

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

MIDDLESEX, ss.

14 MISC _____

**MICHAEL HAWLEY, GRAHAM GUND, MARIE
SACCOCCIO, and ROGER SUMMONS,**

Plaintiffs

v.

**PLANNING BOARD OF CAMBRIDGE, and HUGH
RUSSELL, H. THEODORE COHEN, STEVEN
COHEN, THOMAS SIENIEWICZ, STEVE WINTER,
and CATHERINE PRESTON CONNOLLY,
as they are members of the PLANNING BOARD, and
LMP GC HOLDINGS, LLC, and the
COMMONWEALTH OF MASSACHUSETTS,**

Defendants

COMPLAINT

NATURE OF THE ACTION

1. This is an appeal pursuant to G.L. c. 40A, s. 17, of the decision (the “Decision”) of the Planning Board of the City of Cambridge (“Planning Board”) filed with the City Clerk on October 30, 2014, which granted four (4) special permits to LMP GC Holdings LLC (“LMP GC”) to convert the former Sullivan Courthouse, located at 40 Thorndike Street, Cambridge, Massachusetts (the “Subject Property”) to a mixed use building with 476,303 square feet of gross floor area for office, retail, and multifamily uses. The Decision is attached as Exhibit 1.

PARTIES

2. Michael Hawley is the owner of property located at 101 Third Street, Apartment 3, Cambridge, Massachusetts, and resides at this address.

3. Marie Saccoccio is the owner of property located at 55 Otis Street, Cambridge, Massachusetts, and resides at this address.

4. Graham Gund is the owner of property located at 47 Thorndike Street, Cambridge, Massachusetts, and resides at this address.
5. Roger Summons is the owner of property located at 101 Third Street, Apartment 2, Cambridge, Massachusetts, and resides at this address.
6. The Planning Board of Cambridge is a duly established agency of the City of Cambridge with an office located at City Hall Annex, 344 Broadway, Cambridge, Massachusetts.
7. Hugh Russell is a member of the Planning Board and resides at 1 Corliss Place, Cambridge, Massachusetts.
8. H. Theodore Cohen is a member of the Planning Board and resides at 16 Milton Street, Cambridge, Massachusetts.
9. Steven Cohen is a member of the Planning Board and resides at 26 Fayette Street, Cambridge, Massachusetts.
10. Thomas Sieniewicz is a member of the Planning Board and resides at 84 Magazine Street, Cambridge, Massachusetts.
11. Steve Winter is a member of the Planning Board and resides at 7 Linnacan Street, #4, Cambridge, Massachusetts.
12. Catherine Preston Connolly is a member of the Planning Board and resides at 20 Carver Street, #3, Cambridge, Massachusetts.
13. LMP GC Holdings LLC is a Massachusetts limited liability company with an address c/o Leggat McCall Properties LLC, 10 Post Office Square, Boston, Massachusetts.
14. The Commonwealth of Massachusetts acting through its Division of Capital Asset Management and Maintenance (“DCAMM”), is the owner of the property.

STATEMENT OF THE FACTS

15. On or about November 23, 2013, LMP GC applied to the Planning Board for four (4) special permits to convert the former Sullivan Courthouse (the “Courthouse”), located at 40 Thorndike Street, Cambridge, Massachusetts (the “Subject Property”) to a mixed use building with 476,303 square feet of gross floor area for office, retail, and multifamily uses.
16. LMP GC had standing to apply because it had an equitable interest in the Subject Property, which, at the time of the application, was owned by the Commonwealth of Massachusetts.
17. In 2013, LMP GC applied for the following special permits from the Planning Board, under

the following sections of the Cambridge Zoning Ordinance (the “CZO”), to implement its proposed conversion:

- | | |
|---|------------------|
| * Request for Project Review Special Permit | Section 19.20 |
| * Alteration of a Nonconforming Structure | Section 8.22.2.a |
| * Conversion of Nonresidential Structure to Residential Use | Section 5.28.2 |

18. The Courthouse was constructed on the Subject Property between 1968 and 1974 on approximately 1.37 acres (59,788 square feet) then owned by Middlesex County.

19. The Subject Property is located in Cambridge’s Business B Zoning District.

20. The Courthouse contains 595,000 square feet. It is approximately 280 feet in height, with 22 stories.

21. When the Courthouse was constructed, the applicable provisions of the CZO limited Floor Area Ratio (“FAR”) to 4.0. The Courthouse has an FAR of approximately 9.94. Under today’s stricter CZO, the Courthouse now violates the provisions limiting gross floor area, height, and FAR.

22. In 1997, the Massachusetts Legislature abolished Middlesex County as a governmental entity. Ownership of the Subject Property was transferred to the Commonwealth of Massachusetts.

23. An entity or agency created by the Massachusetts Legislature is immune from municipal zoning regulations (absent statutory provision to the contrary) at least in so far as that entity or agency is performing an essential governmental function. A county stands in the same position as the other legislatively created entities for purposes of applying this rule.

24. Accordingly, the Courthouse was immune from local zoning when it was constructed in the period 1968-1974.

25. Section 5.28.2 of the current CZO states:

5.28.2 Conversion of Non Residential Structures to Residential Use

Where it is proposed to convert an existing principal use structure, designed and built for non residential use, to residential use (excluding Transient Accommodations and Trailer Park or Mobile Home Park listed in Section 4.31 (I-j)), the dimensional standards generally applicable in the district as set forth in the Tables of Dimensional Requirements in Section 5.30 and other applicable regulations in this Ordinance, including permitted uses, Section 4.30 – Table of Use Regulations, shall apply. However, where some or all of those requirements cannot be met, including any use, dimensional or procedural requirement that may apply in the base district, the following provisions shall apply to such conversion after issuance of a special permit by the Planning Board. The provisions

in this Section 5.28.2 shall apply in all zoning districts with the exception of districts with an Open Space designation.

26. Section 8.22.2.a of the current CZO states:

8.22.2 The following changes, extensions, or alterations of a pre-existing nonconforming structure or use may be granted in the following cases after the issuance of a special permit. Such a permit shall be granted only if the permit granting authority specified below finds that such change, extension, or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

a. In an Office, Business, or Industrial District the Board of Zoning Appeal may issue a special permit for the alteration or enlargement of a nonconforming structure, not otherwise permitted in Section 8.22.1 above, or the enlargement (but not the alteration) of a nonconforming use, provided any alteration or enlargement of such nonconforming use or structure is not further in violation of the dimensional requirements in Article 5.000 or the off street parking and loading requirements in Article 6.000 for the district in which such structure or use is located and provided such nonconforming structure or use not be increased in area or volume by more than twenty-five (25) percent since it first began to be nonconforming.

27. Section 19.21 of the current CZO states:

19.21 Purpose. It is the intent of this Section 19.20 to ensure that new construction or changes of use in existing buildings (1) are consistent with the urban design objectives of the City and (2) do not impose substantial adverse impacts on city traffic. A special permit process is established by which the Planning Board may make such findings.

28. On January 7, 2014, the Planning Board opened a public hearing to consider the special permit applications of LMP GC.

29. On information and belief, the Courthouse no longer serves as the locus of an essential government function because the operation of the jail ended sometime during the summer of 2014.

30. In July of 2014, LMP GC amended its application to include a request for a special permit pursuant to Section 6.22.2. The current CZO states:

6.22.2 The Board of Zoning Appeal may grant a special permit for off site accessory parking not allowed in Subsection 6.22.1 (a) provided that convenient and safe access from the parking facility to the use being served is provided in accordance with the following conditions:

- (a) No off site accessory parking facility may be located on a lot which has a more restrictive zoning classification than the lot on which the use being served is located.
- (b) Off site accessory parking facilities shall be located within four hundred (400) feet of the lot being served for residential uses and within one thousand (1000) feet of the lot

for other uses.

31. After several sessions of a continued public hearing, the Planning Board closed the hearing on September 30, 2014. The Board voted unanimously to approve all four (4) special permits. The Decision was filed with the City Clerk on October 30, 2014.

COUNT I

32. The plaintiff realleges the facts contained in paragraphs 1 - 31, and incorporates same by reference herein.

33. The Courthouse was constructed in the period 1968 - 1974. The Courthouse did not comply with the CZO then in effect with regard to FAR. However, as a facility of Middlesex County it was immune from local zoning requirements because served as the locus of

34. Article 2.000 of the CZO defines a “nonconforming structure” as follows:

Nonconforming structure. Any structure which does not conform to the dimensional requirements in Article 5.000 or to the parking and loading requirements in Article 6.000 of this Ordinance for the district in which it is located; provided that such structure was in existence and lawful at the time the applicable provisions of this or prior zoning ordinances became effective.

35. The Courthouse was not “in existence and lawful at the time the applicable provisions of this or prior zoning ordinances became effective.”

36. The special permit granted pursuant to Section 8.22.2.a anticipates that the Courthouse will be fully “decommissioned” as the locus of an essential government function. After its decommissioning, the Courthouse does not constitute a nonconforming structure. Instead, it is a structure formerly authorized by the principle of government immunity or supremacy and is now a violative structure beyond the statute of limitations set forth in G.L. c. 40A, s. 7.

37. Consequently, LMP GC was not eligible to apply for a special permit pursuant to Section 8.22.2.a of the CZO and the Planning Board was in excess of its authority in granting this special permit.

WHEREFOR, the Land Court is requested to nullify the decision of the Planning Board filed with the City Clerk on October 30, 2014, because it was arbitrary and capricious, an abuse of discretion, and in excess of the Board’s authority.

COUNT II

38. The plaintiff realleges the facts contained in paragraphs 1 - 37, and incorporates same by

reference herein.

39. The original notice of the public hearing specified that LMP GC applied for three special permits pursuant to Sections, 8.22.2.a, 19.20, and 5.28.2 of the CZO. No reference was made to a special permit application pursuant to Section 6.22.2.

40. In July of 2014, LMP GC modified its application to include a request for a special permit pursuant to Section 6.22.2 of the CZO, which governs off-site accessory parking:

6.22.2 The Board of Zoning Appeal may grant a special permit for off site accessory parking not allowed in Subsection 6.22.1 (a) provided that convenient and safe access from the parking facility to the use being served is provided in accordance with the following conditions:

- (a) No off site accessory parking facility may be located on a lot which has a more restrictive zoning classification than the lot on which the use being served is located.
- (b) Off site accessory parking facilities shall be located within four hundred (400) feet of the lot being served for residential uses and within one thousand (1000) feet of the lot for other uses.

41. However, no notice of this application was sent to any of the plaintiffs, who are parties in interest as that term is used in G.L. c. 40A, s. 11.

42. Published and posted notice of this application, as required by G.L. c. 40A, s. 11, was defective. The notice for the continued public hearing of July 29, 2014, does not mention the application pursuant to Section 6.22.2. The notice for the continued public hearing of September 30, 2014, does not mention the application pursuant to Section 6.22.2. See Exhibit 2.

43. Section 6.22.2 states that “off site accessory parking facilities ***shall be located*** within four hundred (400) feet of the lot being served for residential uses and within one thousand (1000) feet of the lot for other uses. (emphasis supplied)

44. LMP GC has proposed to locate 92 parking spaces on the Subject Property. An additional 420 parking spaces will be located off-site.

45. LMP GC has proposed to gain control of off-site parking spaces at either the municipal parking garage on First Street or the Cambridgeside Galleria. Portions of the First Street parking garage are not within 300 feet of the Subject Property as required by the CZO.

46. In addition, LMP GC did not demonstrate to the Planning Board that it has legal control of either off-site parking location.

47. The Decision impermissibly delegates the location of the required off-site parking to other persons or entities and involves a further determination of substance before a building permit or certificate of occupancy may issue. *Weld v. Board of Appeals of Gloucester*, 345 Mass. 376 (1963).

48. The location of the off-site parking at the Cambridgeside Galleria does not provide “convenient and safe access from the parking facility to the use being served.” The distance and traffic congestion in the area presents a significant risk to both pedestrians and motorists that results in substantial detriment.

WHEREFOR, the Land Court is requested to nullify the decision of the Planning Board filed with the City Clerk on October 30, 2014, because it was arbitrary and capricious, an abuse of discretion, and in excess of the Board’s authority.

COUNT III

49. The plaintiff realleges the facts contained in paragraphs 1 - 48, and incorporates same by reference herein.

50. Section 5.28.2 of the current CZO states:

5.28.2 Conversion of Non Residential Structures to Residential Use

Where it is proposed to convert an existing principal use structure, designed and built for non residential use, to residential use (excluding Transient Accommodations and Trailer Park or Mobile Home Park listed in Section 4.31 (I-j)), the dimensional standards generally applicable in the district as set forth in the Tables of Dimensional Requirements in Section 5.30 and other applicable regulations in this Ordinance, including permitted uses, Section 4.30 – Table of Use Regulations, shall apply. However, where some or all of those requirements cannot be met, including any use, dimensional or procedural requirement that may apply in the base district, the following provisions shall apply to such conversion after issuance of a special permit by the Planning Board. The provisions in this Section 5.28.2 shall apply in all zoning districts with the exception of districts with an Open Space designation.

51. Section 5.28.20(c) states:

The Planning Board shall determine that any proposed non-residential uses are generally compatible with residential uses in the area, including the dwelling units located within the same building, and will not cause harm or nuisance to surrounding uses.

In its Decision, the Planning Board did not make this determination.

52. Section 5.28.20(d) states:

The Planning Board shall determine that by permitting non-residential uses, there will be a compensating reduction in the number of dwelling units that would otherwise be

permitted, and that the proposed non-residential uses will balance the potential adverse impacts of additional residential units, such as demand for nighttime parking.

In its Decision, the Planning Board did not make this determination.

53. Section 5.28.28 states: Criteria for Approval of a Special Permit

In acting upon this special permit, the Planning Board shall consider the standards and criteria set forth in Sections 10.43, 10.47 and 10.47.1 of this Ordinance in addition to the following review standards.

54. Section 10.43 of the CZO states:

10.43 Criteria. Special permits will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because:

- (a) It appears that requirements of this Ordinance cannot or will not be met, or
- (b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or
- (c) the continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or
- (d) nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City, or
- (e) for other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance, and
- (f) the new use or building construction is inconsistent with the Urban Design Objectives set forth in Section 19.30.

55. Section 10.47 of the CZO states:

10.47 Procedure for Townhouses and Multifamily Dwellings. An application for a special permit for a townhouse development or for a multifamily dwelling required by Section 4.31 shall also meet the requirements of this Subsection 10.47. Where this Subsection and Subsection 10.42 are in conflict, this Subsection shall control.

56. Section 10.47.1 of the CZO states:

10.47.1 Applications for special permits shall be accompanied by three copies of a development plan containing the following graphic and written information:

- (1) An accurately scaled map showing the existing conditions on the parcel on which development is proposed and on lots abutting or directly across any street from said parcel. Said map shall indicate property lines, existing structures and all trees in excess of 3" caliper.
- (2) Information concerning current land use of said parcels (including the number of existing dwelling units).
- (3) Photographs showing conditions on the development parcel at the time of application and showing structures on abutting lots.
- (4) A site plan of the development parcel, drawn to scale, showing proposed lot subdivision, if any, the location of proposed buildings, retained and proposed vegetation, location of parking spaces, driveways, proposed curb cuts and walkways, proposed treatment of the perimeter of the parcel including techniques and materials used (screens, fences, walls) and the location of required private open space.
- (5) Front, side and rear elevations for each structure on the lot indicating building height and heights of buildings on abutting lots.
- (6) Quantitative data on the proposed development including floor area ratio, floor area per unit, number of bedrooms and the amount of private open space allocated to each unit and reserved for common use of the residents.
- (7) A list of any zoning violations which would customarily require variances from the requirements of this Ordinance.
- (8) A Tree Study, certified complete by the City Arborist, as required by the Tree Protection Ordinance of the City of Cambridge, Chapter 8.66.

57. Section 5.28.28.1 of the CZO states:

5.28.28.1 Criteria Applicable to All Projects

- (a) Provision of Parking. Where it is proposed to add dwelling units above the limits established in the base zoning regulations, the Board shall evaluate the impact of increased numbers of dwelling units above that normally permitted in the district on the demand for on-street parking by residents and visitors to the proposed building, particularly in neighborhoods where off street parking is limited. In reaching a determination, the Board may require that the Applicant provide elements of a Parking Analysis as set forth in Section 6.35.3 of the Zoning Ordinance. Where a project is subject to additional criteria as specified in Section 5.28.28.2 below, a Parking Analysis shall be required to be included with the Special Permit Application.
- (b) Privacy Considerations. Where significant variations from the normally required dimensional standards for the district are proposed, the Board shall evaluate the impact on residential neighbors of the new housing use and any other proposed use as it may affect privacy. The location and size of windows, screening elements, decks, entries, security and other lighting, and other aspects of the design, including

the distribution of functions within the building, shall be reviewed in order to assure the maintenance of reasonable levels of privacy for abutters. In reviewing a proposed development plan, the Board shall consider, among other factors, the potential negative impacts of the new activity on abutters as a result of the location, orientation, and use of the structure(s) and its yards as proposed.

(c) Reduction in Private Open Space. Where it is proposed to reduce the amount of onsite Private Open Space below that required in the applicable district, the Board shall evaluate the proposal in light of the following:

(1) The extent to which screening and buffering from neighbors will be accomplished

(2) The quality and viability of the proposed open spaces as they are designed

(3) The tradeoff in benefits and negative impacts of the loss of green space in order to provide the required amount of parking, including consideration of the feasibility of alternate parking arrangements that might produce additional green area, such as placing some or all parking within the structure

(4) The availability of common recreational spaces within the building to compensate for the loss of usable outdoor open space

(d) Community Outreach. The Planning Board shall consider what reasonable efforts have been made to address concerns raised by abutters and neighbors to the project site. An applicant seeking a special permit under this Section 5.28.2 shall solicit input from affected neighbors before submitting a special permit application. The application shall include a report on all outreach conducted and meetings held, shall describe the issues raised by community members, and shall describe how the proposal responds to those issues.

58. Section 5.28.28.2 states:

5.28.28.2 Additional Criteria Applicable to Larger Projects

Where the proposed project includes more than 10,000 Gross Square Feet or more than ten (10) dwelling units, and the proposed Gross Floor Area or number of dwelling units is above the maximum allowed under base zoning regulations, the Board shall evaluate the proposal in light of the following:

(a) The implications of the size or number of additional dwelling units on the anticipated demand for parking. In order to assist the Planning Board in evaluating parking impacts, an applicant for a special permit shall be required to submit a Parking Analysis, as set forth in Section 6.35.3 of the Zoning Ordinance, as part of the special permit application.

(b) The appropriateness of the proposed layout of floor space within the building for a multifamily residential use, with attention to the typical range of unit sizes and types that would be expected for housing in the neighborhood. Considerations may include the suitability of proposed unit configurations for a variety of households, the extent to which unusual unit sizes or shapes may impact parking or overall quality of life for neighbors, and the availability of customary amenities for residents such as storage, utilities, common rooms and recreational facilities.

(c) The potential mitigating effects of the proposed occupancy of dwelling units. For instance, units designed for elderly residents or live/work spaces for professionals or artists may provide desirable housing options for Cambridge residents with fewer adverse impacts on parking or neighborhood character.

59. The grant of the special permit for conversion of the nonresidential structure to a residential (in part) structure pursuant to Section 5.28.2 would result in, but will not be limited to, the following harms:

- A. Traffic: The proposed increase in traffic will be dangerous for motorists, cyclists and pedestrians. The Third Street corridor in particular is already subject to daily commuter traffic jams, from Binney Street to the McGrath Highway. According to LMP GC, new usage at the Courthouse would add about 5000 daily trips. This will significantly increase hazards in the vicinity. Dozens of daily truck deliveries to the renovated Courthouse will present additional risks, particularly in this urban setting. Streets in the vicinity of the Courthouse are so narrow that pedestrians are now at risk, and there is no room for safe bicycle paths on the necessary streets. The LMP GC traffic analyses were flawed in their projections of future pedestrian trips and timings, and failed to meet accepted traffic engineering standards. New traffic generated by the proposed use will cause substantial and adverse impacts on traffic in the neighborhood.

- B. Urban Design: The proposed commercial design is inappropriate in an historic, residential neighborhood. The proposed building and use are not in character with the scale of other structures and uses in the adjacent Business B and Residential Districts. East Cambridge Design Guidelines (adopted by City Council October 15, 2001) call for “finely graduated heights to create transitions in scale” to residential neighborhoods, but the LMP GC Courthouse would be a monolith filling a full city block, rising 20 stories and over 260 feet, and directly abutting residences limited by zoning to just 35’, and historic 19th century buildings (brownstones, an 1826 church, the Bullfinch courthouse) below 65 feet. The actual height, FAR, and square footage of the existing structure have been expressed in contradictory numbers by DCAMM, the City of Cambridge, and LMP. Exact numbers have not yet been verified by the Planning Board. Both the proposed structure and the proposed intensive and largely commercial use are inconsistent with the

intent of the City's urban design objectives.

- C. Light Pollution: The original Courthouse building was mostly concrete with few windows. Those windows were recessed behind thick concrete crenellations which restricted the light flow. At night, the building was mostly dark. The proposed building changes that dramatically. Fenestration will be increased enormously. Usage will not be restricted to "Court" hours, but will be around the clock, creating a need for nighttime lighting that was not there before. The LMP Lighting Impact study (July 2014) conducted by their consultants estimated additional light flux amounting to .2 - .3 foot-candles at the sidewalk. An MIT study conducted by Prof. Seth Teller (a specialist in computational graphics and light simulation) showed that the HDLC study was inaccurate, and that the actual impact of light spilling on abutters would be much greater. Even with the revised proposal to reduce glass area and mitigate light spill from the building, the "lantern effect" of the building remains, which is substantially more detrimental than the original design.
- D. Noise. The increased traffic and deliveries will cause an increase in noise, particularly from commercial vehicles.
- E. Wind. Because of its height, the existing Courthouse breaks through boundary layers of air flow, and when winds hit the high-rise building, they rush downward to escape. This creates massive gusts and "Venturi" effects that are substantially detrimental. The Wind Study performed by LMP GC's consultants was flawed, and did not take into account the prevailing winds and microclimate in the area. Moreover, it did not contrast the old building (deeply ribbed concrete) with the new proposed design, which is essentially smooth. If anything, the slicker new surface will significantly increase the wind flow. Modest mitigation was proposed, including plantings, but this was inadequate.
- F. Shadows: The Courthouse now blocks the sun for for some of the plaintiffs. The LMP GC proposal calls for removing 80-90% of the building facade and then rebuilding to nearly the same, full envelope. This will continue to cast shadows, blocking sunlight and depriving plaintiffs and others of quiet enjoyment.
- G. Privacy and Security. When the Courthouse functioned as a government facility, a full staff of police and security guards and vehicles were present at all hours. Usage was largely restricted to daylight hours; relatively few occupants had outward-looking windows. But the proposed conversion to a private building will be used by thousands of office workers, residents, retailers and visitors; the police and security vehicles will be less present, and the proposed renovation will emphasize windows and appealing views. Inhabitants and visitors of the renovated Courthouse will have direct views into yards, skylights and windows of homes throughout the neighborhood (which are limited to 35'

in height). New activity in and around the revamped Courthouse will cause infringements of privacy and raise serious security risks for neighbors.

60. The severity of these harms will impair the integrity of the district and the adjoining district, or otherwise derogate from the intent and purpose of the CZO, and cause substantial detriment.

WHEREFOR, the Land Court is requested to nullify the decision of the Planning Board filed with the City Clerk on October 30, 2014, because it was arbitrary and capricious, an abuse of discretion, and in excess of the Board's authority.

COUNT IV

61. The plaintiff realleges the facts contained in paragraphs 1 - 60 and incorporates same by reference herein.

62. Section 19.21 of the current CZO states:

19.21 Purpose. It is the intent of this Section 19.20 to ensure that new construction or changes of use in existing buildings (1) are consistent with the urban design objectives of the City and (2) do not impose substantial adverse impacts on city traffic. A special permit process is established by which the Planning Board may make such findings.

63. Sections 19.31 to 19.37 of the CZO state the special permit criteria for a Project Review Special Permit:

19.31 New projects should be responsive to the existing or anticipated pattern of development. Indicators include:

(1) Heights and setbacks provide suitable transition to abutting or nearby residential zoning districts that are generally developed to low scale residential uses.

(2) New buildings are designed and oriented on the lot so as to be consistent with the established street scape on those streets on which the project lot abuts. Street scape is meant to refer to the pattern of building setbacks and heights in relationship to public streets.

(3) In mixed-use projects, uses are to be located carefully to respect the context, e.g. retail should front onto a street, new housing should relate to any adjacent existing residential use, etc.

(4) Where relevant, historical context are respected, e.g. special consideration should be given to buildings on the site or neighboring buildings that are preferably preserved.

19.32 Development should be pedestrian and bicycle-friendly, with a positive

relationship to its surroundings. Indicators include:

(1) Ground floors, particularly where they face public streets, public parks, and publicly accessible pathways, consist of spaces that are actively inhabited by people, such as retail stores, consumer service businesses and restaurants where they are allowed, or general office, educational or residential uses and building lobbies. Windows and doors that normally serve such inhabited spaces are encouraged to be a prominent aspect of the relevant building facades. Where a mix of activities are accommodated in a building, the more active uses are encouraged facing public streets, parks and pathways. In commercial districts, such active space consists of retail and consumer service stores and building lobbies that are oriented toward the street and encourage pedestrian activity on the sidewalk. However, in all cases such ground floor spaces should be occupied by uses (a) permitted in the zoning district within which the building is located, (b) consistent with the general character of the environment within which the structure is located, and © compatible with the principal use for which the building is designed.

(2) Covered parking on the lower floors of a building and on-grade open parking, particularly where located in front of a building, is discouraged where a building faces a public street or public park, and publicly accessible pathways.

(3) Ground floors should be generally 25-50% transparent. The greatest amounts of glass would be expected for retail uses with lesser amounts for office, institutional or residential use.

(4) Entries to buildings are located so as to ensure safe pedestrian movement across streets, encourage walking as a preferred mode of travel within the city and to encourage the use of public transit for employment and other trips. Relating building entries as directly as possible to crosswalks and to pathways that lead to bus stops and transit stations is encouraged; siting buildings on a lot and developing site plans that reinforce expected pedestrian pathways over the lot and through the district is also encouraged.

(5) Pedestrians and bicyclists are able to access the site safely and conveniently; bicyclists should have, secure storage facilities conveniently located on-site and out of the weather. If bicycle parking is provided in a garage, special attention must be aid to providing safe access to the facilities from the outside.

(6) Alternate means of serving this policy objective 19.32 through special building design, siting, or site design can be anticipated where the building form or use is distinctive such as freestanding parking structures, large institutional buildings such as churches and auditoriums, freestanding service buildings, power plants, athletic facilities, manufacturing plants, etc.

19.33 The building and site design should mitigate adverse environmental impacts of a development upon its neighbors. Indicators include:

(1) Mechanical equipment that is carefully designed, well organized or visually screened from its surroundings and is acoustically buffered from neighbors. Consideration is given to the size, complexity and appearance of the equipment, its proximity to residential areas, and its impact on the existing street scape and skyline. The extent to which screening can bring order, lessen negative visual impacts, and enhance the overall

appearance of the equipment should be taken into account. More specifically:

- (a) Reasonable attempts have been made to avoid exposing rooftop mechanical equipment to public view from city streets. Among the techniques that might be considered are the inclusion of screens or a parapet around the roof of the building to shield low ducts and other equipment on the roof from view.
 - (b) Treatment of the mechanical equipment (including design and massing of screening devices as well as exposed mechanical elements) that relates well to the overall design, massing, scale and character of the building.
 - (c) Placement of mechanical equipment at locations on the site other than on the rooftop (such as in the basement), which reduces the bulk of elements located on the roof; however, at-grade locations external to the building should not be viewed as desirable alternatives.
 - (d) Tall elements, such as chimneys and air exhaust stacks, which are typically carried above screening devices for functioning reasons, are carefully designed as features of the building, thus creating interest on the skyline.
 - (e) All aspects of the mechanical equipment have been designed with attention to their visual impact on adjacent areas, particularly with regard to residential neighborhoods and views and vistas.
- (2) Trash that is handled to avoid impacts (noise, odor, and visual quality) on neighbors, e.g. the use of trash compactors or containment of all trash storage and handling within a building is encouraged.
 - (3) Loading docks that are located and designed to minimize impacts (visual and operational) on neighbors.
 - (4) Storm water Best Management Practices and other measures to minimize runoff and improve water quality are implemented.
 - (5) Landscaped areas and required Green Area Open Space, in addition to serving as visual amenities, are employed to reduce the rate and volume of Storm water runoff compared to pre-development conditions.
 - (6) The structure is designed and sited to minimize shadow impacts on neighboring lots, especially shadows that would have a significant impact on the use and enjoyment of adjacent open space and shadows that might impact the operation of a Registered Solar Energy System as defined in Section 22.60 of this Zoning Ordinance.
 - (7) Changes in grade across the lot are designed in ways that minimize the need for structural retaining walls close to property lines.
 - (8) Building scale and wall treatment, including the provision of windows, are sensitive to existing residential uses on adjacent lots.
 - (9) Outdoor lighting is designed to provide minimum lighting and necessary to ensure adequate safety, night vision, and comfort, while minimizing light pollution.
 - (10) The creation of a Tree Protection Plan that identifies important trees on the site, encourages their protection, or provides for adequate replacement of trees lost to development on the site.

19.34 Projects should not overburden the City infrastructure services, including neighborhood roads, city water supply system, and sewer system. Indicators include:

- (1) The building and site design are designed to make use of water-conserving plumbing and minimize the amount of Storm water run-off through the use of best management practices for Storm water management.
- (2) The capacity and condition of drinking water and wastewater infrastructure systems are shown to be adequate, or the steps necessary to bring them up to an acceptable level are identified.
- (3) Buildings are designed to use natural resources and energy resources efficiently in construction, maintenance, and long-term operation of the building, including supporting mechanical systems that reduce the need for mechanical equipment generally and its location on the roof of a building specifically. The buildings are sited on the lot to allow construction on adjacent lots to do the same. Compliance with Leadership in Energy and Environmental Design (LEED) certification standards and other evolving environmental efficiency standards is encouraged.

19.35 New construction should reinforce and enhance the complex urban aspects of Cambridge as it has developed historically. Indicator include:

- (1) New educational institutional construction that is focused within the existing campuses.
- (2) Where institutional construction occurs in commercial areas, retail, consumer service enterprises, and other uses that are accessible to the general public are provided at the ground (or lower) floors of buildings. Where such uses are not suitable for programmatic reasons, institutional uses that encourage active pedestrian traffic to and from the site.
- (3) In large, multiple-building non-institutional developments, a mix of uses, including publicly accessible retail activity, is provided where such uses are permitted and where the mix of uses extends the period of time the area remains active throughout the day.
- (4) Historic structures and environments are preserved.
- (5) Preservation or provision of facilities for start-up companies and appropriately scaled manufacturing activities that provide a wide diversity of employment paths for Cambridge residents as a component of the development; however, activities heavily dependent on trucking for supply and distribution are not encouraged.

19.36 Expansion of the inventory of housing in the city is encouraged. Indicators include:

- (1) Housing is a component of any large, multiple building commercial development. Where such development abuts residential zoning districts substantially developed to low-scale residential uses, placement of housing within the development such that it acts as a transition/buffer between uses within and without the development.
- (2) Where housing is constructed, providing affordable units exceeding that mandated by the Ordinance. Targeting larger family-sized middle income units is encouraged.

19.37 Enhancement and expansion of open space amenities in the city should be incorporated into new development in the city. Indicators include:

- (1) On large-parcel commercial developments, publicly beneficial open space is provided.

(2) Open space facilities are designed to enhance or expand existing facilities or to expand networks of pedestrian and bicycle movement within the vicinity of the development.

(3) A wider range of open space activities than presently found in the abutting area is provided.

64. The grant of the Project Review Special Permit pursuant to Section 19.20 would result in the harms set forth in Paragraph 59, above.

65. The severity of these harms will impair the integrity of the district and the adjoining district, or otherwise derogate from the intent and purpose of the CZO, and cause substantial detriment.

WHEREFOR, the Land Court is requested to nullify the decision of the Planning Board filed with the City Clerk on October 30, 2014, because it was arbitrary and capricious, an abuse of discretion, and in excess of the Board's authority.

Plaintiffs,
By their attorneys,

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