

March 4, 2024

Ms. Lisa Pearson
Planning Director
Salisbury Planning Department
5 Beach Road
Salisbury, MA 01952

CDCI File #: 21-10254
Definitive Subdivision Plan
159 Beach Road
Salisbury, MA 01952

Dear Ms. Pearson,

Civil Design Consultants, Inc. (CDCI), has prepared this letter to summarize revisions made to the plan set to address comments received in a peer review letter from Joseph J. Serwatka, P.E., dated February 25, 2024. Comments received throughout the peer review process have been addressed as described below:

Sheet C-3, Definitive Subdivision Plan

1. Please find the attached letter from Johnson & Borenstein, LLC, justifying the filing of a Definitive Subdivision Plan.
2. The portion of land has been removed from land court, the Endorsed Notice of Voluntary Withdrawal is attached for review.

Sheet C-4, Grading, Drainage & Utilities Plan

1. Dwelling footprints are shown for illustrative purposes only, and the final size and location may vary from that shown on the plan. Roof drywells will be appropriately sized to accommodate the proposed roof areas.
2. The proposed dwellings are shown for illustrative purposes only and meet all Zoning setbacks. The Applicant would be open to a condition requiring driveways to be designed such that vehicles are parked entirely on the lots.
3. The sewer services have been revised to connect to the main in Old County Road.
4. The plan has been revised to depict bituminous concrete pavement in the right-of-way of Old County Road.
5. The water and sewer services have been revised to connect to the mains in Old County Road.
6. The trees on the plan have been revised, one oak tree is to be removed to construct the Lot 2 driveway and two pine trees are to be removed to construct the Lot 1 driveway. Please note that, as mentioned above, the dwellings are shown for illustrative purposes only and the final footprints, including driveway location, may vary from the submitted plan. All appropriate permits will be obtained prior to construction of the driveways.
7. The erroneous section of Project Note 15 has been removed from the plan set.
8. The referenced notes are on the plan set to satisfy the requirements of the Salisbury Planning Board Rules and Regulations Governing the Subdivision of Land, Section 6.4.4.

Sheet C-5, Construction Plan

1. The referenced notes are on the plan set to satisfy the requirements of the Salisbury Planning Board Rules and Regulations Governing the Subdivision of Land, Section 6.4.4.
2. The referenced not is included to satisfy the requirement of Section 11.2.3 – 15 of the Rules and Regulations.
3. The proposed limit of work has been revised as requested.


Drainage Report

1. Watershed maps are now provided for review.
2. A revised signed and stamped Checklist is provided for review.
3. The reference to redevelopment was made in error and has been removed from the checklist.

We appreciate your consideration of this matter. If you have any questions or comments, or require additional information, please do not hesitate to contact this office.

Very Truly Yours,

CIVIL DESIGN CONSULTANTS, INC.

A handwritten signature in blue ink, appearing to read "William Hall", is positioned above the printed name.

William Hall, P.E.
Project Manager

cc: Larkin Real Estate Group, Inc. – Applicant
CDCI File#: 21-10254

JOHNSON &
BORENSTEIN, LLC
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Of Counsel

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Paralegals

Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Tina M. Wilson

February 28, 2024

Via hand delivery

Salisbury Planning Board
Town Hall
5 Beech Road
Salisbury, MA 01952

Re: Definitive Subdivision Plan
Property- 159 Beach Road
Applicant- Larkin Real Estate Group, Inc.

Dear Salisbury Planning Board,

On behalf of the Applicant, I submit the following discussion of law for your consideration in connection with the above-reference definitive subdivision plan.

I. The filing of a preliminary subdivision plan, followed by a definitive subdivision plan, “freezes” the zoning in effect at the time of the filing of the preliminary plan.

“In other states, zoning freezes arise through a constitutional analysis of vested rights. *See generally* E. Ziegler, *Rathkopf’s The Law of Zoning and Planning*, c. 70, Vested Rights and Estoppel Claims, at § 70:3 (West 4th ed. 2009 & Supp. 2016). The legislature in Massachusetts chose to provide a more predictable framework for landowners in the statutory protections of G.L. c. 40A, § 6. Given the rapidity with which a zoning amendment may be adopted that would otherwise prohibit a proposed use or structure that the local bylaw or ordinance previously allowed, a zoning freeze may be the only means for a landowner to retain previously acknowledged property rights and expectations.

Plan freezes are described in the fifth and sixth paragraphs of Section 6, which read as follows: ‘If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice

of such submission has been given to the city or town clerk before the effective date of ordinance or bylaw, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or bylaw, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval . . . ’ ”. MCLE, Massachusetts Zoning Manual, s. 7.3 (2021) *citing* G.L. c. 40A, s. 6, paras. 5 & 6.

II. The freeze applies to the land shown on the subdivision plan and is not limited to the specific development scheme reflected in the plan.

“We reject the town's argument that the words "land shown on the plan" mean the freeze provision covers only the subdivision plan submitted and ultimately approved. Where the language of a statute is clear, courts must give effect to its plain and ordinary meaning and the courts need not look beyond the words of the statute itself. See *LeClair v. Norwell*, 430 Mass. 328, 335, 719 N.E.2d 464 (1999) ("When statutory language is clear and unambiguous it must be construed as written"), Here the words "the land shown" are clear and unambiguous. The Legislature did not say subdivision shown or lot shown, it said "land shown." Massachusetts Broken Stone Co. v. Town of Weston, 430 Mass. 637, 640 (2000), *various citations omitted*

In a subsequent case applying the ruling in Massachusetts Broken Stone and upholding a developer's use of the G.L. c. 40A, s. 6, plan freeze process, the Appeals Court held as follows,

“ . . . if this interpretation of § 6, fifth and seventh pars., has the effect of rewarding sham submissions, filed with no intention of implementation but solely to secure a zoning freeze, the remedy would appear to be legislative.” Kindercare Learning Ctrs., Inc. v. Town of Westford, 62 Mass. App. Ct. 924, 925 (2004)

III. Whether an applicant has any intention to record the plan or develop the land in conformity with the plan, is immaterial to the planning board's consideration of the plan for approval or endorsement.

“A further argument advanced by the appellants -- that the grid plan was properly rejected because the applicants never intended to implement it -- is without merit. Even if a finding of such lack of intention were justified (and we do not say that it is), that would be no ground for disapproving the plan. Our attention is directed to nothing in the Subdivision Control Law preventing an owner from engaging in the fruitless exercise of filing subdivision plans which he intends never to utilize.” Chira v. Planning Bd. of Tisbury, 3 Mass. App. Ct. 433, 439 (1975), *further appl revw den* 368 Mass. 818 (1975)

Whether the applicant submitted its plan solely for the purpose of gaining the benefit of a zoning freeze and with no intent of recording the plan or developing the land in conformance with the plan is immaterial to the Planning Board's action on the plan. Long v. Board of Appeals, 32 Mass. App. Ct. 232, 236 (1992) (“Application of a subjective test of intent to determine whether to endorse a plan would be inconsistent with the purpose of § 81P The test is, therefore, an objective one, and objectively the plan submitted, which showed two adjacent lots with adequate frontage, met the requirement for endorsement.”)

IV. Where a plan is submitted in conformity with the published subdivision regulations, a planning board is obligated to approve it.

“The intent of §81M is clear: If a plan conforms with the board's rules and regulations and with all recommendations of the board of health, the planning board has no choice but to approve the definitive plan.” Mark Bobrowski, Handbook of Massachusetts Land Use and Planning Law §14.03 (Fifth Edition, 2023-3 Cum. Supp. 2022) *citing* Bd. of Selectmen of Ayer v. Planning Bd. of Ayer, 3 Mass. App. Ct. 545, 548 (1975).

V. A parcel of land with adequate frontage on an existing way may be shown on either an ANR or a definitive subdivision plan, and may trigger a full zoning freeze under G.L. c. 40A, s. 6, 5th para.

“... a parcel of land with adequate "frontage" on an existing way may be shown **on either** an ‘approval not required’ (ANR) plan or a plan for which approval under the Subdivision Control Law is required. Such a parcel can have the benefit of a full freeze under the fifth paragraph of Section 6 if shown on the subdivision plan, and is not necessarily relegated to the status of an ANR plan endorsed under Section 81P.” MCLE, Massachusetts Zoning Manual, s. 7.3.2(g) (2021) *citing* Landgraf Assocs., Inc. v. Bldg. Comm'r of Springfield, 4 Mass. App. Ct. 840 (1976), **emphasis added**.

For these reasons and those set forth in the Applicant’s definitive subdivision application package and as presented to the Planning Board at its hearing on this matter, it is respectfully requested that the Board approval the Applicant’s plan as submitted.

Very truly yours,

JOHNSON & BORENSTEIN, LLC

Donald F. Borenstein

Donald F. Borenstein

DFB~klb

Cc: Larkin Real Estate Group, Inc.



**THE TRIAL COURT OF MASSACHUSETTS
LAND COURT**

Three Pemberton Square
Boston, MA 02108
TEL: (617) 788-7470

Title Examination Department

Landcourt.Title@jud.state.ma.us

**LAND COURT REGISTERED LAND
ENDORSED NOTICE OF VOLUNTARY WITHDRAWAL**

This electronically mailed ENDORSED NOTICE OF VOLUNTARY WITHDRAWAL is to be registered with the Registered Land Registry District in accordance with the Chief Title Examiner's Memorandum dated August 3, 2021, for the processing of Subsequent to Registration (SBQ) cases and Condominium approvals.

Case No.: 21-SBQ-06250-07-001

It is **ORDERED**:

Pursuant to G.L. c. 185, § 52, the Court approves the Voluntary Withdrawal from the Registration System of the land herein described, subject to all registered rights outstanding as of the date hereof.

BY THE COURT (Piper, C.J.)

/s/ Gordon H. Piper

DATED	ATTEST
January 12, 2022	/s/ Deborah J. Patterson, Recorder
APPROVED FOR REGISTRATION BY THE COURT	TITLE EXAMINER SIGNATURE
	/s/ Robert Walsh, Esq.



Trial Court of Massachusetts
Land Court Department
3 Pemberton Square, 5th floor
Boston, MA 02108
(617) 788-7470

**NOTICE OF VOLUNTARY
WITHDRAWAL OF LAND
from the Registration System**

(G.L. c. 185, § 52)

CASE NUMBER 21-SBQ-06250-07-001

COURT USE ONLY

The owners of the fee simple estate in all of a parcel of land that has been registered under G. L. Chapter 185 withdraw the land from the provisions of § 52 of Chapter 185.

The land withdrawn is described in Certificate of Title No. 56649 in Book 261, at Page _____
issued from the _____ South Registry District of _____ Essex County,
shown on Land Court Plan No. 6250A as follows:

- ☒ all of the land described in the certificate of title.
☐ part of the land described in the certificate of title, namely:

The description of the land in the form contained in the certificate of title is attached hereto as Exhibit A.

The street address (if any) of the land is: 159 Beach Road, Salisbury, MA

DATE SIGNED: June 22, 2021

SIGNATURE OF OWNER

☒ Edward Foote, Jr.

PRINT NAME (FIRST, MIDDLE, LAST)

Edward Foote, Jr.

STREET ADDRESS

123 Central Avenue

CITY/TOWN

Salisbury

STATE

MA

ZIP CODE

01952

SIGNATURE OF OWNER

☒ Joanne F. Blais

PRINT NAME (FIRST, MIDDLE, LAST)

Joanne F. Blais

STREET ADDRESS

10469 Canyon Cliff Court

CITY/TOWN

Las Vegas,

STATE

NV

ZIP CODE

89129

COMMONWEALTH OF MASSACHUSETTS

SS: Essex

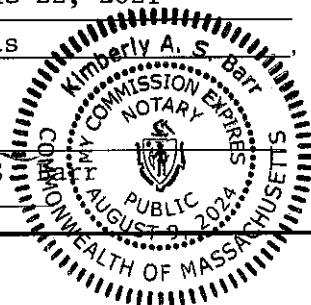
Dated: June 22, 2021

Then personally appeared the above-named Edward Foote, Jr. and Joanne F. Blais
and acknowledged the foregoing instrument to be their free act and deed, before me

☒ Kimberly A. S. Barr
SIGNATURE OF NOTARY PUBLIC

My Commission Expires: 8/9/24

Kimberly A. S. Barr



LAND COURT ENDORSEMENT

Pursuant to G. L. c. 185, § 52, the Court approves the Voluntary Withdrawal from the registration system of the land described above, subject to all registered rights outstanding as of this date.

DATED _____

X

JUSTICE

EXHIBIT A

Lots 281 & 282
on Land Court Plan 6250-A sh.2
Filed with Certificate of Title No. 3421

South Essex County Registry of Deeds