and submissions upon which this decision is based may be referred to in the office of the Town Clerk or the office of the Planning Board.

#### **II. FILINGS:**

Submitted for the Boards deliberation were the following:

Exhibit 1: Set of Engineering Drawings entitled “Definitive Subdivision Plan for Douglas Business Park” dated August 12, 2002 by Guerriere & Halnon, Inc., 1031 Providence Road, Whitinsville, MA 01588-2121 with the Owner/Applicant being K. M. Linder & JEMS Realty, L.L.C., 512 Central Turnpike, Sutton, MA 01590 and including the following eleven drawings:

Cover Plan  
Sheet 1 – Index Plan  
Sheets 2, 3, & 4 – Definitive Lot Layout Plans  
Sheets 5 & 6 – Plan & Profile Sheets  
Sheets 7, 8 & 9 – Grading & Erosion Control Plans  
Sheet 10 – Detail Sheet

- Exhibit 2: Report entitled: “Drainage Analysis, Douglas Business Park in Douglas, Massachusetts” dated August 14, 2002 by Guerriere & Halnon, Inc., 1031 Providence Road, Whitinsville, MA 01588-2121 with the Owner/Applicant being K. M. Linder & JEMS Realty, L.L.C., 512 Central Turnpike, Sutton, MA 01590.
- Exhibit 3: Transmittal letter with attachments dated August 14, 2002 from Guerriere & Halnon, Inc. to the Douglas Planning Board. Attachments included 13 copies of the Definitive Plans, 2 Mylar copies of the Definitive Subdivision Plans, 7 reduced copies of the Definitive Subdivision Plans, 1 copy of the form C – Application for Approval of a Definitive Plan, 1 copy of the Form O – Receipt for Subdivision Plan, a check for the Definitive Plan filing fee of \$7,280.00, a copy of the notification letter sent to the Town Clerk, a copy of the notification letter sent to the Board of Health, and two copies of the drainage analysis.
- Exhibit 4: Letter dated September 4, 2002 from Douglas Fire Chief Donald Gonyon to Town Engineer William J. Cundiff, P.E. regarding review of the drawings.
- Exhibit 5: Memorandum dated September 5, 2002 from the Douglas Board of Health to the Douglas Planning Board regarding review of the submittal.
- Exhibit 6: Letter dated August 30, 2002 from Malley Engineering Company, Inc. to the Douglas Board of Health regarding Definitive Plan Review of Douglas Business Park.
- Exhibit 7: Letter dated September 10, 2002 from Mark E. Allen, P.E. to The Douglas Planning Board regarding the list of waivers for Douglas Business Park.
- Exhibit 8: Letter dated September 11, 2002 from Mark E. Allen, P.E. to The Douglas Planning Board regarding the list of waivers for Douglas Business Park.
- Exhibit 9: Letter dated September 18, 2002 from Mark E. Allen, P.E. to The Douglas Planning Board regarding the intersection evaluation for Douglas Business Park.
- Exhibit 10: Letter dated October 1, 2002 from Mark E. Allen, P.E. to the Douglas Planning Board regarding the requested waiver list.

- Exhibit 11: Letter dated October 7, 2002 from Mark E. Allen, P.E. to the Douglas Planning Board regarding the requested waiver list.
- Exhibit 12: Letter dated October 7, 2002 from Mark E. Allen, P.E. to the Douglas Planning Board regarding transmittal of outstanding items.
- Exhibit 13: Draft letter dated October 7, 2002 from Town Engineer William J. Cundiff, P.E. to Mark E. Allen, P.E. regarding review comments for Douglas Business Park.
- Exhibit 14: Letter dated October 17, 2002 from Town Engineer William J. Cundiff, P.E. to Mark E. Allen, P.E. regarding review comments for Douglas Business Park.
- Exhibit 15: Letter dated October 7, 2002 from Mark E. Allen, P.E. to the Douglas Planning Board regarding a draft Declaration of Easement.
- Exhibit 16: Letter dated October 29, 2002 from Town Engineer William J. Cundiff, P.E. to Joel Bard, Esq. regarding the proper projection of streets.
- Exhibit 17: Letter dated November 12, 2002 from Mark E. Allen, P.E. to the Douglas Planning Board regarding the requested waiver list.

### **III. FINDINGS:**

After due consideration of the exhibits and the record of the proceedings, and upon satisfaction of the conditions herein, the Board finds the following:

1. The submittal is for properties identified on Town of Douglas Assessors Map 106 as Parcels 3, 4, 6 and 7. The entire property is located in an area zoned "IND" (Industrial).
2. The entire site is 28.09± acres based upon the Tax Assessors Mapping information.
3. The plans as submitted are for development of the entire 28.09± acres, indicating a total of eleven industrial lots.
4. The definitive plan, with the granted waivers, generally conforms with the requirements of the Town of Douglas Rules and Regulations Governing the Subdivision of Land ("Regulations"), and the Subdivision Control Law MGL Chapter 41 Sections 81A – 81GG ("SCL").
5. This approval does not relieve the Applicant from complying with or obtaining the appropriate permits for any federal, state and local laws, rules or regulations.

#### **IV. DECISION & CONDITIONS:**

Therefore, the Board voted to approve, by a 6-1 vote, the Definitive Subdivision Plan entitled “Definitive Subdivision Plan for Douglas Business Park in Douglas, Massachusetts” dated August 12, 2002 by Guerriere & Halnon, Inc. 1031 Providence Road, Whitinsville, Mass. 01588, Owner being K. M. Liners & JEMS Realty, LLC. 512 Central Turnpike, Sutton, MA 01590 subject to the following conditions:

##### **A. GENERAL CONDITIONS**

- 1) This subdivision approval is given based upon the subdivision plans identified in Exhibit 1 above as revised in accordance with these conditions. The Board will not consider any additional revisions or modifications to the plans as approved other than those resulting from conditions contained herein. If the Applicant wishes to modify or revise the plans he must follow provisions of the Subdivision Control Law, MGL Chapter 41 Sections 81A – 81GG (“Subdivision Control Law”) and the Douglas Rules and Regulations Governing the Subdivision of Land adopted September 17, 1975 and revised November 24, 1998 (“Regulations”) relating to the submission of a Definitive Plan.
- 2) The Applicant shall ensure safe and convenient vehicular access to the project site during the entire duration of the project. Any Planning Board representatives shall be permitted access to the project site for the duration of the project provided that notice is given to the site construction forman upon arrival.
- 3) Nuisance – The Applicant is responsible to ensure that nuisance conditions, not necessarily limited to the following, do not exist in and around the site as a result of the construction operation. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.

Hours - The hours of operation for any construction activities onsite shall be between 7:00 am and 7:00 pm, Monday thru Friday, 8:00 am and 5:00 pm on Saturdays, and no work shall be allowed onsite on Sundays or on Holidays as recognized by the Commonwealth of Massachusetts.

Dust - The Applicant shall implement dust control operations, in an approved manner, whenever necessary or when directed by the Planning Agent, even though other work on the project may be suspended. Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.

Noise - The Applicant shall implement measures to ensure that noise does not exceed acceptable levels, as set forth by Federal and State regulatory agencies. The Applicant shall cease any excessively loud activities when directed by the Planning Agent.

Vibration - The Applicant shall implement the necessary controls to ensure that vibration does not and create a nuisance or hazard for property abutters.

Traffic - The Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the site. Any traffic issues that occur as a result of site operations and construction shall be mitigated immediately, at the expense of the Applicant. Additional traffic mitigation measures may be required as necessary, or as directed by the Planning Agent.

Roads – The Applicant is responsible for the sweeping, removal of snow and sanding of the internal roadways permitting access to residents and emergency vehicles until the subdivision is completed. The Town shall have the ability to contract outside snow removal/sanding vendors, at the expense of the Applicant, if the snow is not cleared within a reasonable amount of time. A “reasonable amount of time” is solely determined by the Planning Board.

Complaints – All complaints related to the above or otherwise, shall be logged and tracked by the Planning Agent. Complaints will be brought to the attention of the Planning Board, as necessary. Any complaints that are found to be repetitive in nature and continue with no mitigation in the opinion of the Planning Board, may constitute a violation of these conditions and may be grounds for a stop order or a partial stop order.

#### 4) Inspections and Reporting

The Applicant is responsible for the subdivision roadway and infrastructure inspection fees as detailed in the Douglas Regulations.

The Applicant shall furnish labor and equipment as needed, at no expense to the Town, to assist in performing inspections of the site.

The Applicants Engineer shall provide monthly status and scheduling reports to the Planning Board by the first day of each month until the project is completed, as required by the Regulations. Projections of the upcoming month’s work shall also be identified in these monthly reports. The reports shall include any relevant quantity and cost estimates, partial as-built plans, and supporting documentation deemed necessary by the Planning Agent to justify and supplement claims of completed work. Each of these reports shall be signed, stamped and dated by the Design Engineer and contain the following signed statement: “I hereby certify that all quantities and representations contained herein are accurately represented to the best of my professional knowledge and ability.”

The Applicant shall give the Planning Board a 24-hour notice in writing prior to the request for an inspection.

The Applicant is responsible for the construction and completion of all stormwater management systems prior to any other site construction activities.

6) Surety & Covenants

Prior to signing the approved plan, the Applicant shall submit a covenant running with the land, suitable for recording and written in conformance with the Douglas Regulations and the Subdivision Control Law.

The Applicant shall submit prior to the request for release of lots from covenant, a tabular summary of all quantities of each construction item to be broken down in a manner sufficient for the Planning Board or its agent(s) to estimate the cost of construction for bonding purposes. Said tabular summary shall include, but may not be limited to, all roadway work, landscaping, common areas, water, drainage, utilities (electric, cable, telephone, to name a few), and other construction proposed on the plan.

Prior to granting a release from covenant, in part or in whole, the Applicant or subsequent Owner shall complete all the required improvements or submit a performance bond, a deposit of money, or a bank passbook in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements required by this subdivision approval. Said surety shall also include a ten percent (10%) contingency factor based upon the value of the work remaining at the time of posting of surety. This full contingency will remain in place until the Planning Board is satisfied that the entire subdivision has been constructed in accordance with the approved Definitive Plan.

Partial as-built plans, certified by a Professional Civil Engineer and Professional Land Surveyor shall be produced with each request for bond/surety reduction. Any items for which reductions are requested shall be clearly identified on the as-built plans including spot elevations, details, cross sections, finished grades, and the like. Furthermore, any testing locations shall also be indicated on the as-built plans. No release of bond/surety will be considered for items that have not been witnessed and approved by the Planning Board Agent(s), specifically by signing the appropriate place on the Form P.

7) Construction Standards

Where insufficient information is contained in the design drawings or no local design standard exists, The 1988 Massachusetts Highway Department Standard Specifications for Highways and Bridges as amended and supplemented shall be adhered to.

Burial of any stumps and debris onsite is expressly prohibited. Localized burial of stones and/or boulders shall not be permitted.

Soil material to be used as backfill for pipes roads and/or structures (ie. detention basins) shall be tested at the expense of the Applicant, by a firm selected by the Planning Board.

Testing of said backfill shall be performed in conformance with standards and frequencies established by the Planning Agent.

Riprap shall be furnished and installed on all sideslopes in excess of 3 horizontal : 1 vertical (33%) in accordance with Massachusetts Highway Department Standard Specifications for Highways and Bridges Section M2.02.0 – Riprap unless otherwise approved by the Town Engineer.

8) Utilities

Submittal of an underground utility plan as approved/designed by National Grid, or other appropriate agency shall be provided to the Planning Board prior to start of construction. The proposed layout shall not conflict with any of the infrastructure shown on the proposed drawings.

9) Infrastructure

Completion of all roadways, drainage areas, and other improvements required by the Douglas Regulations shall be accomplished within two (2) years from the release of the covenant or posting of surety.

10) Easements

Easements indicated on the drawings shall be enlarged to allow full access to any stormwater structures full perimeter, at least a 15-foot level surface shall be provided within an easement area.

11) Conservation Issues

The amount of wetland and upland area on each lot shall be specified on the plans and on each lot, where applicable.

Any work occurring onsite within areas under the jurisdiction of the Douglas Conservation Commission shall be permitted accordingly prior to the start of construction within those areas.

12) Other

A phasing plan clearly indicating the limits of work for each phase shall be submitted to the Planning Board for approval prior to the start of construction, if required. Temporary cul-de-sacs shall be designed and constructed to the standards of a permanent cul-de-sac at the end of any phased roads creating a dead-end.

The Applicant shall maintain a copy of the approved plan and this Certificate of Approval at the Site during construction.

The Applicant shall obtain temporary easements or written permission from any abutting property Owner if, during the course of construction, it becomes necessary to enter upon their land for construction or planting.

Prior to the application for issuance of occupancy permits for any dwelling having its frontage on any street within the subdivision, the following must be complete:

The entire roadway within the subdivision shall be constructed up to and including the binder course of bituminous concrete, and satisfactorily inspected,

All street drainage shall be fully complete and functioning with all grates and castings set to grade,

The storm water drainage area shall be operational, fully constructed, and completed according to the plans,

All improvements shall be installed and inspected to the satisfaction of the Planning Board's Agent(s).

The Planning Board recommends the following be added to the plan to ease future acceptance as a public way: "Title to each lot shown on this plan is subject to the right reserved to the common grantor to convey the Town of Douglas and easement with respect to the streets and ways shown on the plan for all purposes for which streets and ways are commonly used in the Town of Douglas, upon acceptance of such streets and ways by the Town."

Prior to final approval of the Planning Board, the Applicant shall adhere to the requirements contained in the Town of Douglas Street Acceptance Policy, as endorsed by the Board of Selectmen and the Planning Board in effect as of May 28, 2002.

Any sale or transfer of rights or interest in all or any part of the property described in this plan shall include a condition that successors are bound to the terms and conditions of this Certificate of Approval and the covenant. In the event of the sale of the entire development: 1) the Planning Board shall be provided with the name, the address, and the telephone number of the new Owner and of the representative, if other than the Owner, responsible for the project.

The Applicant and/or subsequent Owner(s) shall be bound by all conditions and requirements set forth in this Certificate of Approval. Sureties in place shall remain in full force and effect until such time that a surety of equal or greater value is provided.

Conditions contained herein does not relieve the Applicant from adhering to the Douglas Regulations.

**B. SPECIAL CONDITIONS**

- 1) Final plans shall be stamped by a Massachusetts registered Civil Engineer and a Massachusetts registered Professional Land Surveyor in accordance with the requirements of 250 CMR 6.00, the Subdivision Control Law and the Douglas Subdivision Rules and Regulations.
- 2) Compliance with the requirements contained in the October 17, 2002 letter from Town Engineer William J. Cundiff, P.E. to Mark E. Allen, P.E. listed in Exhibit 14 to the satisfaction of the Planning Board is required prior to Plan endorsement. Modifications to the drawings and design may be a result of addressing these comments.
- 3) Compliance with Section IV. A. 1. c. of the Douglas Subdivision Rules and Regulations is required as part of this subdivision approval. Section IV. A. 1. c. states: *“Provision satisfactory to the Board shall be made for the proper projection of streets, or for access to adjoining property which is not yet subdivided. These access ways are to be deeded in fee to the town prior to release of any bond.”*
- 4) The subdivision right of way, in its entirety, is to be deeded in fee to the Town prior to the release of any bond.
- 5) Prior to plan endorsement, Town Counsel shall review and approve the method by which the Applicant will convey the Rights of Ways and easements for form content and procedure.
- 6) A street light shall be located on the nearest existing telephone pole at the Cliff Street – Commercial Street intersection.

**V. WAIVERS REQUESTED:**

The Board considered and voted to grant the following requested waivers from the Rules and Regulations Governing the Subdivision of Land, Douglas, Massachusetts adopted September 17, 1975 and revised November 24, 1998:

**1. Section IV.A.4.a – Dead-End Streets**

*Required:* Dead-end streets not longer than 500 feet.

*Proposed:* 1,455 feet to the center of the cul-de-sac.

**2. Section IV.A.3.e – Grade**

*Required:* Grades at intersections not to exceed 2.0% for 150 feet.

*Proposed:* A grade of 2% for 111 feet and then a gentle downward vertical curve for the remaining 39 feet.

**3. Section V.B.2.a – Curbs and Berms**

*Required:* Type VA-4 granite curbs at all finished grades over 5%.

*Proposed:* Cape Cod berm at grades over 5%.

**4. Section V.D – Sidewalks**

*Required:* Concrete sidewalks on both sides of street.

*Proposed:* 5-foot wide asphalt sidewalk on one side of street.

**5. Section “Typical Cross Section – Secondary Street”**

*Required:* 34 feet of pavement width.

*Proposed:* 28 feet of pavement width.

The Board considered and voted to deny the following requested waivers from the Rules and Regulations Governing the Subdivision of Land, Douglas, Massachusetts adopted September 17, 1975 and revised November 24, 1998:

**6. Section V.C.4 – Street Lighting**

*Required:* Adequate street lighting subject to approval by the Planning Board.

*Proposed:* No street lighting is proposed with this application.

**7. Section IV.A.1.c. – Projection of Streets**

*Required:* Provision satisfactory to the Board shall be made for the proper projection of streets, or for access to adjoining property which is not yet subdivided. These access ways are to be deeded in fee to the Town prior to release of any bond.

*Proposed:* 60 foot wide proposed access easement extending from the end of the proposed roadway through Lot 7 to the abutting parcel owned by Emerson and Earlene Smith. This easement would not be deeded in fee to the Town prior to the release of any bond, but would remain under the ownership of Lot 7.