

March 28, 2022

Mr. William Marshall, Chairperson  
Devens Enterprise Commission  
33 Andrews Parkway  
Devens, MA 01434

Re: Determination of Zoning Compliance – Amenity Building and Related Uses  
Pathway Biotechnology Campus | 57 Jackson Road

Dear Chairman Marshall:

Highpoint Engineering, Inc, submits this letter and the attached memorandum on behalf of King Street Properties and their Counsel, Goulston & Storrs, to the Devens Enterprise Commission (the Commission) regarding a Determination of Zoning Compliance as allowed under 974 CMR 1.05 (2) of the Devens By-laws. Specifically, King Street requests that the Commission make a determination for the proposed Amenity Building and related uses, as proposed under the Pathway Biotechnology Campus Master Plan previously approved by the Commission.

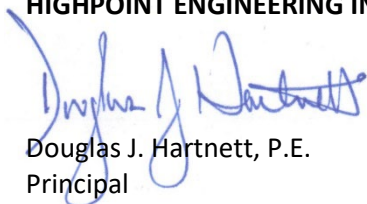
The Commission has issued Unified Permits to King Street and their associated real estate entities for development of 33, 39, and 45 Jackson Road, with construction ongoing on all three parcels. King Street is now proceeding with design and permitting for the final two properties, 57 and 75 Jackson Road. For 57 Jackson Road, this site will support a single biomanufacturing building, together with a detached accessory building referred to as the “Amenity Building” on the latest Master Plan reviewed by the DEC under the 39 Jackson Unified Permit application (the Project).

In reviewing the latest schematic design of the 57/75 Jackson development plan with DEC staff, they have recommended that King Street seek a Zoning Compliance Determination from the Commission prior to finalizing project design and submission of an application for a Level 2 – Unified Permit for 57 Jackson Road. The attached legal opinion regarding the Project’s compliance with Devens Reuse Plan and the Devens By-laws is hereby submitted for the Commission’s consideration.

King Street appreciates the Commission’s review of this request and looks forward to presenting the zoning opinion at the Commission’s next general business meeting on April 6<sup>th</sup>.

Please contact the undersigned if you have any questions.

Best regards,  
**HIGHPOINT ENGINEERING INC.**



Douglas J. Hartnett, P.E.  
Principal

encl.

cc: Tyson Reynoso, Julie Farrer: King Street Properties  
Peter Tamm, Patrick Gallagher; Goulston & Storrs

**MEMORANDUM**

TO: Tyson Reynoso, Julie Farrer  
CC: Doug Hartnett  
FROM: Peter Tamm, Pat Gallagher  
DATE: March 24, 2022  
RE: 57 Jackson Road, Devens, MA – Amenity Building

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This memorandum concerns the proposed development of an amenity building (the “Amenity Building”) at 57 Jackson Road, Devens, MA (the “Property”) to serve the tenants and other occupants of buildings to be constructed by King Street Properties or its affiliates (“KSP”) on the campus known and numbered as 33-75 Jackson Road, Devens, MA (the “Campus”).

We understand that, in the course of discussions with the Devens Enterprise Commission (“DEC”) and Devens planning staff, questions arose relative to the proposed uses of the Amenity Building, and compliance with the applicable requirements of the Devens Reuse Plan (the “Reuse Plan”) and the Devens Zoning By-Laws (the “By-Laws”). Below, we’ve addressed the proposed uses of the Amenity Building and the corresponding requirements of the Reuse Plan and By-Laws.

***I. Amenity Building – Proposed Uses***

The Amenity Building would be constructed substantially in the location shown on the Campus Master Plan previously approved by the DEC in connection with the permitting of the most recent Level 2 Unified Permit application for 39 Jackson Road. We understand that the potential uses of the Amenity Building include the types of amenities typically associated with suburban lab/R&D/office complexes, including:

- a café or similar food and beverage service, potentially including a tap room,
- a multi-purpose space for fitness and other activities, and
- conference rooms and similar amenities.

***II. Compliance with the Reuse Plan and By-Laws***

The proposed uses of the Amenity Building are incidental to the principal biomanufacturing, lab/R&D and office uses of the Campus, and can therefore be permitted as accessory uses to those allowed principal uses.

Allowed principal uses within the Innovation and Technology Business (“ITB”) district in which the Property is located include, among others, (i) office, (ii) light industrial, (iii) industrial, and (iv) research and development. The By-Laws broadly define each of the aforementioned use categories such that the DEC is able to evaluate specific proposed uses on a project-by-project basis. For example, the office use type “refers to offices, individual firms, or organizations which are **primarily** used for the provision of executive, management, administrative, financial, or professional services. Offices may be of the corporate, multiple building occupancy, or free-standing type, ... and other use classifications **when the service rendered is that customarily associated with administrative office services.**” (Emphasis added.) Likewise, the definition of research and development provides examples of uses that would be included, and notes “Research and development uses **may vary considerably in terms of scale of operations**, and may involve the continued development of improved or new products.” (Emphasis added.)

The term “accessory uses” is defined in the Regulations to include uses “incidental to, meaning less than 50% (unless another percentage is specified in the By-Laws or Regulations) of the area of, and on the same lot as, a principal use.”

Taken as a whole, the proposed uses of the Amenity Building constitute far less than 50% of the total area of the principal uses that will be located on the Campus. While the Amenity Building is a standalone building, it is intended to serve the tenants and other occupants of the Campus in the same way as incidental amenity spaces within multi-tenant buildings. Notably, there is no requirement under the By-Laws or Regulations that accessory uses be contained within the building with which they are associated.

Moreover, the proposed uses of the Amenity Building are no different from the types of amenities that are customarily housed within other suburban lab/R&D and office complexes in the region, with the sole distinction being that here, owing to the space needs and access security protocols of biomanufacturing users, it would be impractical to locate the proposed amenities within each individual building. The inclusion of the proposed uses in the Amenity Building will therefore help to achieve the goal of providing competitive, first-class biomanufacturing/R&D facilities in this region.

Some of the proposed uses of the Amenity Building, e.g., the proposed café, also have retail components and may be open to the public. However, any such uses would still properly be classified as accessory uses to the principal biomanufacturing, lab/R&D and office uses of the Campus. The retail nature of those proposed uses does not take away from the fact that they are first and foremost amenities that are necessary to attract first-class tenants to the Campus.<sup>1</sup> But for the principal uses of the Campus, the Amenity Building simply would not be contemplated

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<sup>1</sup> The uses contemplated within the Amenity Building cannot properly be considered small-scale retail. Small-scale retail is defined as “any use of a purely retail nature which is wholly contained within an office or other building primarily devoted to a non-retail use.” As noted above, the proposed café use and other uses contemplated for the Amenity Building are principally and primarily intended as amenities to attract first-class tenants to the Campus; therefore, they are not “of a **purely** retail nature.”

here, and the Amenity Building would not be proposed as a standalone facility, independent from the broader use and development of the Campus.

The By-Laws give the DEC discretion to determine the classification of proposed uses within Devens.<sup>2</sup> This is consistent with the Reuse Plan, which highlights the need for a flexible approach to attract new and innovative businesses to Devens: “The Devens reuse challenge demands a visionary planning effort grounded in environmental, social, and economic reality. It must be **realistic, pragmatic, market-driven, flexible and future-oriented.**” (Emphasis added.) The Reuse Plan further notes that “Long-term employment and high quality jobs will result from the creation of an Innovation and Technology Center that will foster businesses which are among the critical industry clusters in Massachusetts. The unique characteristics of Devens will allow the retention of technology businesses when they enter full scale production.”

### *III. Conclusion*

In summary, the uses contemplated for the Amenity Building are allowed in the ITB as incidental, accessory uses to the principal biomanufacturing, lab/R&D and office uses of the Campus. This is the case even though the uses within the Amenity Building would be contained in a separate building from the principal uses of the Campus, and even though some of the uses proposed for the Amenity Building would have retail components and potentially be open to the public. The proposed uses in the Amenity Building would, first and foremost, be oriented toward attracting first-class tenants to the Campus’s biomanufacturing, lab/R&D and office spaces. As noted above, the proposed Amenity Building uses are necessary in order to provide a competitive, first-class biomanufacturing and R&D campus, and are consistent with the underlying requirements of the By-Laws and goals of the Reuse Plan.

Furthermore, unlike with small-scale retail uses, which must be “wholly contained within an office or other building primarily devoted to a non-retail use,” there is no such requirement under the By-Laws or Regulations that accessory uses be contained within the building with which they are associated. The only requirements are that accessory uses constitute less than 50% of the area of the principal use, and that the accessory uses are located on the same lot as a principal use, both of which are satisfied in the case of the Amenity Building. Therefore, based on the contemplated uses described above being permitted accessory uses to the principal, allowed uses of the Campus, the Amenity Building is permitted under the By-Laws and Regulations to be constructed on the Campus as a detached, standalone structure.

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<sup>2</sup> Under Section VI(A)(2) of the By-Laws, the DEC “shall classify proposed uses of land within Devens according to the use types described hereafter, provided that if the Commission determines that a proposed use does not fit under any use type, it shall not be permitted.”