Neighborhood Association of East Cambridge

April 2, 2014

To: Cambridge Planning Board, Board of Zoning Appeal, City Council, City Manager and Community Development Department

Dear City Officials,

The Neighborhood Association of East Cambridge (NAEC) writes to you today to state our firm opposition to the proposed redevelopment plan for the Sullivan Courthouse as set forth in SP #288. NAEC is a new organization of several hundred community members (including project abutters), whose thoughtful and unwavering opposition to this redevelopment continues to grow support.

We believe the Sullivan Courthouse cannot be considered a legal pre-existing nonconforming structure such that a Special Permit could be granted to authorize its continued nonconformity. Our legal counsel has explained that because the State is immune from the City's zoning laws, the structure is not a pre-existing nonconforming structure, but rather a "violative" structure and not governable under G.L. c. 40A s.6, nor, consequently, Article 8.22 of our City ordinances. Where this enormous structure was created, in spite of City and community outcry, only because the State had the ability to bypass local regulations, a private developer cannot obtain rights that are only available to the State. The continuation of the hardships visited upon the neighborhood by this structure must not be allowed for private use and profit. We ask that the City Solicitor make clear that the Planning Board does not have jurisdiction to authorize this project.

While it is our position that only a variance would authorize the redevelopment proposed in SP 288, even were the Planning Board to conclude that a Special Permit could be granted to continue this nonconformity, SP 288 would be substantially more detrimental to the neighborhood than the current structure. The developer has failed to bring forth a credible analysis of its impacts to prove otherwise. In each developer study we considered (traffic/parking, light, wind), we found substantive errors, omissions and/or misrepresentations. Consider, for example, that the developer's proposal triggered a mandatory full Environmental Impact Review (EIR) with MEPA. That is because in its MEPA filing, the developer told the State EEA (Office of Energy and Environmental Affairs) that there would be 4,646 ADT's (new average daily trips on roadways), which well exceeds the MEPA threshold of 3,000 vehicular trips per day. But the developer asked MEPA to waive that full EIR. Now, the number 4,646 appears in the developer's report to our City as a total (vehicular ADT's, plus individuals who come by mass transit, bike and on foot) — except that it is not an accurate total. The correct total is 4,812 (if one is to believe the underlying data). Should the Planning Board choose to consider SP 288, we urge City officials to engage unbiased, third-party experts to thoroughly assess the impacts of this proposal, and hold the developer to its burden to show that the development "will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use." (Art. 8.22)

Also significant is that based on this unreliable data, the developer is seeking a waiver of a full EIR review under the MEPA regulations. Not only should a waiver

be denied based on the developer's incorrect data, but the enormity of the project (it is the single biggest standalone office building in the City), and the concern of the surrounding community (which is situated in an air quality hot spot), justify strict application of our environmental review regulations. In addition, a project of this size warrants a review of additional Greenhouse Gas Emissions, with consideration given to the City and State's goals to reduce such harmful emissions.

Our investigation of the developer's MEPA submission and the agency's stated preliminary intention to grant the waiver, shows granting a waiver would fail to comply with MEPA regulations under 301 CMR 11.00 in numerous key respects:

1. The EEA has not cited evidence that proponents face "undue hardship" 11.11(1)(a);
2. It failed to offer the option to utilize a Phase One Waiver 11.11(4);
3. It failed to comply with the requirement to make an explicit finding that an EIR will "not serve to avoid or minimize Damage to the Environment" 11.11(1)(b);
4. It failed to determine that "the project is likely to cause no Damage to the Environment" 11.11(3)(a);
5. Draft waiver fails to conclude there are "ample and unconstrained infrastructure facilities" 11.11(3)(b);
6. It does not detail "potential environmental impacts from the project and mitigation measures." 11.11(6);
7. It fails to list "the reasons for the waiver, including any findings required" per 301 CMR 11.11(1-4);
8. Regulations require that the draft waiver shall be printed in the Environmental Monitor "which begins the public comment period," but MEPA wrote that public comment has yet to begin. 11.11(6);
9. The Secretary erroneously proposes to conclude that no advantage is to be gained by following the normal EIR process. In fact a suitable EIR for the Sullivan Courthouse project would include a section on alternatives as required by 11.06(9).

Pursuant to the City's duty to protect public health, the City should weigh-in firmly with the EEA in support of a full EIR being conducted under the MEPA regulations.

We hope this letter is helpful in your consideration of this matter, and that it begins to make more clear why the current proposal from LMP is unacceptable.

We will continue to research these issues and we look forward to continuing to work with the City to ensure that the rights and concerns of the City's residents are respected.

Sincerely,

The Neighborhood Association of East Cambridge