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TOWN OF ACTON
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Planning Department

INTERDEPARTMENTAL COMMUNICATION

To: ***Town Manager's Office*** ***Date:*** ***June 24, 2016***

From: ***Kim Gorman, Municipal Properties Office Manager***
Interim Secretary for Planning

Subject: ***Check Acceptance***

The Planning Department has received a check in the amount of $5,000.00 from Keenan & Son LLP.

These funds were requested to provide funding for Town Counsel review services associated with the Definitive Subdivision Residential Compound for Jamie's Way & Thomas Drive (456 Massachusetts Avenue & 143 Prospect Street) for reviewing, drafting, redrafting, negotiating and recording the covenant, indemnity and personal guarantee stated in Planning Board Decision #15-07 attached.

Please bring this matter to the Board of Selectmen for consideration.

Thank you.

RECEIVED
SEP - 2 2015
TOWN CLERK
ACTON

Planning Board

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DECISION

15-07

Jamie's Way & Thomas Drive

Definitive Subdivision (Residential Compound)

September 1, 2015

APPROVED (with Conditions)

Decision of the Acton Planning Board (hereinafter the Board) on the application of Keenan & Son, LLP (hereinafter the Applicant) for adjacent properties located in Acton, MA at 456 Massachusetts Avenue, owned by the Applicant, and 143 Prospect Street, owned by Sean T. & Marcia A. Towey. The properties are shown on the Acton Town Atlas as parcels F2-117 and F2-126 (hereinafter the Site).

This Decision is in response to an Application for Approval of a Definitive Subdivision entitled "Definitive Subdivision - Residential Compound, Jamie's Way & Thomas Drive", filed with the Acton Planning Department on May 22, 2015, pursuant to Massachusetts General Laws, Chapter 41, Section 81-K through 81-GG, and the Acton Subdivision Rules and Regulations (hereinafter the Rules).

The hearing was held on July 21, 2015 and once continued on August 18, 2015. Ian Rubin of Markey & Rubin Civil Engineering presented the Plan on the Applicant's behalf. Board members Mr. Jeff Clymer (Chair), Mr. Derrick Chin, Mr. Michael Dube, and Mr. Ray Yacouby were present throughout the proceedings of the hearing. The minutes of the hearing and submissions on which this Decision is based upon may be viewed in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1.1 A plan entitled " Definitive Subdivision - Residential Compound, Jamie's Way & Thomas Drive", consisting of 16 sheets, dated May 22, 2015, by Markey & Rubin Civil Engineering, 360 Massachusetts Avenue, Suite 202, Acton, MA 01720.

- Sheet 16, Planting Plan (PL), revised August 13, 2015.

1.2 Supplemental items and documentation required by the Rules consisting of:

- Cover letter from Markey & Rubin;
- A fully executed Application for Approval of a Definitive Plan, form DP;
- Filing fee;
- A completed Development Impact Report, form DIR;
- Designer's Certificate;
- Certified abutters list;
- A list of requested waivers;
- A letter authorizing Town to enter the Site for inspection;
- Copy of the record deeds and plans for the properties;
- Drainage Report, including pre- and post-development drainage maps;
- Revised Drainage Report with Markey & Rubin., Inc. cover letter, dated 7/8/15.
- Proposed storm water operation and maintenance plan;
- Proposed private way maintenance agreement and covenant (draft "Declarations of Common Drive of Easement and Maintenance Residential Compound / Private Way Maintenance Agreements and Covenants");
- The "Storm Water Operation and Maintenance Manuals";
- Letters from Steve Marsh, Westchester Co., Inc., dated July 22 & 23, 2015;
- Applicant Disclosure regarding Westchester Co., undated, received in the Acton Planning Department on July 31, 2015.

1.3 Interdepartmental communication received from:

- Acton Sidewalk Committee, dated 6/12/15;
- Acton Engineering Department, dated 6/25/15 and 7/30/15;
- Water Supply District of Acton, dated 7/10/15;
- Acton Public Health Department, 5/29/15.
- Memo from Planning Department, dated 7/30/15.

1.4 Comments received from residents:

- Letter from James Frazer, President, Davis Place Condominium Association, Inc., dated 7/15/15, with three attached sheets and four photographs.
- Two e-mails from Suzanne Buckmelter of Blanchard Place, Unit 5, dated 7/20/15.

1.5 Other:

- Hearing continuation and decision timeframe extension filed with Town Clerk July 22, 2015.

Exhibits 1.1 through 1.2 are referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

2.1 The subdivision is located within the Residence 2 (R-2) zoning district, the Affordable Housing Overlay Sub-district B and the Groundwater Protection District Zone 4.

2.2 The Plan shows the division of approximately 3.06 acres into five lots. The land is currently developed with two existing single family dwellings and paved driveway.

2.3 The plan shows one existing dwelling to be razed, one to be relocated, and four new single-family residential dwellings to be constructed.

2.4 The proposed single-family residential uses are allowed on the Site in accordance with the Acton Zoning Bylaw.

2.5 Mass. Ave. is a State highway.

2.6 The Applicant previously sought a Residential Compound subdivision approval for the 456 Mass. Ave. portion of the Site (hereinafter the "Keenan Portion), but was unable to fit the desired three lots with a standard street layout and design per the proof plan requirement for Residential Compounds. The Board had disapproved that subdivision. Adding the 143 Prospect St. property (hereinafter the Towey Portion") enables a 5-lot Residential Compound subdivision with a qualifying proof plan.

2.7 The Keenan Portion of the proposed Residential Compound subdivision is identical in area and more or less identical in layout and design as the previously disapproved 3-lot subdivision plan. It cannot be approved or developed on its own in compliance with the Rules.

2.8 The Towey Portion of the proposed Residential Compound subdivision would not accommodate a 2-lot subdivision proof plan. It cannot be approved or developed on its own in compliance with the Rules.

2.9 The Residential Compound Plan shows two proposed subdivision streets, Jamie's Way, approximately 200 feet long, which intersects with Massachusetts Avenue; and Thomas Drive, approximately 100 feet long, which intersects with Prospect Street. The proposed pavement width is 16 feet within variable layouts not less than 25 feet wide.

2.10 Except for proposed lot 2, the proposed lots as shown on the Plan comply with the area, frontage and lot width requirements of the Bylaw. It appears that the lines for lot 2 can be adjusted to comply.

2.11 The Rules require that all proposed lots within a subdivision shall comply with the Bylaw (i.e. the Town of Acton Zoning Bylaw). The existing house and a shed on the Towey Portion (shown on lot 4 on the Plan), will be in violation of the Bylaw's minimum 30-foot front yard requirement to the proposed Thomas Drive, and also in violation of the minimum 10-foot side yard requirement to the proposed new adjacent lot (lot 5), unless removed (as proposed on the Plan) or relocated so as to comply with the zoning bylaw.

2.12 The Applicant has requested that the Board nevertheless grant the Subdivision Approval and that the Town delay any zoning enforcement against the violating house and shed for 5 years.

2.13 The design of the proposed subdivision street is intended for approval under Section 10 of the Rules - Optional Residential Compound, which implies waivers from Section 8 and 9 of the Rules. The subdivision is eligible for consideration as a Residential Compound. The Applicant has demonstrated with a "proof plan" that the 5-lot subdivision could be built under the otherwise applicable requirements of the Rules. With no more than three single-family homes proposed on a street, traffic on the proposed street will be light. A Residential Compound is less intrusive to the neighborhood, preserves more of the natural environment of the Site, and helps preserve the present character of the neighborhood. The Plan, as modified herein, accomplishes these purposes of the Rules' Residential Compounds option.

2.14 Ways in Residential Compound subdivisions can be built to lesser design and construction standards than other streets in Acton. They are intended to remain private ways. This requires a legal framework for the maintenance and ownership of the private way. Furthermore, the Board needs assurances that the Town will not be asked to plow, maintain, or accept the private way in the future.

2.15 The intersections and turn-around areas accommodate the dimensions of the Acton ladder truck.

2.16 Section 9.6 of the Subdivision Rules require the applicant to provide sidewalks on one side of the traveled street within the proposed subdivision and along the portion of any existing public street upon which the subdivision Site has frontage.

2.17 Sidewalks already exist along the entire frontages of the proposed subdivision Site on Massachusetts Avenue and Prospect Street. The Applicant has acknowledged that, in lieu of constructing sidewalks in accordance with Section 9.6 of the Rules within the subdivision street, a contribution to the Town's sidewalk fund is required using the established formula, which is $50.00 per foot of subdivision frontage plus $20.00 per foot of subdivision street length. For this subdivision the contribution would amount to (0 feet subdivision frontage - sidewalks already exist) X $50) + (200 feet Jamie's Way + 100 feet Thomas Drive) X $20) = $0.00 + $6,000.00 = $6,000.00.

2.18 The application includes an authorization for Town representatives to enter the Site for inspection purposes. This is good. An additional authorization is required for the Town to complete the streets should the developer fail to do so.

2.19 At least lots 2 and 5 require a Notice of Intent Filing with the Conservation Commission.

2.20 This subdivision is subject to the granting of additional sewer connection permits. The sewer privilege fee will be $12,311.52 per additional lot on the Site with payment due before the issuance of sewer connection permits and/or building permits.

2.21 The Board solicited comments from various Town departments. They are listed in Exhibit 1.4 above. The Board considered all comments in its deliberations and made them available to the Applicant. They are restated herein as required plan modifications or conditions as deemed appropriate by the Board.

3 BOARD ACTION

Therefore, the Board voted by individual voice vote - four in favor, none opposed - to APPROVE the definitive subdivision subject to and with the benefit of the following waivers, conditions, plan modifications, and limitations.

3.1 WAIVERS

Any waivers from the Rules, including waivers pursuant to Section 10 of the Rules (Residential Compound) are discretionary if in the judgment of the Board granting them is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law.

3.1.1 The Applicant has requested waivers from Section 8 (Design Standards) and Section 9 (Improvements) of the Rules to allow the construction of the street as shown on the Plan. This waiver request implies a waiver from the sidewalk requirements of the Rules.

3.1.2 With the exception of the sidewalk requirements, the requested waivers are GRANTED pursuant to Section 10 of the Rules (Residential Compounds) and subject to any required Plan modifications and conditions stated herein.

3.1.3 In lieu of constructing the sidewalks as required, the applicant may opt to contribute $6,000.00 to the Town's sidewalk fund, payment of which shall be made prior to endorsement of the Plan.

3.2 PLAN MODIFICATIONS

The Plan shall be revised prior to its endorsement to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Board or its designee. Where approvals are required from persons or agencies other than the Board, the Applicant shall be responsible for providing evidence of such approvals to the Board or its designee.

3.2.1 Adjust lot lines so that lot 2 complies with the minimum frontage requirement of 150 feet in the Residence 2 zoning district.

3.2.2 Record by plan and deed instruments the conveyance of sufficient land area from the Towey Portion to the Keenan Portion so that the Keenan Portion, as expanded, will fit a 3-lot subdivision proof plan. Then reflect the conveyance on the Subdivision Plan.

3.2.3 Show a 3-lot subdivision proof plan for the expanded Keenan Portion.

3.2.4 On the layout plan sheets 1 and 2 (L1 & L2), Plan sheets 6 and 7, add a note in extra large and bold print, stating: "Lots 4 and 5 together with the street layout for Thomas Drive shall be retained in single ownership and shall not be conveyed separately, nor shall lots 4 and 5 be built upon, until the existing house and shed on lot 4 have been removed, or have been relocated so as to be in compliance with the dimensional requirements of the Acton zoning bylaw."

3.2.5 Submit letter authorizing the Town to complete the streets should the developer fail to do so (SRR 5.2.9).

3.2.6 On the landscape plan (PL), Plan sheet 16, and all relevant related Plan sheets:

- Delineate a line for the limit of clearing and construction on lot 1 to ensure the preservation of the existing trees as provided on the plan.
- Immediately along the southerly edge of the 3-foot shoulder of Thomas Drive, specify a vertical cut, rather than a slope, for the ledge outcrop between proposed Thomas Drive and the southerly Site boundary.
- Between (1) the southerly Site boundary, and (2) the proposed Thomas Drive and the proposed driveway and house on proposed lot 5, delineate a line for the limit of clearing and construction to ensure the preservation of existing vegetation along the southerly site boundary for a depth of not less than 8 feet at the narrowest point at the end of Thomas Drive. The limit line shall run along the top of the vertical cut at Thomas Drive.
- The Plan shows the subject area to be augmented with a line of 10 staggered Arbor Vitae. Add one, or as space allows two, more Arbor Vitae to the westerly end of the planting line, and then continue the screening with a 6-8 foot high opaque privacy fence (not a chain link fence) westerly along Thomas Drive to be installed on the limit of clearing/construction line on top of the vertical cut to approximately STA 10+00.

3.2.7 Draft Private Way Declarations:

- Reference & designate purposes & beneficiaries of all access and drainage easements shown on the Plan.
- Add a reference and include as appendix the proposed drainage system Operation and Maintenance Plan.

- Add paragraphs restating conditions 3.3.6 through 3.3.8 of this decision.
- Delete the reference to the "Code of the Town of Acton, Massachusetts" and replace simply with "the Plan as approved by the Acton Planning Board in its Subdivision Approval (Decision #15-07)".

3.2.8 The Private Way Declaration for Jamie's Way (lots 1, 2 and 3) shall include covenants that (1) obligate the respective lot owners individually to maintain minimum landscaping on their lots as shown on the endorsed plan, and (2) obligate the lot owners together to maintain the landscaping within Jamie's Way as shown on the endorsed plan. These two landscaping provisions shall run to the benefit of, and shall be enforceable by the owners, collectively or individually, of the Davis Place Condominium with respect to lots 1 and 3, and the owner of 448 Mass. Avenue (presently Yanhua Tang) with respect to Lot 2 and Jamie's Way.

3.2.9 The Private Way Declaration for Thomas Drive (lots 4 and 5) shall include covenants that (1) obligate the owner of lot 5 individually to maintain minimum landscaping on lot 5 as shown on the endorsed plan, and (2) obligate the lot owners together to maintain the landscaping within Thomas Drive as shown on the endorsed plan. These two landscaping provisions shall run to the benefit of, and shall be enforceable by the owners, collectively or individually, of the Blanchard Place Condominium.

3.2.10 On the detail plan, sheet 15, add a note stating that the 12" compacted gravel base shall be applied in two 6" courses.

3.2.11 Adjust, as needed, the alignment and placement of sewer lines, and construction details for sewer installations in accordance with the Health Department's standards and requirements. Specifically, show that sewer lines are located in their own trenches, 10 feet away from other utilities and 18 inches below water pipes; and that sewer connections are surrounded by six inches or more of crushed stone.

3.2.12 Specify the size of the proposed water mains and service lines.

3.2.13 Unless directed otherwise herein, the definitive plan shall be modified to comply with all requirements of the Rules, and shall address all departmental comments received by the Board in a manner that resolves to the Board's satisfaction any concerns raised therein.

3.3 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to the following conditions shall be reason to rescind this subdivision approval pursuant to MGL Ch.41, S.81-W. The Town of Acton may elect to enforce compliance with this Decision using any and all powers available to it under the law.

3.3.1 Prior to the issuance of any building permit on the Site being issued, submit a copy of the MassDOT access permit for Mass. Ave.

3.3.2 No building permits for new dwelling units on proposed lots 4 and 5 shall be issued until and unless the existing house and shed on lot 4 have been razed, or have been relocated in order to achieve compliance with the Acton Zoning Bylaw.

3.3.3 Lots 4 and 5 together with the street layout for Thomas Drive shall be retained in single ownership and shall not be conveyed separately until the existing house and shed on lot 4 have been removed, or have been relocated so as to be in compliance with the dimensional requirements of the Acton zoning bylaw.

3.3.4 Prior to endorsement of the Plan and separate from any performance guarantee, the Applicant shall grant the Board a restrictive covenant, signed by the owner of 143

Prospect Street, i.e. lots 4 and 5, stating that lots 4 and 5 shall not receive building permits for new dwelling units and that lots 4 and 5 and the Thomas Drive street layout shall not be sold into separate ownerships until the structures on Lots 4 have been razed or relocated so as to be in compliance with the Acton zoning bylaw.

3.3.5 The aforesaid restrictive covenant shall be accompanied with an indemnity from the Applicant for any losses to the Town, legal or otherwise, from having to enforce the covenant and the Zoning Bylaw in this matter, and the Applicant shall grant a personal guarantee to stand behind that indemnity.

3.3.6 In addition, where the Board's provisions for lots 4 and 5 as set forth above are extraordinary considerations and serve the Applicant's convenience and expedience, the Applicant shall pay the Town for any cost that it may incur in Town Counsel fees, including but not limited to reviewing, drafting, redrafting, negotiating, and recording the covenant, indemnity, and personal guarantee required in the preceding paragraphs. The payment shall be made in the form of a $5,000.00 fee deposit together with drafts of the above required documents. The Applicant shall deposit or pay additional funds should that become necessary. Any funds remaining after completion of this work shall be refunded to the Applicant.

3.3.7 The landscape plantings as required herein for the Keenan Portion shall be installed prior to the start of construction or the issuance of any building permits on the Keenan Portion, and shall be maintained in good condition throughout the time of construction. Likewise, the landscape plantings as required herein for the Towey Portion shall be installed prior to the start of construction or the issuance of any building permits on the Towey Portion, and shall be maintained in good condition throughout the time of construction.

3.3.8 Jamie's Way and Thomas Drive shall remain private ways. They shall not be accepted as public ways. The Applicant and the owners of Lots 1, 2, 3, 4 and 5 shall not petition the Town to accept them as public ways.

3.3.9 Jamie's Way and Thomas Drive in their entirety shall be maintained by the owners of Lots 1, 2, 3, 4 and 5 in accordance with the common driveway easement and covenants. This shall include the removal of snow and ice. The Applicant and the owners of Lots 1, 2, 3, 4 and 5 shall not petition the Town to provide snow and ice removal services or to provide any other maintenance and upkeep of Jamie's Way or Thomas Drive.

3.3.10 Jamie's Way shall not serve more than three (3) residential lots; Thomas Drive shall not serve more than two (2) residential lots. There shall be no further division of the tract or Lots contained therein to create any additional Lots, and development of the land is permitted only in accordance with the single-family residential land uses indicated thereon, including all allowed accessory uses.

3.3.11 The Applicant shall be diligent in complying with the erosion and sediment control plan. The Applicant shall not cause or permit the runoff of water or erosion that result in the flooding or siltation of any street, way or drainage facility owned or maintained by the Town. If such runoff or erosion occurs, the Board may order the immediate cessation of any excavation, construction and building activities until the conditions that caused the runoff or erosion have been corrected.

3.3.12 The Applicant shall be diligent in constructing the stormwater management system to be consistent with Massachusetts Stormwater Regulations.

3.3.13 The installation of water service lines shall be made in compliance with the applicable requirements of the Acton Water Supply District.

3.3.14 The installation of sewer lines shall be made in compliance with the applicable requirements of the Town of Acton.

3.3.15 All work on the Site shall be performed in compliance with the requirements of the Acton Board of Health and Acton Conservation Commission.

3.3.16 As required under Massachusetts General Laws, Ch. 60, S. 23, the Plan approved hereunder shall not be recorded with the Middlesex South District Registry of Deeds or the Land Court unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the Plan have been paid in full. If not paid at the time of endorsement of the Plan, the Board will add a Plan note to remind the Registry of Deeds or the Land Court of this legal requirement.

3.3.17 Prior to endorsement of the Plan, the Applicant shall provide the Board with a performance guarantee in accordance with Section 6 of the Rules.

3.3.18 A performance guarantee shall be of the one type in a single document, in a single account, by a single developer, and a by a single issuer for the entire subdivision. In other words and for example, there shall not be a monetary performance guaranty on one portion of the subdivision and a restrictive covenant against the issuance of building permits on another portion of the subdivision, nor shall a monetary performance guarantee be split into different parts provided for different developers or by different issuers.

3.3.19 No work on the Site shall begin prior to the endorsement and recording of the Plan.

3.3.20 All work on the Site shall be conducted in accordance with the Rules, except as waived, and the terms of this approval, and shall conform with and be limited to the improvements shown on the endorsed Plan.

3.3.21 Prior to the issuance of a building permit on the Site the following documents shall be recorded at the Middlesex South District Registry of Deeds or the Land Court:

- This Decision;
- The endorsed Record Plan;
- The Restrictive Covenant unless another performance guarantee is provided;
- The "Declarations of Common Drive of Easement and Maintenance / Private Way Maintenance Agreement and Covenant" as required herein, including the "Stormwater Operation and Maintenance Manuals" and the landscaping covenant for the lots on Jamie's Way with the approved landscape plan attached;
- The covenant, indemnity and personal guarantee required in paragraphs 3.3.4 through 3.3.6 above as determined by Town Counsel.

3.3.22 Prior to the issuance of the last occupancy permit, Submit an as-built plan to the Acton Engineering Department upon the completion of all construction approved hereunder certified by a PLS and a statement by a PE that the subdivision has been constructed as designed and if not, any differences shall be noted in the statement.

3.4 LIMITATIONS

The authority granted to the Applicant under this approval is limited as follows:

3.4.1 The foregoing required modifications and conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Rules and other applicable laws and regulations.

3.4.2 This subdivision approval applies only to the Site identified in this Decision and to the activity as shown on the Plan.

3.4.3 Other approvals or permits required by law and other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.

3.4.4 This subdivision approval shall expire if not endorsed on the Plan within one year from the date that this Decision has been filed with the Town Clerk. It shall also expire, if street construction and installation of services are not completed within 8 years from the date that this Decision has been filed with the Town Clerk. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to this Decision and to require any appropriate modifications of the Plan.

3.4.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this Decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to M.G.L. ch. 41, s. 81-BB and shall be filed within 20 days after the date of filing this Decision with the Town Clerk.

5 CERTIFICATE OF ACTION

This document stating the Decision of the Board shall serve as the Certificate of the Board's Action to be filed with the Town Clerk pursuant to MGL, Ch. 41, S. 81-U.

Roland Bartl

Roland Bartl, AICP, Planning Director
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this Decision has passed and there have been no appeals made to this office.

_____

Eva Szkaradek, Town Clerk

Copies
furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Town Engineer	Municipal Properties Director
Town Clerk	Natural Resource Director	Town Manager
Fire Chief	Police Chief	Acton Water District
Owners	Historical Commission	Assistant Assessor