

Record of Decision
Rail Spur Extension to 36 Saratoga Boulevard (Lot 4A), Devens Massachusetts
Unified Permit Amendment
May 6, 2010

1. Applicant/Owner:

The applicants and owners are Triplenet Investment IX, L.P.c/o J.G. Pertucci Company, Suite 201, 171 State (Route 173), Asbury, NJ 02184; Mass Development, 33 Andrews Boulevard, Devens, MA 01432; and Stealth Realty Trust, 211 Central Street, Acton, MA 01720.

2. Premises and Proposed Project:

The applicant is amending the existing Unified Permit for 36 Saratoga (Lot 4A) to facilitate the construction of a rail spur within the subject property as well as within an existing and proposed easement on two adjacent parcels (18 Saratoga/Lot 4B and abutting land owned by MassDevelopment), to accommodate a new tenant (New England Sheets). The original development of 36 Saratoga was approved by the DEC in 1999 for North American Van Lines. On April 8, 2010, the DEC approved an amendment to the unified permit for 36 Saratoga Boulevard to allow for construction of a new loading dock and associated site improvements to accommodate New England Sheets. The proposed rail spur that is subject of this application is not within 100 feet of any wetlands, therefore a Wetland Order of Conditions is not required. The easement and rail spur run along the northern boundary of the 36 Saratoga parcel, across Lot 4B and land owned by MassDevelopment. All properties are located within the Rail Industrial and Trade Related Zoning District.

3. Submission:

The following is a list of exhibits that have been included as part of the record for this Application:

1. Application cover letter dated March 23, 2010 from David Kelly of Kelly Engineering Group, Inc. (2 pages)
2. Completed Level 2 Application Form, dated 3/24/10
3. Copy of Easement Agreement from Owner of 18 Saratoga authorizing right to pass, including construction, maintenance, repair and replacement, dated March 11, 2010 (Book: 45550 Pg: 134)
4. Site Plans entitled "Site Development Plans for Rail Service to 36 Saratoga Boulevard, Devens, Massachusetts", prepared by Kelly Engineering Group, Inc., 0 Campanelli Drive, Braintree, MA 02184, consisting of the following sheets:
 - Sheet 1: Cover Sheet, dated 3/23/10
 - Sheet 2: Existing Conditions Plan, dated 3/23/10, revised through 5/3/10
 - Sheet 3: Overall Layout Plan, dated 3/23/10, revised through 5/3/10
 - Sheet 4: Layout and Landscaping Plan, dated 3/23/10, revised through 5/3/10
 - Sheet 5A: Site Plan, dated 3/23/10, revised through 5/3/10
 - Sheet 5B: Plan and Profile, dated 3/23/10, revised through 5/3/10
 - Sheet 6: Detail Sheet dated 3/23/10, revised through 5/3/10

5. Drainage Report entitled "Stormwater Management Calculations for Rail Crossing 02-02-10 Rail Service to 36 Saratoga Blvd., Devens, MA" prepared for Triple Net Investment IX, L.P., C/O J.G. Pertucci Company Suite 201, 171 State (Route 173) Asbury, NJ 08802, prepared by Kelly Engineering Group, Inc., 0 Campanelli Drive, Braintree, MA 02184;
6. Review Comment letter from John Marc-Aurele, MassDevelopment, to Peter Lowitt, dated April 21, 2010 (2 pages)
7. Response to Comments dated April 26, 2010 from David Kelly of Kelly Engineering Group, Inc. (3 pages)
8. Response to Comments dated May 3, 2010 from David Kelly of Kelly Engineering Group, Inc. (2 pages)
9. Letter dated May 3, 2010 from David Kelly of Kelly Engineering Group, Inc. (3 pages), including Hydraulic Calculations for Box Culvert, Pipe Crossing Calculations and Box Culvert Calculations.
10. Memo from Peter Lowitt to Towns of Ayer, Harvard and Shirley Board of Selectman and Planning Offices; Subj.: Level Two Amendment Rail Spur - 36 Saratoga Boulevard; dated March 25, 2010;
11. Staff Report, dated 4/26/10.
12. Certified List of Abutters, dated March 30, 2010.
13. Memo from Peter Lowitt to Abutters and Interested Parties; Subject: Level Two Amendment Rail Spur - 36 Saratoga Boulevard; dated April 26, 2010;
14. Public Hearing Legal Notice Fax to Nashoba Publications, from Peter Lowitt/Mary Quinn, dated March 26, 2010, to be published April 2, 2010 and April 9, 2010.
15. Copies of Legal notices from April 2, 2010 and April 9, 2010
16. Public Hearing Notice Fax to Town Clerks of Ayer, Harvard, Shirley, Lancaster and MassDevelopment, from Peter Lowitt/Mary Quinn, dated March 26, 2010
17. E-mail dated 4/2/2010 from March Cohen to Peter Lowitt, Subject: Review of 36 Saratoga Blvd. Plans for rail service.
18. E-mail from David Kelly to Peter Lowitt, dated 4/21/10 Subject: 36 Saratoga Boulevard Rail Access.
19. E-mail from Neil Angus to David Kelly, dated 4/20/10, Re: Answer for Public Hearing1.
20. Staff Report dated 5/6/10;

4. Unified Permit Components and Actions:

The project seeks site plan approval to construct a rail spur for 36 Saratoga Boulevard (Lot 4A) and associated site improvements.

5. Process:

Kelly Engineering Group, Inc., on behalf of Triplenet Investment IX, L.P., MassDevelopment and Stealth Realty Trust submitted a Level II Unified Permit application package, including the application and site plans on March 24, 2010. Copies of the application and plans were sent to the surrounding Towns on March 25, 2010. Notice of the public hearing was sent to all surrounding Towns on March 26, 2010. Legal notices were placed in Nashoba Publications on April 2, 2010 and April 9, 2010. Certified Mail notice was sent to all abutters on April 26, 2010. The 30-day town-comment period expired on April 26, 2010. The DEC opened the public hearing on

April 27, 2010 and continued the hearing to the May 6, 2010 meeting. The hearing was closed on May 6, 2010.

6. Waivers

The Applicant did not request any waivers from the DEC Rules and Regulations:

7. Findings

The DEC made the following findings:

1. The proposed use of a rail spur servicing a warehouse/light industrial and office use is an allowed use in the Rail Industrial and Trade Related Zoning District.
2. Shifting a portion of long-haul freight truck trips to rail is consistent with the sustainable redevelopment goals of Devens as it reduces energy use and greenhouse gas emissions and traffic congestion.
3. Regarding the approval criteria listed in 974 CMR 3.03(2):
 - (a) The Site Plan complies with 974 CMR 3.00 and with the applicable provisions of the By-Laws.
 - (b) The development lies on lots that are recorded at the Registry of Deeds.
 - (c) The application is Complete.
 - (d) All drives, parking lots, loading areas, paths, sidewalks, and streets are designed to provide for safe vehicular and pedestrian travel.
 - (e) Access and site circulation will enable prompt fire, police, and emergency response.
 - (f) Adequate capture and discharge of stormwater and surface water runoff and compliance with applicable portions of the "Devens Stormwater Pollution Prevention Plan" has been achieved.
 - (g) Connections with utility, power and communication systems available in the abutting infrastructure have been shown and approved by the Mass Development Manager of Engineering and Utilities.
 - (h) Facilities required under the Water Resources Protection Bylaw and the related Design Standards have been included.
 - (i) The plans demonstrate compliance with Landscaping Design Standards for plant materials, planting strips, screening, and preservation of existing specimen trees and wooded areas.
 - (j) A Wetlands Order of Conditions is not required for this project.
 - (k) The Applicant has indicated the project will comply with all applicable Industrial Performance Standards.
 - (l) Sufficient parking for current needs has been provided.
 - (m) Adequate traffic mitigation and control measures have been proposed.

- (n) The Applicant agrees to participate in the Devens traffic management association.
- (o) Adequate water supply exists in terms of quantity, quality, and water pressure for commercial and/or domestic needs and fire protection.
- (p) Connection to sanitary sewers has been made.
- (q) Building design meets the minimum standards as established by Mass Development for the district in which the lot is located.

8. Conditions:

The DEC voted to impose the following conditions:

1. Pursuant to the Site Plan Rules 974 CMR 3.02(1) and the By-Laws, Article III, Section H, any further “expansion of the parking lot, structure or loading dock” shall require a new application for unified permit site plan review.
2. Additional erosion and sediment controls are required for the rail spur construction and shall be implemented at the discretion of the DEC or its Staff prior to commencement of construction. The best management and maintenance practices for the Site as required in the By-Laws and Rules and Regulations and articulated in the Applicant’s final Erosion and Sediment Control Plan and Notes, shall be strictly adhered to, now and in the future.
3. The Applicant shall comply with the By-Laws, Article III, Section K 1. a., which provides that “no soil, loam, sand, gravel, or other earth materials shall be permanently removed from any lot within Devens, except in accordance with an approved Level Two Development Permit.
4. A stormwater management plan shall be included on the final plans in accordance with the Devens Stormwater Pollution Prevention Plan. The Applicant is also required to continue filing annual reports with the DEC in October of each year indicating how it is maintaining its on-site stormwater management facilities.
5. Existing screening vegetation that is proposed to be removed shall be replaced. Replacement plantings shall be of a similar species and size and located as close to the property line and/or parking areas as feasible.
6. All landscaping shall be maintained in healthy condition. Any dead or damaged landscaping shall be replaced promptly. Tree protection fences shall be installed prior to the commencement of any construction activities on the Site and maintained in areas where construction is being conducted. The applicant shall be required to submit a letter confirming a one-year guarantee of all approved landscaping once installed.
7. All applicable federal, state, and local permits necessary for the construction and operation of the Project must be obtained and filed with the DEC prior to the issuance of a Certificate of Occupancy for the facility.
8. The Applicant shall notify the DEC in writing seven or more days prior to the completion of the following construction milestones:

- a) completion of the site grading and site work;
- b) complete installation of site stormwater management facilities and other subsurface utilities;
- c) completion of all site improvements as shown on the approved site plan;
- d) installation of trees and other major landscaping features.

The LUA shall schedule a site inspection by the DEC's consultants or allow the submission of a red-lined print stamped by a RLS or PE, as appropriate.

- 9. The Applicant shall submit final as-built plans in accordance with the DEC As-Built policy, prior to completion of the project.
- 10. No outdoor storage of equipment or materials are permitted as part of this approval. Any outdoor storage of equipment or materials will require will require DEC approval.
- 11. Copies of the final easement agreement with MassDevelopment and easement and rail service agreement with Pan Am are to be submitted to the DEC prior to commencement of construction of the rail easement.
- 12. Within 60 days of the date of this approval, the Applicant shall undertake an additional noise study to address any potential additional noise associated with the rail loading and unloading activities. Any necessary mitigation to ensure compliance with the Industrial Performance Standards shall be installed prior to the issuance of a Certificate of Occupancy for the Facility. The applicant shall also use all best efforts to minimize noise associated with the facility operations to ensure compliance with the DEC Industrial Performance Standards for Noise and Vibration, including, but not limited to:
 - Delivery of rail cars during the day to the extent feasible.
 - On-going maintenance of rail and facility operations, including but not limited to the application of rail lubricators to reduce noise on the rail spur. The Applicant is also required to keep all copies of maintenance records available for inspection.
 - All facility loading/unloading doors shall remain closed at all times when not in use for loading/unloading.
 - All trucks and vehicles on-site shall comply with the Massachusetts Anti-Idling law. The applicant shall post signs at loading areas notifying drivers of the 5-minute rule as per MGL Ch. 90 Sec. 16A.
- 13. Rail loading and unloading hours of operation for the facility are 7AM to 11PM, Monday through Friday. Any change in operations outside of these dates and times will require DEC review and approval to ensure conformance with all applicable DEC Regulations.
- 14. To ensure all uses and operations adequately protect public health and safety, the Applicant shall submit a Spill Prevention Control and Countermeasure Plan for all

on-site chemicals and hazardous materials being used, prior to the issuance of a Certificate of Occupancy for the facility.

15. The Applicant shall pay all outstanding peer review and legal fees prior to Certificate of Occupancy for the facility.
16. All outstanding engineering review comments from MassDevelopment, including but not limited to confirmation of box culvert calculations from the supplier and confirmation that depth of cover over box culvert is adequate for loading conditions, shall be addressed prior to commencement of construction.

9. Decision:

The DEC voted May 6, 2010, after the Public Hearing was closed, to issue findings, including that the application complied with Approval Criteria in 974 CMR 3.03(2), to impose Conditions, and to approve the rail spur to 36 Saratoga Boulevard.

10. Building Permit

No Building Permit is required for this portion of the project. . All requirements in the Massachusetts Building Code, the Massachusetts Sanitary Code, and of the Devens Fire Chief must be met. When approvals are obtained, they will be integrated with this Site Plan Record of Decision; together they will constitute the Unified Permit for the project, which will, in turn, allow construction to commence.

11. Permit Duration

In accordance with 974 CMR 1.10, unified permits shall remain in effect so long as the approved activities are commenced within six months of the date of the DEC or the LUA produces a written decision and completed within two years. It is further noted that a thirty-day "reconsideration period" during which an applicant, a Town, or an aggrieved person may request the DEC reconsider its action (By-Laws, Article IV, Sections C through F). Work performed during this period, which begins on May 7, 2010 and terminates June 7, 2010, is "at risk". Final plans must be submitted for endorsement by the Commission by November 7, 2010.

Approved by:

Date: _____

Peter C. Lowitt, FAICP, Director
Devens Enterprise Commission

Certification

Middlesex,SS

I certify the above is a true action and record of the Devens Enterprise Commission and that Peter C. Lowitt, Devens Land Use Administrator/Director, is empowered by the Devens Enterprise Commission to sign this Record of Decision on its behalf.

Date

Mary Quinn, Notary
My Commission expires _____