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Rev. Thos. J. Green

THE JAMES DIMAN GREEN
CONDOMINIUM ASSOCIATION

101 3rd Street, Cambridge, MA 02141

date: 17 March 2014

re: **Please Approve Policy Order 13 — and then some.**

from: Michael Hawley and Nina You of the James Green Condominium Association.

To the **City Council**:

We urge you to approve Policy Order O-13, re: Sullivan Courthouse Parking. This may be more important than you know. We believe there are overarching legal reasons that may impede the Planning Board from ruling on SP#288, so your role is crucial.

We live in the 1827 church at Third & Thorndike, diagonal abutters to the odious Sullivan Courthouse. After much research, we conclude Developer's special permit application (SP#288) should be firmly rejected. Of the many wonderful possibilities for that block, the current proposal is just about the worst possible idea. It packs the maximum number of corporate commuters into a gigantic office tower — the biggest single building in all of Cambridge. The impact of this wouldn't just be substantially more detrimental to the neighborhood (in the language of MGL 40(a)6) — it would permanently change the neighborhood to a business center for thousands of commuters.

An aside: our residence, the church, has an underground garage. We have four apartments, and seven underground parking spaces. More spaces than cars. Thus, we never put cars on the street, and guests and contractors often park inside as well. This is an admirable solution.

We offer three helpful points for you —

- **the parking numbers**: they do not add up;
- **the legal problem**: this is not a trivial "legal nonconforming" building, and the Planning Board may have difficulty ruling because of that;
- **a financial question, and recommendation**: how can we negotiate to trade parking spaces for height when we don't know what the building cost to buy, or what it costs to partially deconstruct or demolish it?

1. The Parking Numbers Don't Add Up.

Back-of-the-envelope numbers:

300'

300 foot building in BB zoned for 80', abutting residential zoned for 35'.

Developer needs **500 spaces**
City Traffic Director Susan Clippinger agreed.
There are about **100 spaces under the building,**
and roughly 400 need to be leased in the City's garage.

So if you believe the Developer and
you believe the City's math is wise and correct:

Reduce the building to 60 feet (1/5th current height),
and the 100 underground spaces are sufficient.

That would conform to the zoned height limit of 80 feet,
and preserve the municipal garage for future uses.

For every 10 feet you add to the building height,
you need to find another 17 spaces.

So if you add another 60 feet,
you need 200 spaces = 100 underground + 100 in garage,
and you need a variance to let you build to 150% of the 80 foot limit.

80'

Those are the back-of-the-envelope numbers —
if you believe the Developer's need and the City's approval.

60'

OK. What about the front of the envelope...?

35'

According to **Chapter 455 of the Acts of 1961**, the City Traffic Director "*shall be a traffic engineer, possessing the qualifications required for associate or full membership in the Institute of Traffic Engineers (ITE).*" Susan Clippinger is **not** a traffic engineer.

1,110 spaces = City garage.
747 spaces = peak use 10am 4 Sept, according to Developer's report to City
_____
363 spaces remain

But: that is a Wednesday two days after Labor Day.
That's not an average. It's not a maximum day. It's a *quasi-vacation* day.
But, what the heck, let's roll with it.

Any ITE traffic engineer knows: this use requires **one space for every three vehicular trips.**

Developer told the State (MEPA):	**1,548 spaces** = 4646 vehicular trips /3.
We would need	**1,448 external spaces,**
which means	**you must lease the entire garage** to the Developer,
and find another	**1,085** spaces = 338 for Developer + 747 for displaced cars.

In other words **you need another municipal garage that's about the same size.**

But:

Developer told City a *different* number:	**742 spaces** = 2,226 vehicular trips /3.
We would need	**642 external spaces**, about 60% of garage capacity.
That **overflows the garage by**	**279 spaces** = 642-363.

Even if you believe the Developer only needs 420 spaces in the garage,
as they claim, and which the ITE would reject, and which is probably a low-ball number,
that still **overflows the garage by** **57 spaces** = 420–363.

And remember: that's a **below** average day, and definitely not a peak day.

And: in the traffic report to the City, the Developer included this helpful table:

Trip Generation:	Daily
Total Trips	4,646
Vehicle	2,226
Transit	1,856
Pedestrian	474
Bicycle	256

Wait: 2,226 + 1,856 + 474 + 256 = 4812 total trips.
Not 4646. You don't need to be a certified traffic engineer to know the total is incorrect.
We don't believe Developer's numbers or City's Traffic Department findings.

2. A Legal Problem.

Is it legal to capitalize on this nonconforming building by transforming it for an intensive private use?

Our laws say: **no**, not if the new use would be *substantially more detrimental* to the neighborhood. And the proposed use is far more detrimental: thousands of commuters and visitors packed into the biggest single building in Cambridge would clobber the residential neighborhood with traffic, parking, wind, solar glare, noise. The building would be illuminated 24/7, glowing with the intensity of dozens of full moons every night. Such a proposal violates any rational sense of urban design. **For these reasons, SP#288 must be rejected.** Even DCAMM pointed out that a would-be developer needed to be mindful of local zoning, and this proponent, Leggat-McCall, chose to blithely sidestep our zoning policies in proposing to leverage every cubic inch of the volume for maximum revenue. **But there is a bigger issue that may deter the Planning Board from ruling.**

This is not like the case of a small town post office on Main St. that blends in charmingly with surrounding homes and shops, and which is then sold and renovated as a B&B. **The Sullivan Building was built to this absurd size because of one reason: government immunity from local laws. The basis for that governmental immunity no longer exists, the government has abandoned the building which therefore must lose its legal immunity from local zoning laws.**

The Sullivan Building never received a waiver, variance or permit from the City. Consider as well: It was built over strident protests from the City and picketing from the community. It took **nearly 20 years to build and fully occupy**: it was supposed to take **three**. It **cost more than $90m to construct** in the 1960's: it was supposed to cost just $14m — an eye-popping **600% cost overrun. It** destroyed irreplaceable historic 19th century buildings. Before it was even finished, it was the subject of investigations by the Supreme Judicial Court and Grand Jury, Massachusetts State Police, and it triggered an immense Senate investigation, investigations by the Massachusetts Bar Association, and by taxpayers groups, individual legislators. The criminal investigations continued long after it was constructed. The Sheriff called it "a fiasco that never should have been built." In 1973 a board of three men were appointed to a Courthouse Review Board. They met just once: long enough to resign. There were lawsuits won by occupants because of asbestos, lawsuits won by prisoners because of deplorable conditions. Taxpayers were socked with the costs of this failure for three decades. This wasn't a small mistake. In this case, **the government exemption drove a corrupt, illegitimate and, frankly, criminal process that should be deplored by everyone.**

The current disposal process by DCAMM continues this mess. In 2006 Governor Romney began the evacuation of the Courthouse to allow for renovation. **The Governor said it renovation would cost $130m. The very next year, a DCAMM-led study concluded renovation would cost $394m.** Oops. So, DCAMM offered to give the building for free to Cambridge. Our City said: no, and City Manager Robert Healey said: "It would truly be best imploded." So DCAMM sought maximum revenue by auctioning it to the highest bidder in disregard of community needs and city ordinances.

And as if that is not insult enough, **the original founding deed from 1813** could not have been more clear: a private citizen, Andrew Craigie, **gave this property to the people** — not the City, not the County, not the State, but **to the inhabitants.** He gave the land and $24,000 to build buildings in **conformity** with best practices, and designed by the best architect (Charles Bulfinch). It was a gift **forever** for a public use, and **for no other use whatsoever.**

The construction of the Sullivan Building, while technically in keeping with the use of this land for a courthouse and jail, has effectively ruined this founding gift for any public use, since neither the State nor the City can afford to clean it up.

That is why we are in this mess.

We believe this is no longer a legal nonconforming structure. It is a building that attained a gross nonconformity only through government fiat. The basis for that exemption no longer applies and therefore the building must lose its immunity from local zoning laws. It is a dead building.

To approve this renovation in whole or in part is to condone what has happened: it is to assert that this destruction of a public use by government exemption, and the transfer of an immense structure attained only because government exemption drove a corrupt process, is legal. Most would feel it is not, and to permit the proposed renovation would set a terrible precedent.

That is why the Planning Board may defer to City Council, hoping that pushback on the parking problem will somehow nudge this into compliance.

3. Financial Problem & Recommendation.

City Council is in effect urging a negotiation with Developer, essentially trading parking spaces for more building height. Given the serious legal issues, the quandary faced by the Planning Board, and the flakey numbers presented to date for parking, more homework is required. In particular:

What does the building cost? We don't know. It's a secret.
And what does it cost to deconstruct the building, reducing its height to 60 feet, or 80 feet?
We don't know: no credible study has been done.
What would it cost to completely raze the structure?
Again, we don't know: no credible study has been done.
How many parking spaces are really needed?
It's hard to trust the Developer or the City Traffic Department.

Given these uncertainties, we recommend:

1. The City should approve Policy Order O-13.

2. The Planning Board should firmly deny SP#288 if it has the opportunity.

3. The City should commission an independent traffic and parking study conducted by members of the Institute of Traffic Engineers, and vetted by a further independent expert.

4. The City should issue an RFP soliciting bids for partial deconstruction and full demolition of the Sullivan Building, in order to properly weigh value of parking versus costs.

5. Only after these studies are concluded should anything like a negotiated tradeoff of parking spaces and building height be attempted.

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