

3/15/06

TOWN OF HARVARD'S MOU ELEMENTS / CRITERIA

DDEB GOVERNANCE COMMITTEE

MEMORANDUM OF UNDERSTANDING

1. GOVERNANCE

A. JURISDICTION

Beginning on July 1, 2009 (date of jurisdiction), the Town of Harvard will assume jurisdiction over the "Barnum Road" portion of the Devens Enterprise Zone. This is the geographic area comprised of approximately 206 acres of land within Devens located east of the railroad tracks to the former Barnum Gate. The assumption of jurisdiction explicitly includes the right to tax parcels within this area and the obligation to provide municipal services.

MassDevelopment shall provide all data and materials in its possession necessary for Harvard to assert jurisdiction and provide services, including assessor's data, plot plans, utility layouts, etc.

MassDevelopment will conduct land surveys necessary to delineate new town boundaries and the extent of any easements required to effect transfer of jurisdiction.

The Town of Harvard will not be responsible for the cost of legal or other services required to effect transfer of jurisdiction. It is expected these costs will be borne by project funds available to MassDevelopment or by additional funding received by the state or federal government.

Any properties owned by MassDevelopment, or other state agency, and leased or otherwise used as a source of revenue, shall be subject to taxation by the Town of Harvard or shall provide a payment in lieu of taxes directly related to its economic value.

It is expected that the residents of Devens will vote in the Town of Devens starting July 1, 2009.

B. MUNICIPAL SERVICES

Beginning with the date of jurisdiction, the Town of Harvard will provide police, fire, public works, and all other municipal services for its newly incorporated lands.

C. UTILITIES

Utility services (natural gas, electric, sewer, and water) will continue to be provided to the Barnum Road area of Harvard by the Devens/regional utility providers after the transfer of jurisdiction. Sufficient capacity will be reserved within the utilities to service the Barnum Road area at full buildout, including Army Reserve and National Guard parcels. Assessments, rates, and utility support services to the Barnum Road area shall be the same as for other general users of the utilities.

Capacity* for the sewer and water utilities shall be made available to the Town of Harvard at a future date in the event that the Town of Harvard wishes to provide for these services to its commercial district located on Ayer Road. MassDevelopment agrees to bear all costs related to the acquisition of the easements necessary to provide utility service from the Barnum Road area into Harvard's commercial district, including compensation to property owners within the enterprise zone.

*** Capacity is defined as the Title V generation rates to support a minimum of 800,000 sq. ft. of mixed commercial, industrial, and institutional development.**

The Town of Harvard shall have the right of access to the public water supply or wells in the Salerno and Patton (Well #3) area as a future municipal water supply.

D. DEC/PERMITTING

The unified permitting process shall continue to be provided to the parcels identified as (list) in the Barnum Road area by the Devens Enterprise Commission until the parcels have been developed, but no later than June 30, 2012. In the event the Town of Harvard adopts a unified permitting process and authority for these parcels, the unified permitting authority of the DEC will be assumed by the Town of Harvard's authority.

2. BOUNDARIES

The Town of Harvard's existing boundaries running through Devens will be adjusted as follows::

In the south to generally follow the layout of Route 2 from the Guilford rail crossing to the current town line where it crosses Route 2. Land south of Route 2 and east of the Nashua River will remain within the geographic boundaries of Harvard.

In the east to follow the Guilford rail line from its crossing with Route 2 until the rail line crosses the current town boundary with Ayer. Then to follow the current boundaries of the Devens Enterprise Zone east of the rail yard and south of Grove Pond.

In the north following the boundary of the Devens Enterprise Zone as it runs south of Grove Pond until that boundary meets the existing boundary with the Town of Ayer.

Approximately 2,600 acres of land now within the geographic boundaries of Harvard and lying north of Route 2, west of the Guilford rail line, and east of the Nashua River will be used to form the Town of Devens..

The Town of Harvard and the Town of Ayer will agree on a plan to protect the Grove Pond Well Field.

3. OWNERSHIP

Upon the transfer of jurisdiction, the Town of Harvard will assume ownership of the lands located with the public ways, sidewalks, the Cold Spring Brook Conservation Area, and any other dedicated open space or conservation lands. The town will grant suitable easements to MassDevelopment or its successors to maintain and provide public utility services to properties in effected area. Ownership of any other parcels will not be affected by this change in jurisdiction.

4. ZONING

A revised re-use plan and zoning bylaws for the Barnum Road area will be developed as part of the disposition legislation. A joint vote of the DEC, or a unified permitting authority established by the Town of Harvard to replace the DEC, and the Town of Harvard Town Meeting may amend the re-use plan and zoning bylaws for the Barnum Road area.

The Salerno Circle and golf course area of Devens shall be under permanent development restrictions to protect the viewshed and adjacent Harvard residential areas.

All parcels within the current boundaries of the Devens Enterprise Zone that will be subject to jurisdiction by the Town of Harvard shall be explicitly exempt from the provision of Chapter 40B Sections 20, 21, 22, and 23 of the Massachusetts General Laws allowing the bypass of local zoning for the provision of affordable housing. This exemption will come in force with the passage of the legislation implementing the provisions defined in this MOU.

To protect the town of Harvard from adverse development along its boundaries with Devens, MassDevelopment agrees to place deed restrictions limiting certain types of development on the parcels described in this paragraph. These deed restrictions shall go into effect within 24 months of the passage of legislation and the properties subject to the provisions in this paragraph shall be limited by the provisions of the paragraph immediately upon passage of the legislation. MassDevelopment may convey no parcels without including in the deeds these provisions.

- A. Commercial and residential development occurring within the Salerno Circle area (define) shall be subject to a height restriction of 35 feet, shall have no lighted signage, and shall in no other way significantly and adversely impact the viewshed from Harvard or the esthetic enjoyment of property in Harvard as a result of noise, excess or improper lighting, or other activities. A vegetative buffer should be maintained on the edge and slopes of the Salerno Circle area to allow screening of development on Salerno Circle from viewsheds in Harvard.
- B. Development within the golf course area (define) shall be limited to its current use or its conversion to residential use subject to a height restriction of no more than 35 feet, a density no greater than 3 units on any individual acre within the area and a total of no more than 200 units of housing developed within the area.

The Board of Selectmen of the Town of Harvard shall have standing to challenge any violation of these restrictions before the local permitting authorities and through the normal course of legal action that would be available to any resident with standing in the Town of Devens. Harvard's Board of Selectmen shall be considered an abutter to parcels in this area and shall receive any and all legal notices that would be required to be

transmitted to an abutter by the Town of Devens or the Devens Enterprise Commission acting for the Town of Devens.

5. HOUSING AND COMMERCIAL DEVELOPMENT

The commercial and industrial uses in the Barnum Road area shall be as allowed in the re-use plan and in the zoning bylaws.

There shall be no housing constructed in the Barnum Road area, unless allowed under an amendment to the re-use plan and zoning bylaws by a joint vote of the DEC and the Town of Harvard Town Meeting.

6. EDUCATION

The Town of Harvard shall continue to provide for the education of students who reside within its jurisdiction.

7. REUSE PROJECTS

Reuse of the Barnum Road area will be as provided for in the Barnum Road Master Plan developed in conjunction of the town of Harvard and adopted by MassDevelopment and the Devens Enterprise Commission in 2002(?). Changes to the Master Plan shall only be made with the consent of the DEC or a unified permitting authority established by the Town of Harvard to replace the DEC, and the Harvard Planning Board.

MassDevelopment shall complete improvements to Barnum Road, including the burial of utility lines, granite curbing, stormwater management systems, and landscaping for the Barnum Road area no later than June 30, 2009. The cost of these improvements shall be borne by MassDevelopment.

All parcels designated for development (get parcel numbers) shall be free of contamination, stored soils, or any other impediments to their beneficial development by the time of transfer of jurisdiction.

MassDevelopment will take steps to insure all properties within the Barnum Road area are in compliance with zoning prior to transfer of jurisdiction and will provide all funding required to enforce compliance with zoning for any parcels found not in compliance at the time of transfer.

8. FINANCIAL SUSTAINABILITY

Matters pertaining to the financial sustainability of Devens shall in no way delay or impact the transfer of jurisdiction of the Barnum Road area to the Town of Harvard on July 1, 2009.

9. ENVIRONMENTAL/HISTORIC PROTECTION

MassDevelopment, the Commonwealth of Massachusetts, and the United States Army shall continue to be responsible for any/all environmental remediation, monitoring, and other costs associated with contamination of any lands located within the Barnum Road area.

10. OPEN SPACE/RECREATION

The conservation land located within the Cold Spring Brook Conservation Area shall receive the protections afforded under Article 97 of the Massachusetts Constitution. The provisions of Article 97 shall be explicitly waived for the limited purpose of allowing easements to be granted and utility lines to be installed for the purpose of providing sewer, water, and other utilities, but not roadways, as may be authorized by a vote of Harvard's Annual Town Meeting. The wetlands bylaws of the state and town shall govern the passage of utility lines through the Cold Spring Brook Conservation Area, but no provisions of these laws shall be interpreted so as to have the effect of prohibiting the use of easements through the area for the purpose of providing utility services.

11. TRANSPORTATION

Trucks and other commercial traffic to Devens shall continue to be required to utilize the Jackson Road entrance and exit from Route 2. There will be no public ways constructed connecting the Barnum Road area with commercial or residential properties in Harvard. All public ways that may still be in existence providing passage from the Town of Harvard to the area designated to become the Town of Devens are considered discontinued at the new town border as per the provisions of Massachusetts General Laws and related case law. No person or organization may claim any damages as the result of the discontinuation of any road crossing the new town borders. No public way providing passage from the Town of Harvard to the area designated to become the Town of Devens shall be created without an affirmative vote of Harvard's Annual Town Meeting.

12. OTHER

The ISO rating of the Devens Fire Department will be extended to the Barnum Road area.

The activities of the Devens Restoration Advisory Board shall continue.