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VIA EMAIL

February 26, 2014

City of Cambridge Planning Board
344 Broadway
Cambridge, MA 02139

Re: 40 Thorndike Street, Cambridge

To the Cambridge Planning Board:

I have been retained by the Neighborhood Association of East Cambridge (NAEC), which is a citizens group of over 100 current members and growing, comprised of abutters to the 40 Thorndike St property as well as East Cambridge residents and other citizens of Cambridge. NAEC is strongly opposed to the proposed redevelopment of the Sullivan Courthouse building at 40 Thorndike Street (the “Courthouse”) by Leggat McCall Properties LLC (the “Developer”) as set forth in SP#288.

The renovation of the Courthouse for the purposes proposed by Leggat McCall fails to meet the criteria for special permit approval under MGL40A Section 6, and violates corresponding Cambridge Zoning Ordinances governing the extension of non-conforming structures and uses. The Division of Capital Asset Management & Maintenance (“DCAMM”), the State agency disposing of the property, stipulated in writing that any bidder “*will be subject to [Cambridge’s] zoning laws.*” To grant SP#288 would be “*substantially more detrimental*” than the previous use for several of the reasons enumerated in Article 10.43, as well as ordinances in Articles 5, 8 and 19. In fact, SP#288 should be denied for many reasons.

At the outset, we note three broad points.

First: The prior use and structure was solely intended as a *public use*. In fact, historically the site embodies the founding gift that largely established East Cambridge. That gift was made in 1813 “*to the inhabitants*” of Middlesex County with the explicit intent to promote this sort of public use “*in conformity*” with best building practices “*forever*” and “*for no other use whatsoever.*”

Second: It must be noted that the Courthouse, even if in keeping with the notion of public use, was an affront to those ideals of best practice. Outrageous nonconformity— it towers 300’ over residences zoned for just 35’ — is the tip of the iceberg. The Courthouse was a fiasco from start to finish, resulting in the demolition of historic 19th century properties, a five-fold cost overrun, failed infrastructure, lawsuits against the State from occupants and prisoners alike, and effective abandonment by 2008. It is an environmental hazard, and a thorough study in 2007 ordered by the Commonwealth budgeted a renovation cost of \$394m. The building stands as a beacon of corruption, graft, and bad management. The magnitude and implications of this failure are hard to overstate.

Third: The Developer seeks to change the use from public to private, yet maintain the nonconforming structure. That structure was only allowed because of governmental exemption from city zoning laws, in service of the greater public good. Developer cannot meet this higher standard of public use, and would violate change of use provisions stipulated in City ordinances, thus, the nonconformity can no longer be justified. Moreover, in this case, it is unclear that a nonconformity attained only by government fiat and born from a deeply flawed and/or illegitimate construction process can or should legally be perpetuated.

With reference to City ordinances in particular:

1. **Nonconformity:** per Article 8.11, there can be no doubt that the proposed privately owned, commercial, residential and retail use of this nonconforming structure will be substantially more impactful than its public use ever was as a courthouse and jail. While the Courthouse and jail did attract large numbers of people at times, those numbers were generally in the hundreds (not thousands), the courts had sporadic and relatively low duty cycles, prisoners occupied space incurring little or no influx or egress, and most usage was only during the hours of 8:30-4:30, Monday through Friday. Nearly all influx was restricted to the sole entrance on Thorndike Street: the building in effect served as a wall on its three residential-facing sides leaving them relatively undisturbed. The Board must also recognize that the use of this structure for the past 7+ years has solely been as a jail. The proposed change of use would incur thousands of occupants and visitors, and roughly 5,000 trips per day, flowing through and around the building, intensively and at all hours and on all sides. This pattern of use will certainly “*be substantially more detrimental to the neighborhood than the existing nonconforming structure.*” (Article 8.22).
2. **Traffic:** Despite the City's traffic study, and the fact that there has been no credible city-wide or East Cambridge traffic survey in recent years, it is clear from the Developer’s application that the traffic generated will cause substantial changes in the established neighborhood character, thus violating Article 10.43(b). While the Special Permit application suggests that impact on local residences will be mitigated because “most traffic will travel on First Street,” it also makes clear that the neighborhood can expect several thousand vehicular trips per day, including not only day workers but also a significant increase in box truck traffic, garbage trucks, buses and

other service vehicles that will invariably swirl around all sides of the building. The Developer also disregards traffic snarls generated by dropping off visitors and double parking or parking illegally while dropping off retail customers, as is to be expected. The previous Courthouse, even with its comparatively low use, often consumed every available space on side streets throughout the neighborhood. The proposed impact will be significantly worse.

The Board must also recognize that Third Street is the heaviest traveled thoroughway and is the site where the traffic study finds lack of sufficient pedestrian and bicycle facilities. Third Street is clogged at rush hour, and the proposed use will congest thousands of new vehicular trips at the choke point. While the daily trip number seems to be underestimated, even accepting that number, the Board must take into consideration the burgeoning traffic load caused by the development of numerous properties in the vicinity. It would be erroneous to conclude that relying on the MBTA, especially in light of current conditions, will remedy this.

In short, the nominal findings presented by the Developer and the City, while necessary, are in no way sufficient to conclude that impact will not be significant. SP#288 violates both Articles 19.25.11 and 10.43(b).

3. **Privacy:** Allowing development of the full high-rise structure, more than 200' above the applicable zoning limit, will substantially impact the privacy considerations the Board is required to consider. Per Article 5.28.28.1, the Board is required to maintain a reasonable level of privacy for abutters. The nonconforming height will allow a substantial visual intrusion on virtually all previously private open space of abutters and neighbors.
4. **Urban Design:** The Board must require the redevelopment of this site to be consistent with the Urban Design objectives set forth in Article 19.25.2, 19.30, and specifically the Eastern Cambridge Design Guidelines. Those clearly stated goals are: “*to use finely graduated heights to create transitions in scale from Kendall Square to residential neighborhoods*” and to “*preserve and enhance neighborhood character.*” A tower roughly 300' high that abuts and disrupts residences zoned for 35' is the antithesis of that. In addition, while there seems to be no recent urban master plan for East Cambridge, it is hard to believe that an urban planner would propose locating a busy, 22-story corporate office tower to abut a quiet residential zone.

NAEC and community members have given numerous other reasons for which the Board has authority to deny SP#288, including inadequate parking, light pollution, wind shear, solar glare and other factors. For example, Developer ignored Article 10.42.1 by failing to post and maintain public notification panels. Developer has not fully presented the environmental impact of this building, and any request for a waiver of project review under the Massachusetts Environmental Protection Act should be denied. Thus, for many reasons, NAEC supports the denial of SP#288, the termination of

the nonconforming status of this building, and the return of this site to the people of Cambridge for renewed community purposes with appropriate development.

NAEC appreciates that the Board operates performe within the scope of city ordinances. But the Board also has the duty of care to preserve community values, protect the integrity of neighborhoods, and ensure planning that improves the physical environment of the City. NAEC seeks to ensure that the Board upholds that duty.

Very truly yours,

Michael S. Nuesse