



**RFP for Real Estate Disposition First Street Garage**  
**LMP GP Holdings LLC**

Care of:  
 Robert M. Dickey, Executive Vice President  
 Leggat McCall Properties LLC  
 10 Post Office Square Floor 13, Boston MA 02109

**November 19, 2018**





BY HAND DELIVERY  
November 19, 2018

Elizabeth Unger  
Purchasing Agent, City of Cambridge  
Room 303, City Hall  
795 Massachusetts Avenue  
Cambridge MA 02139

**Re: Sealed Bid Submission Pertaining to Request for Proposal: File No. 8268  
RFP for Real Estate Disposition First Street Garage**

Dear Ms. Unger:

LMP GP Holdings LLC (the "Offeror"), a joint venture of Leggat McCall Properties LLC ("LMP") and Granite Properties ("Granite") that is redeveloping the former Sullivan Courthouse at 40 Thorndike Street ("40 Thorndike"), is pleased to submit, in the accompanying sealed package marked "RFP for Real Estate Disposition First Street Garage," the enclosed bid in response to the City of Cambridge's (the "City") Request for Proposals for the leasing of 420 parking spaces and certain retail space at the First Street Garage ("Lease," "First Street Garage," or "Garage"). As required by the RFP, Offeror is an Equal Opportunity Employer.

Our bid is fully responsive to the Evaluation Criteria and other requirements identified in the City's RFP. Our bid also contains significant financial commitments that go well beyond the rental revenues for the Lease. These financial commitments will benefit the entire Cambridge community and will be consistent with the City's planning, environmental, housing, and transportation goals. In addition, the lease of these parking spaces to the Offeror will facilitate and enable the conversion and complete transformation of the long-abandoned, previously tax-exempt, former Sullivan Courthouse into an asset for the East Cambridge neighborhood and the City at large.

The submitted materials have been organized into three sections as follows:

1. Executive Summary: overview of our bid and its benefits to the neighborhood and City, including both the benefits directly related to the bid, and additional benefits in the broader context of our development plan at 40 Thorndike.
2. Bid Information: our specific bid response adhering to all the requirements of RFP File No. 8268, including but not limited to the \$150,000 good faith deposit, the Proposal Form, the Price Summary Form, the Disclosure of Beneficial Interest, and the list of three financial references.
3. Appendix: background information and materials on our 40 Thorndike project, which we have included as reference since our interest in responding to this bid relates to Special Permit 288.

Thank you in advance for your time. We look forward to your response and to the opportunity to further engage with the City and community on the improvements linked to the First Street Garage Lease.

Sincerely,



Robert M. Dickey  
Executive Vice President



# **RFP for Real Estate Disposition First Street Garage**

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## I. Executive Summary and Background Information

On behalf of LMP GP Holdings LLC (the "Offeror"), an Equal Opportunity Employer, Leggat McCall Properties ("LMP") is pleased to submit this bid to the City of Cambridge (the "City") with respect to leasing 420 parking spaces and approximately 9,000 square feet of currently vacant retail space at the First Street Garage ("Lease," "First Street Garage," or "Garage").

Our bid is fully responsive to the Evaluation Criteria and other requirements identified in the City's RFP for File No. 8268, Real Estate Disposition Parking Spaces and Ground Floor Retail Space, First Street Garage ("RFP"). The RFP is consistent with the original rationale for the creation of the Garage to support of the surrounding community. For the Lease, the City issued a comprehensive RFP that outlines eight criteria, including 1) Parking and Transportation Demand Management ("PTDM") strategies, 2) enlivenment of the Garage's ground floor retail ("Retail Space"), 3) lease payments for parking, 4) lease payments for Retail Space, 5) up front financial support for Garage capital projects, 6) ongoing capital projects, 7) community enhancements, and 8) green initiatives.

In this RFP, Offeror has not only met each criteria, but also exceeded the City's request. Our bid also contains significant financial commitments that go well beyond the rental revenues for the Lease. These financial commitments will benefit the entire Cambridge community and are consistent with the City's planning, environmental, housing, and transportation goals.

This RFP is the result of a process which began in 2011 under the Deval Patrick administration in which DCAMM followed a public property disposition process to offer 40 Thorndike, the former Sullivan Courthouse property, for public bid and redevelopment. 40 Thorndike is a tax-exempt State asset which has been largely empty and abandoned for a decade since the court operations moved out in 2008/2009, leaving only a small jail operation which closed in 2014. A recent court decision validated the 40 Thorndike building as a preexisting non-conforming structure and upheld the decision of the Cambridge Planning Board which allowed 40 Thorndike to be redeveloped under Special Permit 288. Special Permit 288 was issued after significant community engagement and positive changes to the original development plan in the spring and summer of 2014 (including reducing the height by two stories). The 40 Thorndike project was approved by unanimous vote at the Planning Board in the fall of 2014. The 40 Thorndike project was then delayed by a legal challenge that was resolved in the fall of 2017. If the City allows 420 parking spaces in the Garage to be used to be leased in support the 40 Thorndike project, Offeror will be enabled to proceed with the approved redevelopment plan for 40 Thorndike under Special Permit 288.

The redevelopment of 40 Thorndike represents the complete transformation of a long-abandoned, tax-exempt property with a requisite asbestos abatement cost of nearly \$50 million.

We are pleased to summarize our bid on the following pages.



## Lease Bid – Summary of Financial Benefits

### Benefits directly related to the Lease of the First Street Garage:

- Lease payment for parking spaces with total revenue to the City in excess of \$50,000,000 over the lease term (30-years wherever referenced). This reflects a \$326/space/month rate, which is 44% higher than the current regular rate of \$225/space/month in the garage.
- Garage improvement of \$500,000 in up front contribution and \$26,000 annually for a total of \$1,300,000 over the lease term.
- Retail program to include approximately 9,000 SF of rehabilitated retail space composed of:
  - Community center/senior space (added commitment of \$25,000 per year over the lease term to fund programming for this space, for a total contribution of \$750,000);
  - Café;
  - Demonstration kitchen for public educational use;
  - Indoor year-round farmers market;
- Green Initiatives totaling up to:
  - Up front contribution of \$1,900,000 toward the installation of solar array and 20 electric vehicle charging stations to service 40 vehicles at the Garage;
  - Annual value of electric produced estimated at \$140,000 initially to be retained by the City. Estimated total value of electric produced over the life of the solar array is estimated to be in excess of \$3,500,000;
  - Maintenance and upkeep contribution of up to \$10,000 annually for solar array maintenance over the lease term.
- Retail improvements made solely by the Offeror totaling an estimated \$4 million. The retail space is expected to operate at a loss throughout the term of the lease when factoring in operating expenses, real estate taxes, and community center subsidies.

### Benefits related to Community Enhancement:

- Cambridge Affordable Housing Trust contribution of \$4.5 million.
- Conversion of 8 market rate dwelling units to 8 affordable dwelling units and conversion of 8 moderate dwelling units to 8 affordable dwelling units at 40 Thorndike, at an estimated value to the City of \$5-6 million.
- Workforce development contributions to: a Cambridge Pathways to Apprenticeship Program (\$20,000 annually), Just a Start (\$50,000 annually), Cambridge Housing Authority (\$25,000 annually), totaling an investment over 10 years of \$900,000
- City of Cambridge Community Benefits Stabilization Fund contribution of \$50,000 annually for 10 years, for a total of \$500,000, to be distributed to Cambridge non-profit organizations.
- A Senior Parking Program contribution of up to \$36,000 annually to the City, to provide senior parking subsidies at the First Street Garage, with the possible criteria of age, proximity, income and access to parking.



In addition to the benefits listed above, which relate to the Lease, the Lease itself would allow for the redevelopment of the 40 Thorndike project, pursuant to Special Permit 288, which we outlined here as contextual reference for the Executive Summary and is excluded from Section 2, which focuses solely on the RFP bid proposal.

## 40 Thorndike – Summary of Benefits

- An estimated \$7 million payment to the Cambridge Affordable Housing Trust, pursuant to the Incentive Zoning provisions.
- Development of 24 dwelling units: in Special Permit 288, Offeror would develop 8 affordable, 8 moderate, and 8 market at the 40 Thorndike project; in this bid Offeror would develop 24 affordable dwelling units
- A new ground floor plan covering Spring Street, Thorndike Street, Second Street, and Third Street that includes:
  - New accessible green landscaped open space on Spring Street;
  - Community room;
  - Childcare center.
- Expansive PTDM obligations (under PTDM F-56).
- Estimated annual new property tax revenue of \$3.8 million (\$8/SF times 470,000 SF).
- Reduction of two floors, 40,000 SF, from the existing structure.

## Conclusion

**These benefits represent a total financial contribution / value of \$25 million to the City over the 30-year term of the lease (as further described in Section 2), excluding annual tax payments of \$3.8 million at 40 Thorndike, annual lease payments for Garage parking and retail space of \$1.76 million to the City, and costs associated with the PTDM strategies at both 40 Thorndike and the Garage.**

In addition, the Offeror agrees to allow the City the option to require us to seek a reduction of the 420 parking space lease by up to 125 spaces (30% of the total lease) immediately following the execution of the Lease.

Thank you for your consideration of our bid proposal.



## 2. Bid Proposal

We believe that our bid meets and exceeds the minimum evaluation criteria, and also provides additional benefits for the City of Cambridge. In this section, Offeror provides the following information:

- A) How this bid meets or exceeds the minimum evaluation criteria,
- B) All required bid forms and documents,
- C) Demonstrated experience and resources to fulfill the contract, and
- D) How Offeror best meets the comparative evaluation criteria.

### 2A. Meeting and Exceeding the Minimum Evaluation Criteria

Offeror meets both the Minimum Evaluation Criteria outlined in detail in RFP Section VI, and the Minimum Quality Requirements requested in the Proposal Form.

- In Table A1 below, Offeror shows that for each of the eight Evaluation Criteria in RFP Section VI, this bid exceeds the Minimum Evaluation Criteria. For a more detailed summary of the benefits proposed for each Criteria, please see *Section 2D. Detailed Overview of Evaluation Criteria (page 31)* in which we provide a detailed proposal satisfying each evaluation criteria.
- Please note that we also meet the Minimum Quality Requirements listed in the Proposal. For the complete Proposal Form, please see *Section 2B. Submission of Required Bid Forms (page 12)*.

**Table A1: Summary Matrix of Lease Proposal and Evaluation Criteria Fulfillment**

The table below shows how this bid meets and/or exceeds the Criteria. Please note that these benefits relate directly to the Offeror's response to the RFP for the First Street Garage. For additional benefits that relate to 40 Thorndike, please see Appendix.

Criteria	Description
<b>1. PTDM Strategies</b>	<i>Proposal shall be evaluated based on the offeror providing a plan to manage parking demand.</i>
	<p><b>Offeror Bid: The proposal is Highly Advantageous because the Offeror proposes <u>six</u> plans to manage parking demand in expansion / addition to those that will be provided in connection with the 40 Thorndike PTDM F-56 ("PTDM F-56"). The specific additional PTDM commitments proposed in this bid are as follows:</b></p> <ul style="list-style-type: none"> <li>• Expansion of the PTDM F-56 Transit Pass Program to all 40 Thorndike residents and retail employees.</li> <li>• A contribution of \$50,000 toward the City's installation of additional bike-sharing accommodation in the vicinity of the Garage.</li> <li>• Expansion of PTDM F-56 Bike Share Incentive to all 40 Thorndike resident households.</li> <li>• Expansion of PTDM F-56 Preferential Parking from 1 electric vehicle charging stations to 4, which serve 8 parking spaces.</li> <li>• Installation of a Multi-Modal Transit Display to provide transit information to all 40 Thorndike building users.</li> <li>• Expansion of PTDM F-56 Unsubsidized Parking Program to 40 Thorndike residents, where parking fees are separate from rent.</li> </ul> <p>Additionally: Upon the City's election, the Offeror will seek a parking reduction of up to 125 spaces under 40 Thorndike's Special Permit 288</p>
<b>2. Ground Floor Retail</b>	<i>Proposals shall be evaluated based upon how the plan proposed for the ground floor retail space is beneficial to the City and is compatible with the neighborhood in terms of current and anticipated future retail needs and neighborhood character.</i>
	<p><b>Offeror Bid: The proposal is Highly Advantageous because the Offeror has proposed a detailed plan to enliven the ground floor retail space with pedestrian and economic activity, improve the public realm, and address expressed needs of the neighborhood. The proposal includes:</b></p> <ul style="list-style-type: none"> <li>• Indoor year-round farmer's market and event space</li> <li>• Cafe operated by a local vendor</li> <li>• Community / Senior Space</li> <li>• Demonstration kitchen for public education programming</li> <li>• When market is not in operation, this flexible space can host large events (at least 100-person capacity) and be offered free of charge to local community organizations. The Offeror's plans for the Retail Space have been designed to support East End House's current senior programming in the community / senior space and in the demonstration kitchen.</li> </ul>



Criteria	Description
<b>3. Lease Payment for Parking</b>	<i>Proposed Lease Payment for 420 Parking Spaces: A proposal shall be evaluated based on the proposed monthly lease payment offered for the 420 parking spaces.</i>
	<b>Offeror Bid: The proposal is Advantageous based on a bid of \$136,920 per month for 420 spaces (a rate of \$326/space/month), which is a \$101 per month or a 44% premium over the current commercial passholder rate of \$225/space/month at the First Street Garage.</b>
<b>4. Lease Payment for Ground Floor Retail</b>	<i>A proposal shall be evaluated based on the proposed lease payment offered for the approximately 9,000 square feet of ground floor retail space.</i>
	<b>Offer Bid: The proposal is Advantageous based on a bid of \$12.50/SF/year times a 9,000 SF of retail space, or an annual lease payment of \$112,500.</b>
<b>5. Capital Projects</b>	<i>Additional contribution: a proposal shall be evaluated based on the amount of additional monetary support proposed for potential capital projects associated with the Property</i>
	<b>Offeror Bid: The proposal is Highly Advantageous because the Offeror provides a total of \$4.5 million of up front financial support.</b> <ul style="list-style-type: none"> <li>• <b>\$500,000</b> upfront contribution toward Garage improvements (separate from Retail Space improvements)</li> <li>• <b>\$4 million</b> upfront contribution toward Retail Space improvements, with \$2.5 million for core/shell and \$1.5 million for fit-out</li> </ul>
<b>6. Capital Projects</b>	<i>A proposal shall be evaluated based on the amount of additional monetary support proposed for potential capital projects associated with the Property.</i>
	<b>Offeror Bid: The proposal is Advantageous because the Offeror provides a total of \$26,000 in annual contributions</b> <ul style="list-style-type: none"> <li>• <b>\$780,000 value:</b> \$26,000 annual contributions for the 30-year term of the lease, toward Garage upgrades and capital improvements</li> </ul>

Criteria	Description
<b>7. Community Enhancement</b>	<i>A proposal shall be evaluated based on the amount of additional monetary support proposed for community enhancement.</i>
	<p><b>Offeror Bid: The proposal is Highly Advantageous because the Offeror provides in excess of \$50,000 per year for additional monetary support for proposed community enhancements as follows:</b></p> <p><b>Affordable Housing:</b></p> <ul style="list-style-type: none"> <li>• <b>\$5 to \$6 million estimated value:</b> Offeror will modify its affordable unit mix at 40 Thorndike (Special Permit 288) from 8 affordable, 8 moderate-income, and 8 market rate units to 24 affordable dwelling units.</li> <li>• <b>\$4.5 million value:</b> contribution to the Cambridge Affordable Housing Trust beyond any Incentive Zoning requirements at 40 Thorndike.</li> </ul> <p><b>Workforce Programs:</b></p> <ul style="list-style-type: none"> <li>• <b>\$200,000 value:</b> annual contribution of \$20,000 for 10 years toward a Cambridge Pathways to Apprentice Program</li> <li>• <b>\$500,000 value:</b> annual contribution of \$50,000 for 10 years towards the Just a Start workforce development</li> <li>• <b>\$250,000 value:</b> annual contribution of \$25,000 for 10 years to support Cambridge Housing Authority workforce development programs</li> <li>• Commitment to carry out 40 Thorndike redevelopment / improvements with a General Contractor who is signatory to major trade unions.</li> <li>• Support toward an educational program for Cambridge school students to learn from the development and construction process linked to relevant Garage improvements and the 40 Thorndike project.</li> </ul> <p><b>Community Benefits:</b></p> <ul style="list-style-type: none"> <li>• <b>\$500,000 value:</b> annual contribution of \$50,000 for 10 years toward the Cambridge Community Benefits Stabilization Fund</li> <li>• <b>\$750,000 value:</b> annual contribution of \$25,000 for 30-year lease term for the East End House to program and operate the Community / Senior Space in the Retail Space</li> <li>• <b>Up to \$1,080,000 value:</b> annual contribution of up to \$36,000 for the 30-year term of the lease toward a program to provide East Cambridge seniors aged 65+ with vouchers to use toward the cost of parking in the First Street Garage</li> </ul>



Criteria	Description
<b>8. Green Initiatives</b>	<i>A proposal shall be evaluated based on the amount of additional monetary support proposed for the City's green initiatives.</i>
	<p><b>Offeror Bid: The proposal is Highly Advantageous because the Offeror provides up to \$1.9 million in up-front funds and at least \$150,000 in annual contributions through solar array maintenance and energy gains:</b></p> <p><b>Upfront contributions:</b></p> <ul style="list-style-type: none"> <li>• <b>Up to \$1.5 million value:</b> installation of a solar array system on the Garage roof (roof parking is preserved and operates as normal)</li> <li>• <b>Up to \$400,000 value:</b> installation of 20 electric vehicle charging stations, serving 40 parking spaces at the First Street Garage</li> </ul> <p><b>Annual contributions:</b></p> <ul style="list-style-type: none"> <li>• <b>~\$3.5 million value:</b> average annual savings of \$140,000 in electricity costs due to solar energy, with savings directly benefitting the City</li> <li>• <b>Up to \$10,000:</b> annual contribution toward the maintenance and servicing of solar array system</li> </ul>

## 2B. Submission of Required Bid Forms

In this section we provide the required documents as follows:

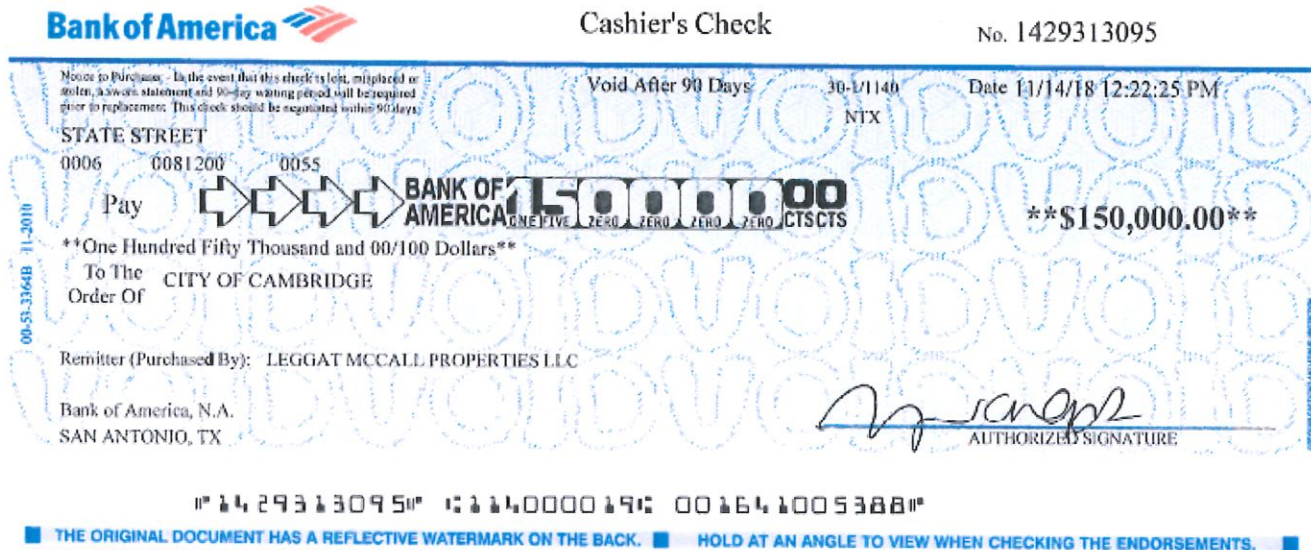
- i. **Documents required by RFP Section 7, Document Submission requirements**
  1. \$150,000 cashier's check as good faith deposit
  2. Proposal Form
  3. Price Summary Form
  4. Disclosure of Beneficial Interest
  5. Three financial references from a bank, mortgage company, investment company or other licensed financial institution.
- ii. **Confirmation of compliance with RFP Section V, Contract Terms and Conditions**
- iii. **Additional requested information**

### i. Documents required by RFP Section 7, Document Submission requirements

#### 1. \$150,000 cashier's check as good faith deposit

A cashier's check for \$150,000 (along with six (6) copies of the proposal) were hand delivered to Elizabeth Unger, Purchasing Agent, City of Cambridge, Room 303, City Hall, Third Floor, 795 Massachusetts Avenue, Cambridge MA 02139 prior to 11am on Monday, November 19<sup>th</sup> 2018.

Below is an image of the check for your reference.



## 2. Proposal Form

Proposal Form is included in the following page.



CITY OF CAMBRIDGE, PURCHASING DEPARTMENT  
795 MASSACHUSETTS AVENUE, RM. 303  
CAMBRIDGE, MA 02139

PROPOSAL FORM FOR THE DISPOSITION OF REAL ESTATE  
First Street Garage

1. Name of person submitting proposal: { LMP GP HOLDINGS LLC  
By: LMP Thorndike LLC, its manager  
By: Eric Sheffels (title: manager)  
Address: Attn: Eric Sheffels, 10 Post Office Square, Floor 13, Boston MA 02109

Telephone: 617-422-7032

1. Please check one of the following:

( ) Corporation, incorporated in the State of: \_\_\_\_\_

☒ Partnership, names of partners are: Please see attached list of **members and beneficial owners**

Submit this form with your proposal.

## 2. Minimum Quality Requirements

The City will reject any proposal that does not meet the minimum evaluation criteria. A "NO" response or a failure to respond to any of the following minimum evaluation criteria will result in a rejection of your proposal.

Please check YES or NO for each of the minimum criteria listed below:

- A. The offeror has sufficient assets to maintain a viable ground floor retail establishment.

YES ☒ NO ☐

- B. The offeror has proposed at minimum an annual lease payment of one million five hundred and twelve thousand dollars (\$1,512,000.00) subject to Escalation stipulated in terms and conditions for the Property.

YES ☒ NO ☐

- C. The offeror has submitted with this proposal a good faith deposit in the form of a cashier's check in the amount of \$150,000 (one hundred and fifty thousand US dollars).

YES ☒ NO ☐

- D. The offeror has proposed at minimum a lease payment of twelve dollars (\$12.00) per square foot per month for the ground floor retail space.

~~month~~ year\* YES ☒ NO ☐

- E. The offeror has sufficient capital to make an immediate payment to the City for capital repairs or improvements to the Property in the amount of up to \$1,000,000.

YES ☒ NO ☐

- F. The offeror has proposed at minimum payments of \$25,000 per year for each of the following: 1) capital projects for the Property (Evaluation Criteria # 6); 2) community enhancement (Evaluation Criteria #7); and 3) the City's green initiatives (Evaluation Criteria #8).

YES ☒ NO ☐

Submit this form with your proposal.



The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals. As required by M.G.L. c. 62C, Section 49A, the undersigned also certifies under the penalties of perjury that the offeror has complied with all laws of the Commonwealth relating to taxes.

Signature: \_\_\_\_\_



Name of person signing proposal: \_\_\_\_\_

LMP GP HOLDINGS LLC

By: LMP Thorndike LLC, its manager

By: Eric Sheffels

Title of officer signing for firm, if applicable: \_\_\_\_\_

(title: manager)

Name of business, if applicable: \_\_\_\_\_

LMP GP HOLDINGS LLC

Address: Attn: Eric Sheffels, Leggat McCall Properties

10 Post Office Square, Floor 13, Boston MA 02109

Signature of all firm partners, if applicable: \_\_\_\_\_

LMP GP HOLDINGS LLC is a Limited Liability Company

and the Offeror is bound by the authorized signature

on this Proposal Form.

Submit this form with your proposal.

Attachment for:

**PROPOSAL FORM FOR THE DISPOSITION OF REAL ESTATE**

**First Street Garage RFP**

Names of Members are:

LMP GP Holdings LLC is owned by:

LMP Thorndike LLC

Granite Properties, Inc.

ST 2008 (Delaware) Management, LLC

The beneficial owners of LMP GP Holdings LLC are:

Bacon, Eric

BRV Partners Fund I

Birch, Donald William

DeBonis, Mark G

Dickey, Robert M

Favazzo, Charles N

Gause, William D

Jacoby, Francis X

Malihi, Mahmood

Neubauer, Karl R

Reynolds, James C

Schusterman, Stacy

Sheffels, Eric B

Stone, Christine M

Walsh, Robert T



### 3. Price Summary Form

Included below, please find the Price Summary Form. Following the form are the requested Schematic plans, elevations, drawings, writings, and schedule of when the proposed ground floor retail operation will be open to the public for business, as requested by the form.

### INSTRUCTIONS for PRICE SUMMARY FORM

The attached price summary form must be submitted with the offeror's proposal. Failure to adhere to this instruction will result in automatic disqualification of your proposal. The price summary form must provide (on the attached worksheet):

- a. Your proposed price for the 420 parking spaces; 2) your proposed price per square foot for the ground floor retail space; 3) your proposed price for each additional contribution: capital improvements, community enhancements, and green initiatives.
- b. Schematic plans, elevations and other drawings and writings describing the ground floor retail operation that is proposed on the Property.
- c. A schedule indicating when the proposed ground floor retail operation will be open to the public for business.



**PRICE SUMMARY FORM**

(1) Proposed price for 420 Parking Spaces per month: \$ 136,920 x 12 months =  
\$ 1,643,040 /year

In words: One million six hundred forty three thousand forty dollars

(2) Proposed price per square foot of Retail Space: \$ 9,375 x 12 months =  
\$ 112,500\* /year (\* derived from: 9,000 square feet x \$12.50 per square foot)

In words: One hundred twelve thousand five hundred dollars

(3) Proposed Fixed yearly contribution for:

a. Capital improvements: \$ 26,000 /year lump-sum payment

In words: twenty six thousand dollars

b. Community enhancement: \$ 206,000 /year lump sum payment

In words: two hundred six thousand dollars

c. Green initiatives: \$ 140,000 /year lump sum payment

In words: one hundred forty thousand dollars

(4) Proposed additional one-time payment for:


a. Capital improvements: \$ 4,500,000 to be paid in YEAR 1 of lease

b. Community enhancements: \$ 4,500,000 to be paid in YEAR 1 of lease

c. Green initiatives: \$ 1,900,000 to be paid in YEAR 1 of lease

**Total proposed monetary offer for Year One:**

\$ 13,027,540

Signature of Offeror: 

**Submit this form with your proposal.**

**Schematic plans, elevations and other drawings and writings describing the ground floor retail operation that is proposed on the Property.**

The Offeror proposes the following program for the Retail Space on First Street:

Space Breakdown	Function
40%	Flex Space: Indoor Year-Round Farmer's Market and Open Lounge Seating
20%	Café
20%	Community / Senior Space
5%	Demonstration Kitchen
15%	Back of House Functions

The Offeror will contribute toward and, with the City's permission, carry out all necessary improvements to restore the Retail Space, construct a core/shell with a renewed façade as demonstrated in the above First Street view, and implement fit-out to support the proposed programs above. The Offeror estimates the core/shell improvements to cost \$2.5 million dollars, with an additional \$1.5 million dollars for the fit-out and ancillary soft costs.

The current concept for the Retail space brings together the following program components:

- An in-door year-round farmer's market, hosting at least 10 individual local vendors at any given time and opening for three to five (3-5) days a week;
- A café operated by a local vendor with seating for 30-40 patrons, serving coffee, breakfast, lunch, and light dinner;
- A designated community room with separate entrance and exit, for exclusive use by local community organizations and local seniors;
- A demonstration kitchen to support local community programming focusing on healthy cooking and food education.

The above program achieves the following objectives:

- Activates pedestrian and economic activity along the portion of the Garage facing First Street;
- Addresses the expressed request of the neighborhood for access to affordable and fresh food;
- Supports current community programs with space constraints, such as existing senior programming at East End House;
- Prioritizes local retailers and vendors, with the commitment that at least 50% of all retailers and vendors will be local and independent (with independent defined as a business with no more than 5+ locations);
- Provides space for community events, such as holiday markets and artist fairs, at no fee to local community groups.

The Offeror will be responsible for the following:

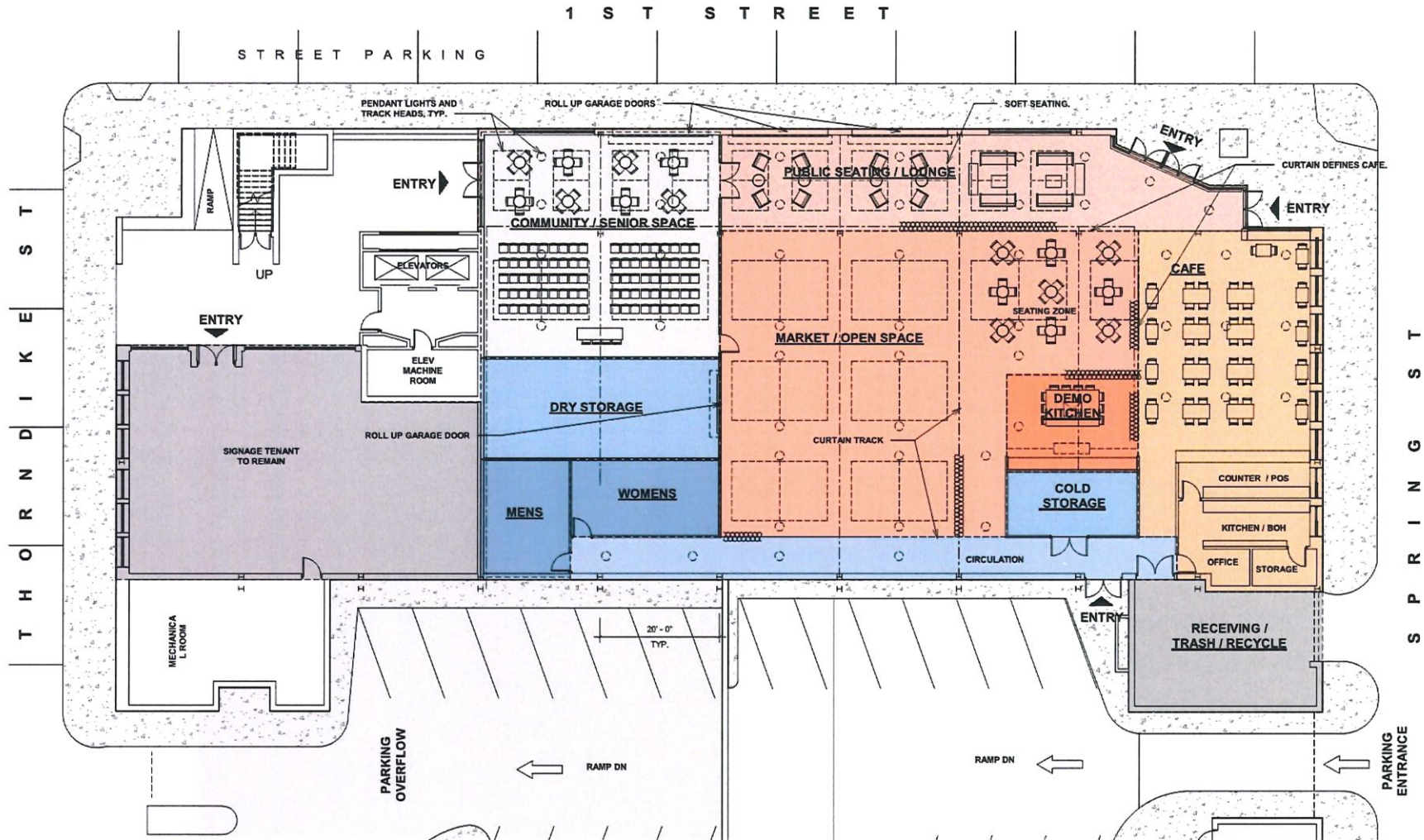
- Operate and maintain the entirety of the Retail Space;
- Coordinate with local community groups to program uses and events for the community / senior space, the demonstration kitchen, and the open market space on days when the market is inactive;



- Engage and oversee a farmer's market operator for the operations of the year-round indoor farmer's market;
- Administer the sub-lease associated with the operator of the café.

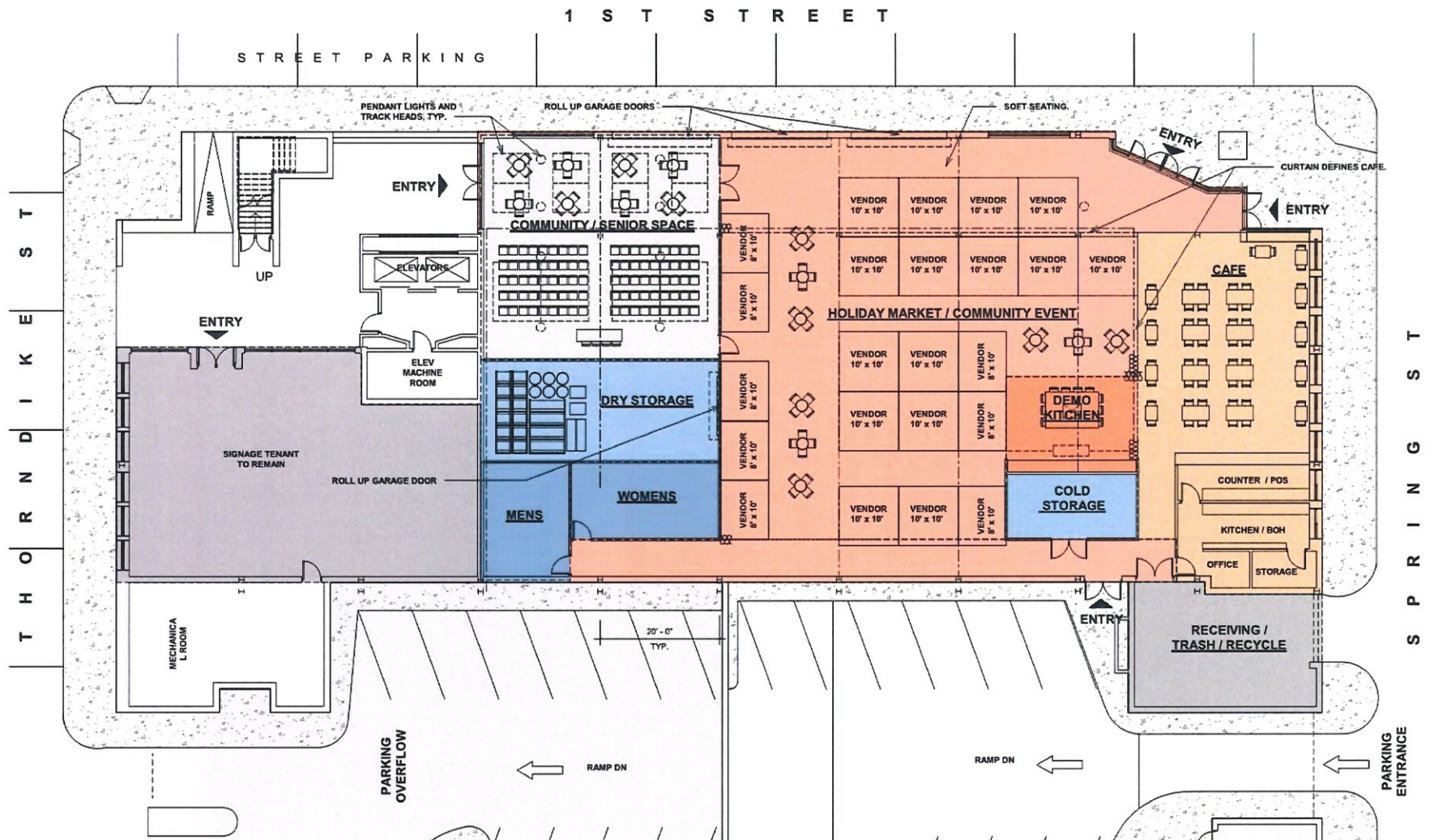
The next pages will present schematic plans, elevations, and an additional perspective view.

# Schematic Plan A: Fit Plan of Retail Space during Farmer's Market Day





## Schematic Plan B: Fit Plan of Retail Space during Holiday / Event Day





## Elevations



**Conceptual Design: First Street Elevation**



**Conceptual Design: Spring Street Elevation**



## Perspective View from First Street

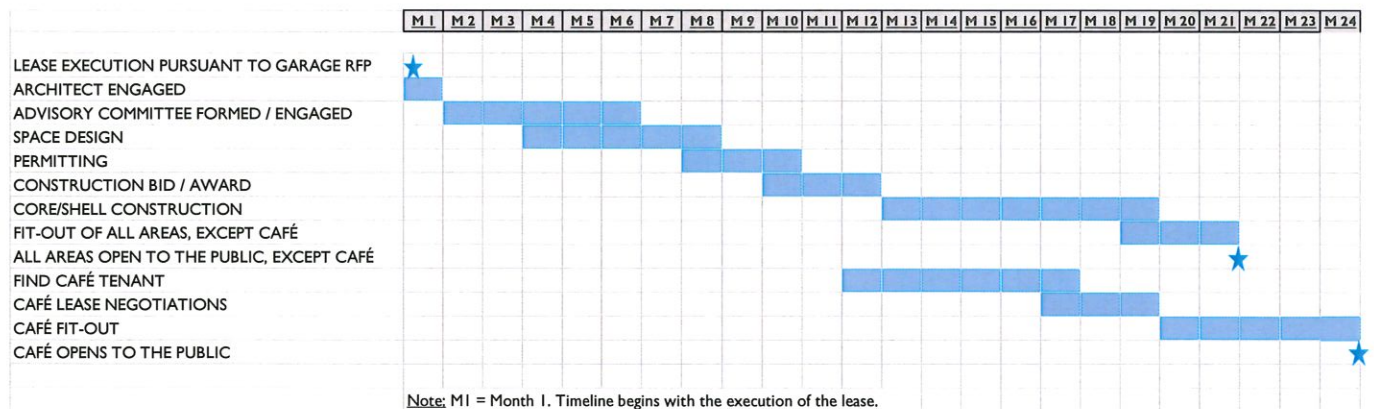


**Schedule indicating when the proposed ground floor retail operation will be open to the public for business.**

### Ground Floor Retail Schedule

The below schedule indicates when the proposed ground floor retail operation is projected to be open to the public for business. The Offeror is of the view that zoning relief should not be needed for the issuance of a building permit for the construction work contemplated for the Retail Space, but the Offeror is committed to seeking all zoning approvals and permits required. The Offeror acknowledges that all proposed capital improvements to the Retail Space, upon lease execution and at any time during the duration of the lease, will require City approval and the submittal of an execution timeline.

The projected execution timeline below is for a total of 24 months from lease execution to initial occupancy and the start of business and program operations. The goal would be to complete this Retail Space project ahead of the Certificate of Occupancy for the 40 Thorndike project. The schedule includes time at the beginning of the process for an Advisory Committee of area residents and business owners to participate in the schematic design and programming of the space.



4. Disclosure of Beneficial Interest Form

A Disclosure of Beneficial Interest is included below.



**DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

**INSTRUCTION SHEET**

**NOTE:** The Division of Capital Asset Management and Maintenance (DCAMM) shall have no responsibility for insuring that the Disclosure Statement has been properly completed as required by law. Acceptance by DCAMM of a Disclosure Statement for filing does not constitute DCAMM's approval of this Disclosure Statement or the information contained therein. Please carefully read M.G.L. c. 7C, s. 38 which is reprinted in Section 8 of this Disclosure Statement.

**Section (1):** Identify the real property, including its street address, and city or town. If there is no street address then identify the property in some other manner such as the nearest cross street and its tax assessors' parcel number.

**Section (2):** Identify the type of transaction to which this Disclosure Statement pertains --such as a sale, purchase, lease, etc.

**Section (3):** Insert the exact legal name of the Public Agency participating in this Transaction with the Disclosing Party. The Public Agency may be a Department of the Commonwealth of Massachusetts, or some other public entity. Please do not abbreviate.

**Section (4):** Insert the exact legal name of the Disclosing Party. Indicate whether the Disclosing Party is an individual, tenants in common, tenants by the entirety, corporation, general partnership, limited partnership, LLC, or other entity. If the Disclosing Party is the trustees of a trust then identify the trustees by name, indicate that they are trustees, and add the name of the trust.

**Section (5):** Indicate the role of the Disclosing Party in the transaction by checking one of the blanks. If the Disclosing Party's role in the transaction is not covered by one of the listed roles then describe the role in words.

**Section (6):** List the names and addresses of **every** legal entity and **every** natural person that has or will have a **direct or indirect** beneficial interest in the real property. The only exceptions are those stated in the first paragraph of the statute that is reprinted in Section 8 of this Disclosure Statement. If the Disclosing Party is another public entity such as a city or town, insert "inhabitants of the (name of public entity)." If the Disclosing Party is a non-profit with no individual persons having any beneficial interest then indicate the purpose or type of the non-profit entity. If additional space is needed, please attach a separate sheet and incorporate it by reference into Section 6.

**Section (7):** Write "none" in the blank if none of the persons mentioned in Section 6 is employed by DCAMM. Otherwise list any parties disclosed in Section 6 that are employees of DCAMM.

**Section (8):** The individual signing this statement on behalf of the Disclosing Party acknowledges that he/she has read the included provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts.

**Section (9):** Make sure that this Disclosure Statement is signed by the correct person. If the Disclosing Party is a corporation, please make sure that this Disclosure Statement is signed by a duly authorized officer of the corporation as required by the statute reprinted in Section 8 of this Disclosure Statement.

This completed and signed Disclosure Statement should be mailed or otherwise delivered to:

Deputy Commissioner for Real Estate  
Division of Capital Asset Management and Maintenance  
One Ashburton Place, 15<sup>th</sup> Floor, Boston, MA 02108

**DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

- (1) REAL PROPERTY: **First Street Garage, 55 First Street, Cambridge MA**
- (2) TYPE OF TRANSACTION, AGREEMENT, or DOCUMENT: **Proposal for Disposition and Lease of Real Property**
- (3) PUBLIC AGENCY PARTICIPATING in TRANSACTION: **City of Cambridge**
- (4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY (IF NOT AN INDIVIDUAL):  
**LMP GP HOLDINGS LLC, a limited liability company**
- (5) ROLE OF DISCLOSING PARTY (Check appropriate role):
- |   |   |
|---|---|
| <input type="checkbox"/> Lessor/Landlord                | <input checked="" type="checkbox"/> Lessee/Tenant |
| <input type="checkbox"/> Seller/Grantor                 | <input type="checkbox"/> Buyer/Grantee            |
| <input type="checkbox"/> Other (Please describe): _____ |   |

- (6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME

RESIDENCE

**Please see attached additional pages**

- (7) None of the above-named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):
- (8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

*No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been*



**DISCLOSURE STATEMENT FOR  
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY  
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

*filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.*

*Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.*

*The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.*

(9) This Disclosure Statement is hereby signed under penalties of perjury.

**LMP GP HOLDINGS LLC**

\_\_\_\_\_  
PRINT NAME OF DISCLOSING PARTY (from Section 4, above)



**11/19/2018**

\_\_\_\_\_  
AUTHORIZED SIGNATURE of DISCLOSING PARTY

\_\_\_\_\_  
DATE (MM / DD / YYYY)

**By: LMP Thorndike LLC, its manager**

**By: Eric Sheffels (title: manager)**

\_\_\_\_\_  
PRINT NAME & TITLE of AUTHORIZED SIGNER



Attachment for:

**Disclosure Statement for Transaction Statement with a Public Agency Concerning Real Property M.G.L. c 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)**

Persons and individuals as requested by Section (6) of Disclosure Statement for Transaction Statement with a Public Agency Concerning Real Property M.G.L. c 7C, s. 38 (formerly M.G.L. c. 7, s. 40J):

Bacon, Eric – 301 Berkeley Street, Boston MA 02116

Birch, Donald William – 113 Townsend Farm Road, Boxford MA 01921

BRV Partners Fund I – c/o Berkshire Group, 444 Madison Avenue 38<sup>th</sup> Floor, New York, NY, 10022

DeBonis, Mark G – 720 Leominster Road, Lunenburg MA 01462

Dickey, Robert M – 15 Davis Avenue, W. Newton MA 02465

Favazzo, Charles N – 6 Crawford Road, Lexington MA 02420

Gause, William D – 11 Patriot's Landing, Essex MA 01929

Granite Properties, Inc.— 5601 Granite Parkway Suite 800, Plano, TX 75024

Jacoby, Francis X – 15 Moccasin Path, Natick MA 01760

LMP Thorndike LLC – c/o Leggat McCall Properties LLC, 10 Post Office Square Boston MA 02109

Malihi, Mahmood – 70 Mt. Vernon Street #4B, Boston MA 02108

Neubauer, Karl R – 10 Park Street #1, Brookline MA 02446

Reynolds, James C – 73 Grant Street, Concord MA 01742

Schusterman, Stacy – 110 W. 7<sup>th</sup> Street Suite 2000, Tulsa OK 74009

Sheffels, Eric B – 27 High Road, Wayland MA 01778

ST 2008 (Delaware) Management, LLC – c/o Granite Properties, Inc. 5601 Granite Parkway Suite 800, Plano, TX 75024

Stone, Christine M – 72 Farragut Avenue, Somerville MA 02144

Walsh, Robert T – 150 Grove Street, Lexington MA 02420

**5. Three financial references from a bank, mortgage company, investment company or other licensed financial institution.**

**Andrew Rosen**  
**Bank of America Merrill Lynch**

SVP, Commercial Real Estate  
Banking  
andrew.rosen@bamll.com  
(617) 346-4241  
225 Franklin Street  
MAI-225-02-04  
Boston, MA 02110

**Nicholas Moise**  
**Eastern Bank**

Senior Vice President/Director  
Commercial Real Estate  
[n.moise@easternbank.com](mailto:n.moise@easternbank.com)  
(617) 897-1032  
265 Franklin Street  
Boston, MA 02110

**Douglas MacLean**  
**Berkshire Bank**

SVP - Commercial Real Estate  
Market Executive  
[dmaclean@berkshirebank.com](mailto:dmaclean@berkshirebank.com)  
(508) 735-4740  
60 State Street, 38th Floor  
Boston, MA 02109

**ii. Confirmation of compliance with RFP Section V, Contract Terms and Conditions**

Offeror acknowledges and agrees to the Contract Terms and Conditions (including the Terms provided in the original RFP) as set forth in Section V of the RFP and RFP Addendums I through 4, and will provide additional information as may be requested by the City to demonstrate financial ability to perform. (See also materials provided with bid documents).

**Additional Information for Section 5.4:**

**Demonstrated ability to finance the proposed improvements**

LMP GP Holdings LLC is organized so that the talents and abilities of both LMP and Granite Properties will be brought to bear in carrying out the terms of the First Street Garage lease. Both LMP and Granite Properties are mature, stable, and well-capitalized development entities.

**Leggat McCall Properties**

LMP is a mature, stable, and well-capitalized development entity. LMP is owned as a joint venture by the 15 LMP partners and Berkshire Realty Investments, and has been associated with New England real estate for over 50 years. LMP has completed fifty projects with budgets over \$50MM, and ten projects with budgets over \$200MM, and we have the financial capacity to continue successfully completing projects of the same size and scope.

For additional information on LMP's ability to execute the project successfully, please see *Section 2C. Demonstration of Experiences and Resources to Fulfill the Contract (page 26)*.



**Harrison Albany Block**  
\$300 Million  
700,000 SF/650 units



**One First Street**  
\$110 Million  
210 Condominiums



**Novartis**  
Biotechnology Research  
Building/Office/Parking/Reta  
795,000 sf



**Charles Stark Draper Laboratory**  
Urban Phased Construction  
and Interior Renovations  
490,000 sf





**Schneider Electric**

\$45 Million  
238,000 SF



**Waltham Woods Corporate Center**

\$107 Million  
400,000 SF



**Mass. General Hospital Lunder Building**

Inpatient and Interventional  
Procedure Building  
530,000 sf

### Granite Properties

Granite Properties is one of the country's leading privately held commercial real estate investment, development and management companies with more than 160 team members across five national offices. Since 1991, we have developed or acquired over 26 million square feet of Class A office space worth \$6.1 billion, achieving returns of more than double the NCREIF index for our investors. The company's current portfolio includes 8.9 million square feet of office and retail property with more than 100 acres for future development. At the heart of our success is the extraordinary customer experience that we create in each and every asset through our mixed-use environments rich in amenities and our concierge-level service. This commitment to excellence extends to Granite's corporate culture, which has been recognized as one of Fortune Magazine's Great Places to Work for 6 years running. The Granite senior leadership team is unusual for its depth and longevity, having been together for over 17 years and has combined real estate experience of over 100 years. Granite Properties was established in 1991 by Michael Dardick, CEO of the firm, and the Schusterman family, a long-time leader in the oil and gas industry.

The following highlight Granite's portfolio as a best in class developer, owner, and operator of real estate:

- Completed over \$6.1 Billion in real estate transactions
- Over 26 million square feet of real estate development and acquisitions
- Currently over \$2 billion in office assets owned and managed with less than 10% leverage
- 14% unlevered IRR return across all office investments since inception
- 70+ individual office investments without a single negative return
- In-house property management and leasing teams allowing for the strongest execution post development
- Awarded "Developer of the Year" three times by the NAIOP
- 6 Years in a row selected as a "Great Place to Work" by the Great Place to Work Institute
- Granite's senior leadership team has been together for over 17 years and has combined real estate experience of over 100 years.



Below are some notable Granite projects:

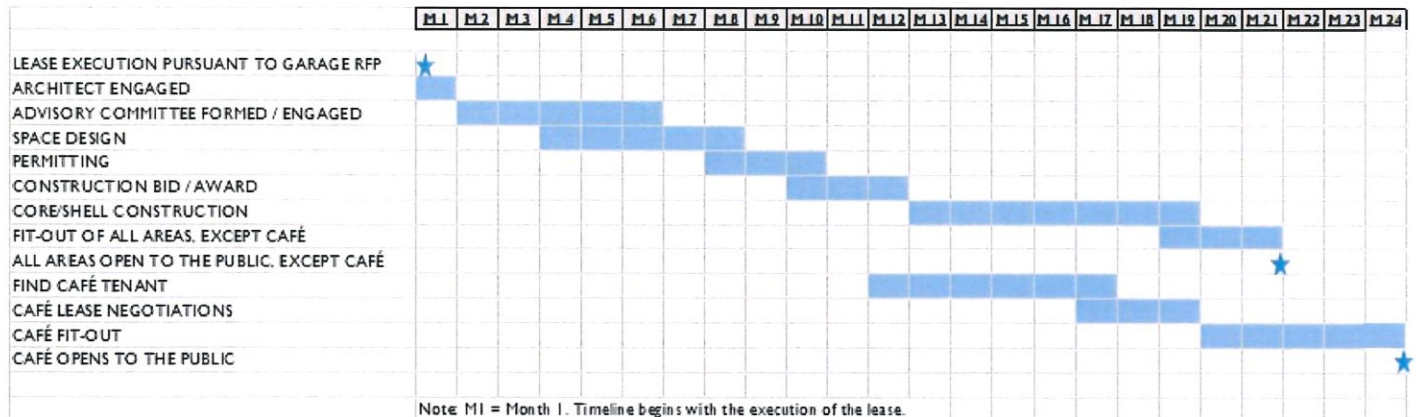


### Additional Financial Information

LMP GP Holdings LLC is a special purpose entity established by LMP and Granite Properties. In regards to the financial information suggested:

- LMP and Granite Properties are fully capable of funding LMP GP Holdings LLC, as shown by Section I above.
- The parties would be happy to provide any additional financial information at the request of the City, including audited financial statements and a credit release. For additional information, please contact Robert M. Dickey, Executive Vice President at LMP.
- The Offeror, LMP GP Holdings LLC owns no other real estate, and this entity has no history of delinquency, default, or outstanding liens or judgments. Other than the appeal challenging the Special Permit for the 40 Thorndike Project (in which the Planning Board was a named defendant), Offeror has no litigation history.
- LMP and Granite both own and manage additional properties. For additional information on existing properties, please refer to <http://www.lmp.com/> and <https://www.graniteprop.com/>

Per Section 5.12, below is a detailed timeline for execution of the proposed construction at First Street Garage:



### iii. Additional requested information

The following additional requested information is provided below:

#### 1. Confirmation of being Equal Opportunity Employer

LMP GP Holdings LLC and its affiliates are Equal Opportunity Employers.

#### 2. (6) Copies of Request for Proposals

Six (6) copies of the proposal (along with a Cashier's check for \$150,000) and all required bid forms and documents were hand delivered to Elizabeth Unger, Purchasing Agent, City of Cambridge, Room 303, City Hall, Third Floor, 795 Massachusetts Avenue, Cambridge MA 02139 prior to 11am on Monday, November 19<sup>th</sup> 2018.

#### 1. Americans with Disabilities Act – Tax Compliance form

Included on the following page.



**Americans with Disabilities Act (42 U.S.C. 12131)  
Section 504 of the Rehabilitation Act of 1973  
Tax Compliance/Anti-Collusion Statement  
Debarment Statement**

The Americans with Disabilities Act (the "Act") applies to all employers of fifteen or more employees. All vendors that are subject to the Act must comply with its provisions. In further compliance with the Act, all Contractors who enter into contracts with the City are prohibited from discrimination against the City's employees, regardless of the size of the Contractor.

The Act protects against discrimination on the basis of "disability", which is defined as a physical or mental impairment that substantially limits at least one "major life activity"; discrimination against a person having a history or record of such impairment; and discrimination against an individual regarded - even if inaccurately - as having such an impairment. The Act also expressly prohibits discrimination that is based on an individual's relationship or association with a disabled person.

The Contractor shall not discriminate against any qualified employee or job applicant with a disability and will make the activities, programs and services covered by any contract awarded through this procurement readily accessible to and usable by individuals with disabilities. To be qualified for a job, or to avail oneself of the Contractor's services, the individual with the disability must meet the essential eligibility requirements for receipt of the Contractor's services or participation in the Contractor's programs or activities with or without: 1) reasonable modifications to the Contractor's rules, policies and practices; 2) removal of architectural, communication, or transportation barriers; or, 3) provisions of auxiliary aids and services.

By submitting its contract, the Contractor certifies to the City of Cambridge that it understands and will comply with all applicable provisions of the Act, including compliance with applicable provisions of Section 504 of the Rehabilitation Act of 1973, if the Contractor is receiving federal funds.

The undersigned certifies under penalties of perjury that this contract has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals

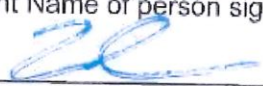
As required by M.G.L. c. 62C, §49A, the undersigned certifies under the penalties of perjury that the Contractor has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

The undersigned certifies that it is not currently subject to any State or Federal debarment order.

Date: 11/19/2018

**LMP GP HOLDINGS LLC** By: LMP Thorndike LLC, its manager By: Eric Sheffels (title: manager)

(Print Name of person signing bid)

  
(Signature & Title)



## 2C. Demonstration of Experiences and Resources to Fulfill the Contract

We understand the importance of this project to the City and the neighborhood, and we are excited about the opportunity to contribute to the City. Offeror has a long history of partnering effectively with municipalities like the City on projects of this size, scope, and complexity, and we are confident that our expertise and local knowledge will allow us to exceed your expectations for the project.

Offeror will be a good partner for the City. This project will involve extensive community involvement and coordination amongst multiple government agencies, so we understand that the City needs a trustworthy partner with whom it is easy to work. If chosen, we will lead an open and transparent process. We will communicate early and often and solicit and incorporate feedback thoughtfully to find a solution that both the community and the City view as a success.

### Key highlights of our team include:

- i. **LMP's proven ability to execute** – With over fifty projects completed with budgets over \$50MM and ten projects with budgets over \$200MM, LMP has an extensive track record of completing large and complicated projects in the Boston area. Our firm is known for partnering with cities, institutions, and corporations on their most complex and challenging projects; many of these projects are in tight urban settings with complex permitting requirements. This experience makes us well-suited to manage this project. We look forward to using our expertise and experience for the benefit of the City.
- ii. **Strong leadership** – LMP has 31 Project Managers (“PMs”) with an average of 21 years of experience, and we have selected Robert M. Dickey, senior executive and partner, to lead this project. Mr. Dickey is a long-term partner of LMP with executive management experience leading large, complex projects. He will be hands on in managing our team. Two PMs from LMP, Don Birch and Duong Huynh, will report to Mr. Dickey. This core group of experienced leaders will ensure that the team remains coordinated, focused, and effective.

### 2C.i. LMP's proven ability to execute

Established in 1965, LMP has been associated with New England real estate for half a century. Our firm is not a broker, architect, property manager, or general contractor. We are developers, investors, and project advisors, and we strive to be experts in the entire value creation and project delivery process. LMP is the largest firm of its type in New England and we are proud of the ten billion dollars' worth of projects that we have overseen as investors and project managers in the last fifteen years.

Both as a principal and service provider, LMP has a strong track record of successful projects in New England. A few defining characteristics of the firm:

- Fifty projects completed with budgets over \$50MM and ten projects with budgets over \$200MM over the past 15 years.
- Over the past decade, a focus and expertise in urban mixed-use projects throughout Boston and Cambridge and predominantly inside Route 128.
- Multi-jurisdictional permitting and entitlement processes.
- Multi-party ownership structures including private joint ventures, multi-institutional ventures and joint ventures with non-profit organizations.
- Advisory, counsel and support in structuring project governance and organization.
- Incorporating innovative and practical sustainability goals in our projects.

- Executing complex projects on tight urban sites or active campus environments.
- Track record with most major architects and contractors throughout New England.

Perhaps most importantly, we are committed to a development process that respects the input of the local community. Through this bid proposal, we would like to demonstrate our ability to deliver on topics the neighborhood and the City have prioritized, such as affordable housing, sustainability, workforce development, and community space.

Throughout its portfolio, LMP has led many projects with innovative and cutting-edge design teams. At One First Street, for example, our team renovated multiple historic structures into condominiums while maintaining the spirit of the original buildings and won a prize for best historic development in Cambridge. At Novartis, our PMs coordinated a \$500+ million project that involved coordinating the design teams of Maya Lin and Toshiko Mori, as well as their local design teams. We understand that a key element in this project will be integrating the project into the neighborhood and creating a vibrant sense of place, and we are excited about the opportunity to lead the project.

The brief thumbnails below highlight some of our recent projects:



**Harrison Albany Block**  
\$300 Million  
700,000 SF/650 units



**One First Street**  
\$110 Million  
210 Condominiums



**Novartis**  
Biotechnology Research  
Building/Office/Parking/Reta  
795,000 sf



**Charles Stark Draper  
Laboratory**  
Urban Phased Construction  
and Interior Renovations  
490,000 sf



**Schneider Electric**  
\$45 Million  
238,000 SF



**Waltham Woods Corporate  
Center**  
\$107 Million  
400,000 SF



**Mass. General Hospital  
Lunder Building**  
Inpatient and Interventional  
Procedure Building  
530,000 sf

## 2C.ii – Strong Leadership

We believe that our team will bring an unparalleled level of expertise and focus to this project. Below are resumes for the key personnel on this project.



**Robert M. Dickey**  
**Executive Vice President / Partner**

**Responsibilities**

Mr. Dickey joined Leggat McCall Properties in 2011 as a partner of the firm, bringing 34 years of experience in real estate acquisition, development, and project management. In addition to co-managing the firm's development business, he plays a key role in client development and serves on the Investment Committee. His projects have included build-to-suits, university real estate, corporate relocations, life science facilities and land transactions.



**Experience**

Mr. Dickey's assignments include:

- **Harvard University, Cambridge, MA:** Project Executive for over \$250 million of projects completed between 2003 and 2008, comprising 500 beds of new graduate housing, 120 units of faculty housing, 39 units of community based affordable housing, and below-grade parking for 300 cars.
- **Harvard University, Allston, MA:** Project Executive on a series of building renovations and tenant relocations that facilitate the redevelopment of the Barry Corner area.
- **Wellesley College, Wellesley, MA:** Real estate advisor to the school on several properties outside the campus core, including the "North 40" property recently sold to the Town for \$35 million.
- **Andover Newton Theological School, Newton Centre, MA:** Real estate advisor to the school on its existing 23 acre campus. Recently helped the school in successfully transacting two long-term ground lease deals.
- **Boston University, Boston, MA:** Partner with the University and Boston Medical Center on the development of a 175,000 sf laboratory research facility subject to a long-term ground lease.
- **Bent Street Land Company, Cambridge, MA:** Project Executive for mixed use project in East Cambridge comprising 115,000 square feet office/lab building and 121 unit multi-family housing project.
- **Polaroid, Cambridge, MA:** Project Executive for the redevelopment of Polaroid's world headquarters, as well as the planning/permitting of an additional 100,000 square feet of office and laboratory space, 120 residential units, and associated structured and below-grade parking.

**Prior Experience**

Prior to joining Leggat McCall Properties in 2011, Mr. Dickey was a Managing Director at JLL where he was responsible for the firm's development activities in New England and directed a group of over 30 people. He joined Spaulding & Slye in 1994 and was a Partner of the firm when it was acquired by JLL in 2006. Prior to 1994, Mr. Dickey was employed by Northland in Newton, Massachusetts and by LaSalle Partners in Chicago, Illinois.

**Education**

B.A. - University of Vermont

**Professional Affiliations & Associations**

NAIOP/Commercial Real Estate Development Association

Urban Land Institute

MIT Center for Real Estate

**Community Service**

Citizen Schools – National Board of Directors

The Fessenden School – Board of Trustees

Newton-Wellesley Hospital – Board of Overseers and Real Estate Committee



**Donald W. Birch**  
**Executive Vice President/Chief Operating Officer**



**Responsibilities**

Mr. Birch manages select high profile projects and advisory assignments for the Company. He is a member of the Company's Executive Committee and serves as Chief Operating Officer of the firm. In his more than 30 years with Leggat McCall Properties, Mr. Birch has held leadership positions in Development Management, Asset/Investment Management, Construction Management, and Property Management. Mr. Birch has managed a number of large development projects in various stages of execution, from acquisition, permitting, design, construction, occupancy and disposition. In addition to his development and advisory experience, Mr. Birch has been a Property Manager and ultimately ran the firm's property management business, including professional, facilities and administrative staff of more than 125 employees, and a property portfolio of more than seven million square feet, in 32 properties located in five states between Boston and Washington D.C.

**Experience**

Mr. Birch's representative assignments include:

- **Thomas Jefferson University | Jefferson Health, Philadelphia, PA:** Enterprise masterplan advisory assignment involving downtown and greater Philadelphia locations and the integration of recent mergers/alliances with Philadelphia University, Abington Health, Aria Health, Kennedy Health and Magee Rehabilitation Hospital.
- **CitySquare, Worcester MA:** \$550 million Public-Private Partnership and master-planned mixed-use development on 12 acres in downtown Worcester. Project included new public infrastructure, multiple office buildings, medical care, hotel, residential, retail and structured parking.
- **Battery Wharf, Boston, MA:** \$350 million, 480,000sf, mixed-use hotel, residential and retail complex including four above-grade structures on a common below-grade waterfront foundation and wharf structure, on Boston Harbor.
- **Raytheon Corporation, Waltham, MA:** \$37 million, 150,000sf, build-to-suit world headquarters facility.
- **Hebrew Senior life, Dedham, MA:** \$442, Million, 940,000sf intergenerational lifestyle campus including 268 beds of long-term nursing care, 51 units of assisted living and 266 units of independent living on a 162-acre site.
- **Four Penn Center, Philadelphia, PA:** \$94 Million, 525,000sf gut-rehab of an existing 20 story office tower.
- **Concord Road Corporate Center, Billerica, MA:** \$40 Million, 350,000sf, multi-tenant office complex including 165,000sf of new construction, 185,000sf of existing building rehabilitation.

**Prior Experience**

Prior to joining the Leggat McCall team in 1989, Mr. Birch was employed by Essex Builders Company, Inc. (a former Leggat McCall Properties affiliate) as a Project Estimator. He was also the project leader in the development of the company's Engineered Building Systems division and completed the Butler Manufacturing, Builder Product Courses.

**Education**

B.S., Civil Engineering - University of Massachusetts

M.S., Civil Engineering/Construction Management - Northeastern University

**Professional Affiliations & Associations**

NAIOP Commercial Real Estate Development Association

Worcester Regional Chamber of Commerce

Former Member of Building Owners and Managers Association - Board of Directors 1997/1998

**Duong Huynh**  
**Assistant Project Manager**



**Responsibilities**

Duong's work at Leggat McCall focuses on principal development management and strategic real estate advising. On the principal development side, she focuses on project planning, permitting, community engagement, leasing efforts and management of consultant teams. Duong uses her capacity in real estate financial analysis, architectural design, and market research to support LMP's efforts as long-term strategic advisor to institutions and as investors in value additive assets. She brings blended experience in real estate development, architecture, and housing policy and finance consulting.

**Experience**

Duong's LMP assignments include:

- **UMass Boston, Boston, MA:** Strategic advising of university leadership around management and planning of real estate projects around campus.
- **Northeastern University, Boston, MA:** Strategic advising of university leadership around student housing planning initiatives and repositioning of existing assets.
- **Suffolk University, Boston, MA:** Planning, cost control, risk management, and reporting for renovation projects at Suffolk University's Sawyer building, including classroom spaces, art production studios, and water infiltration structural repairs.
- **Thomas Jefferson University, Philadelphia, MA:** Market analysis, strategic advising, and asset management analysis on behalf of the university for its Philadelphia Center City campus and Institutional Master Plan.
- **MITIMCO's North of Main project, Cambridge, MA:** Cost control and reporting on capital improvement efforts for a 24-story 415,000 SF tower in Kendall Square that includes commercial office, a residential tower, and 400 above-ground parking spaces. Market analysis to assess cost and rental trends related to project.

**Prior Experience**

Prior to joining Leggat McCall Properties in 2017, Duong worked at the New York City Economic Development Corporation's Real Estate Transactions Group as Summer Associate, conducting deal underwriting, RFP structuring and analysis, and developer interviews for a 1 million GSF disposition project in Long Island City, Queens. Prior, she was at Wharton pursuing her MBA with a focus on real estate and finance. Duong spent over three years at the Affordable Housing Institute in Boston, where she led projects in Boston, Southeast Asia, and the Arabian Gulf as advisor to real estate developers, governments, and financial institutions on housing policy and finance issues.

**Education**

Bachelor of Science in Architecture, Massachusetts Institute of Technology (MIT), Cambridge, MA (2012)  
Working toward a Master in Business Administration, the Wharton School of Business at the University of Pennsylvania, Philadelphia, PA

**Professional Affiliations & Associations**

NAIOP Commercial Real Estate Development Association  
CREW Boston



## 2D. Detailed Overview of Evaluation Criteria

### Criteria I: Parking Demand Management Strategies

#### **Part I: Current PTDM Strategies as part of 40 Thorndike Street Special Permit & Additional PTDM Commitments as Part of This Bid**

The Offeror is seeking the thirty-year (30-year) lease of four hundred twenty (420) spaces at the First Street Garage to serve as accessory parking for the 40 Thorndike project (i.e. the redevelopment of the Sullivan Courthouse). As part of Special Permit case number 288 (SP 288), granted October 30, 2014, the Offeror filed a Parking and Transportation Demand Management Plan with project number F-56 (PTDM F-56). PTDM F-56 was approved February 18, 2014 by the Parking and Transportation Demand Management Planning Officer (PTDM Planning Officer). The Offeror remains fully committed to implementing the strategies outlined in PTDM F-56, which will reduce the Offeror's parking demand as linked to the First Street Garage.

Moreover, as part of commitments linked to the lease of 420 spaces at the Garage, the Offeror will implement additional PTDM strategies to ensure that the proposed users of the 420 spaces—the residents and occupants of 40 Thorndike—meet and exceed mode-split goals and minimize parking and traffic impacts on the East Cambridge surrounding neighborhood. To provide a baseline, this section will outline the original PTDM F-56 strategies and then highlight in a separate column the additional strategies linked specifically to the proposed parking lease of the First Street Garage. This information can be found in the following *PTDM Strategies Table*. Please refer to *Appendix, Sections 3C-D* for the full text of Special Permit 288 and the accompanying PTDM F-56.

### PTDM Strategies Table

Major Strategies	
Select Strategies under PTDM F-56 (approved February 18, 2014) <sup>1</sup>	Additional commitments linked to Proposal for Garage lease
<b>Charles River Transportation Management Association (TMA) enrolled programs:</b> provide ride matching, EZRide shuttle service, emergency ride home service, vanpool formation assistance, and car-sharing program to all residents who live within the 24 units of housing at 40 Thorndike (henceforth known as Project Residents) and all employees who work at 40 Thorndike ("Project Employees").	
<b>Transit Pass Program:</b> provides 100% transit subsidy for MBTA monthly passes, up to the federal pretax benefit limit to all employees of commercial tenants of 40 Thorndike who receive health care benefits ("Commercial Employees"). The program allows Commercial Employees to use tax-free dollars to pay for transit and parking costs.	<b>Expansion of the Transit Pass Program:</b> (i) Program expansion will apply to all Project Residents, who will receive two MBTA monthly passes, at 100% subsidy, for the first three months of tenancy. Benefit applies each time a new household moves in. (ii) Program expansion will also apply to all retail employees of 40 Thorndike ("Retail Employees") in a manner consistent with the program for commercial tenants.
<b>Bicycle Incentive 1:</b> funds the installation of a BLUEbike station on-site.	<b>City bike share contribution:</b> Additional contribution of \$50,000 toward the City's installation of additional bike-sharing accommodation in the vicinity of the Garage.
<b>Bicycle Incentive 2:</b> requires all building commercial tenants, including retail tenants, to become Silver Level Corporate Members of BLUEbike for use by all Project Employees.	<b>Expansion of Bicycle Incentive 2 to Project Residents:</b> Provision of 100% subsidized Silver level BLUEbike membership for three months for up to two adults per Project Resident household. Benefit applies each time a new Project Resident household moves in.

<sup>1</sup> Provided as a baseline only to better understand the column to the right which highlights the specific additional commitments in the Offeror's Parking Lease bid. Additionally, the strategies highlighted on the left column here are not meant as a comprehensive summary of strategies under PTDM F-56. Please refer to PTDM F-56 in the *Appendix, Section 3D*, for the comprehensive list of strategies, which the Offeror remains fully committed to as part of the 40 Thorndike project.



Other Strategies	
Strategies under PTDM F-56 (approved February 18, 2014) <sup>2</sup>	Additional commitments linked to Proposal for Garage lease
<b>Monitoring Program:</b> to conduct annual survey on Project Employee transportation mode split and to produce biennial parking utilization counts report.	
<b>On site transportation coordinator:</b> to serve both Project Employees and Project Residents.	
<b>Preferential parking:</b> for seven (7) rideshare spaces and 1 Lower Level 2 charging station on-site at 40 Thorndike, serving 2 parking spaces.	<b>Expansion of Preferential Parking:</b> An increase from 1 to 4 charging stations on-site at 40 Thorndike, serving 8 parking spaces. Additionally, as part of the Garage lease, the Offeror will contribute toward the installation of 20 charging stations at the First Street Garage, serving 40 spaces (see Section 2D: Criteria 8: Green Initiatives (page 49)).
<b>Bicycle Parking:</b> provides 216 bicycle spaces on-site (166 long-term and 50 short-term spaces).	
<b>Bicycle and Walking Incentive:</b> promotes and participates in the City's Green Streets Initiative, Walk/Ride Day Corporate Challenge, and other events as part of the City's month-long GoGreen Month.	
<b>Bicycle Incentive 3:</b> funds air pumps and a bicycle maintenance station.	
<b>Bicycle Incentive 4:</b> sponsors one bike-to-work program annually.	
<b>Access to Zipcars:</b> either on-site or nearby. At least two ride-sharing parking spaces will be provided on-site, subject to further agreement with a ride-sharing company. The number of ride-sharing spaces can grow if there is demand.	

<sup>2</sup> Provided as a baseline only to better understand the column to the right which highlights the specific additional commitments in the Offeror's Parking Lease bid. Additionally, the strategies highlighted on the left column here are not meant as a comprehensive summary of strategies under PTDM F-56. Please refer to PTDM F-56 in the *Appendix, Section 3D*, for the comprehensive list of strategies, which the Offeror remains fully committed to as part of the 40 Thorndike project.

Other Strategies	
Strategies under PTDM F-56 (approved February 18, 2014) <sup>2</sup>	Additional commitments linked to Proposal for Garage lease
<b>Alternative Work Hours and Telecommuting:</b> whereby tenants will be encouraged to allow Project Employees to use staggered and flexible work hours.	
<b>Marketing and Promotion Materials:</b> to provide transportation resources and incentivize building users toward non-Single Occupancy Vehicle (SOV) trips. Materials aim to provide access to transit schedules, ridesharing information, orientation information for new building users, and notification of transportation related events. Channels include an interactive website, printed materials, and bulletin boards and kiosks.	<b>Multi-modal Transit Display:</b> Installation of a multi-modal transportation display screen to provide information to building users at 40 Thorndike, located at a central location visible and accessible to all Project Employees and Residents.
<b>Unsubsidized Parking Program:</b> whereby commercial tenants are required to not subsidize Project Employees' cost of parking. This is intended to reduce single occupancy vehicle commuting. Additionally, car-pools and van-pools will receive a discounted parking rate to parking on-site at 40 Thorndike.	<b>Resident Parking:</b> Charging Project Residents parking fees separate from the rent to remind residents of the cost of owning and parking a vehicle. Because all of the 24 units of housing at 40 Thorndike will be affordable, this program is subject to constraints under Cambridge's affordable housing program.
<b>Office of Workforce Development:</b> will receive commercial and retail tenants' job listings, which encourages application from and hiring of local Cambridge residents for jobs located in the project.	



## Part II: At the City's Election, a Commitment to Seek Reductions in Leasehold Parking Spaces

We recognize that this RFP has requested Offeror to lease 420 parking spaces within the First Street Garage for 30 years, and we are prepared to fulfill that commitment without qualification.

We also understand that a reduction in the required amount of parking for 40 Thorndike (Special Permit 288) might be deemed to be appropriate. Moreover, based upon the commitments that the Offeror has made under PTDM F-56 approved February 18, 2014, the expanded PTDM commitments outlined in Part I of this section, and current trends in vehicular use patterns, the Offeror believes that such a reduction would be warranted and that 40 Thorndike's parking needs could be met with substantially fewer parking spaces than currently contemplated.

The Offeror has proposed to provide 512 spaces under the approved Special Permit 288<sup>3</sup>. If the City's Transportation and Planning staff recommends a reduction, the Offeror is prepared to agree to the following provisions as a part of the lease at the First Street Garage:

1. The Offeror will promptly and diligently seek all required revisions to Special Permit 288 to allow for a reduction in required parking spaces at 40 Thorndike (henceforth known as "the Reduction"). Under Special Permit 288, the Reduction could result in the existing required 512 parking spaces being reduced to as few as **387 spaces**. As the 40 Thorndike project includes 92 spaces on site, this could result in as few as **295 spaces** as the necessary number of spaces to be leased in the First Street Garage. This could result in a **reduction of up to 125 spaces, or 30%**, from the 420 spaces contemplated herein.
2. Should the Offeror successfully complete the Reduction, and the Reduction becomes final with all appeal periods having expired, at the City's election and sole discretion, the lease could be amended to reflect the reduced number of leasehold spaces, resulting from the Reduction, in place of the original 420 spaces. The lease would then ensure that the rent and other obligations of Offeror, relating solely to the per space cost, are reduced proportionately.
3. The pursuit of the Reduction is an option for the City and not intended to be a precondition to the issuance of a building permit or the development of the project as contemplated in Special Permit 288.

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<sup>3</sup> See Appendix 3C, Special Permit 288 (within this document, refer to Page 35, Appendix I, Approved Dimensional Chart).

### **Part III: Acknowledgement of Resident Rights to Snow Emergency Parking**

The Offeror fully acknowledges the City's long-term policy to provide residents with Snow Emergency Parking at no fee in the Garage. The Offeror will accommodate the same policy and terms as part of its lease for parking in the Garage with the City.



## Criteria 2: Ground Floor Retail

### Part I: Program for Retail Space

The Offeror proposes the following program for the Retail Space on First Street:

Space Breakdown	Function
40%	Flex Space: Indoor Year-Round Farmer's Market and Open Lounge Seating
20%	Café
20%	Community / Senior Space
5%	Demonstration Kitchen
15%	Back of House Functions

**View of Retail Space from First Street**



The Offeror will contribute toward and, with the City's permission, carry out all necessary improvements to restore the Retail Space, construct a core/shell with a renewed façade as demonstrated in the above First Street view, and implement fit-out to support the proposed programs above. The Offeror estimates the core/shell improvements to cost \$2.5 million, with an additional \$1.5 million for the fit-out and ancillary soft costs.

The current concept for the Retail space brings together the following program components:

- An in-door year-round farmer's market, hosting at least 10 individual local vendors at any given time and opening for three to five (3-5) days a week;
- A café with seating for 30-40 patrons, serving coffee, breakfast and lunch;
- A designated community room with separate entrance and exit, for exclusive use by local community organizations, including neighborhood theater groups, and local seniors;
- A demonstration kitchen to support local community programming focusing on healthy cooking and food education.

The above program achieves the following objectives:

- Activates pedestrian and economic activity along the portion of the Garage facing First Street;
- Addresses the expressed request of the neighborhood for access to affordable and fresh food;
- Supports current community programs with space constraints, such as existing senior programming at East End House;
- Prioritizes local retailers and vendors, with the commitment that at least 50% of all retailers and vendors will be local and independent (with independent defined as a business with no more than 5+ locations);
- Provides space for community events, such as holiday markets and artist fairs, at no fee to local community groups.

Cambridge currently has no permanent in-door farmer's market – the Retail Space's farmer's market will be the first such amenity in the City. The market will provide residents with access to local fresh foods at affordable prices. Vendors will be able to store foods on-site, resulting in savings further passed down to buyers. Meanwhile, the café draws pedestrian traffic to the site and acts as an amenity to those visiting the market.

As part of its research into local community space needs, the Offeror is aware that East End House currently hosts many programs and activities for local seniors in addition to its childcare programs. The Offeror is committed to collaborating with East End House to explore opportunities to host its existing community space needs in the community / senior space and demonstration kitchen as outlined above.

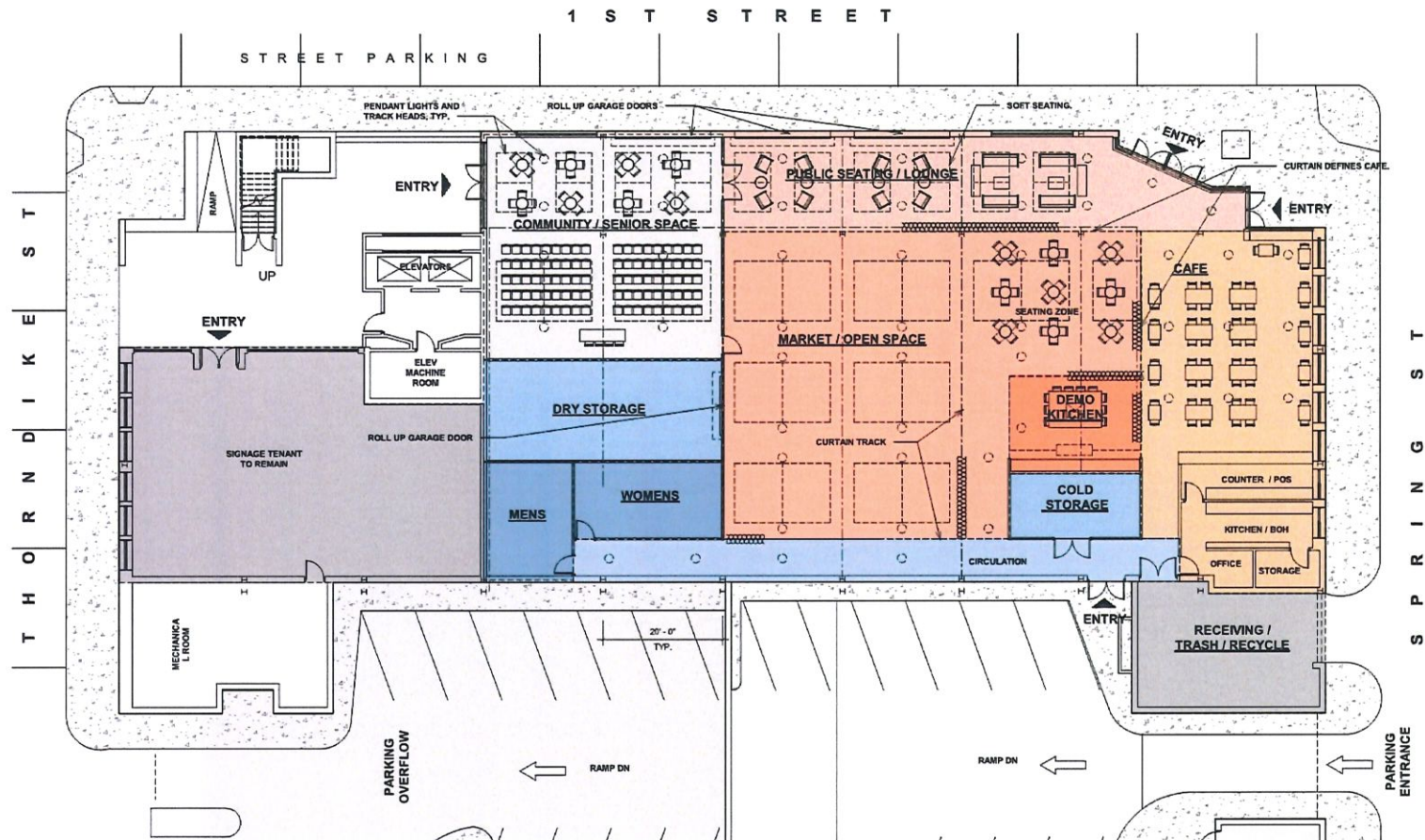
Additionally, on days when the farmer's market is not active, the open area and movable partitions can be reconfigured to host different large-scale community functions, such as holiday markets and artist fairs. The space has capacity to host at least 100 people.



## Part II: A “Day in the Life” of the Space

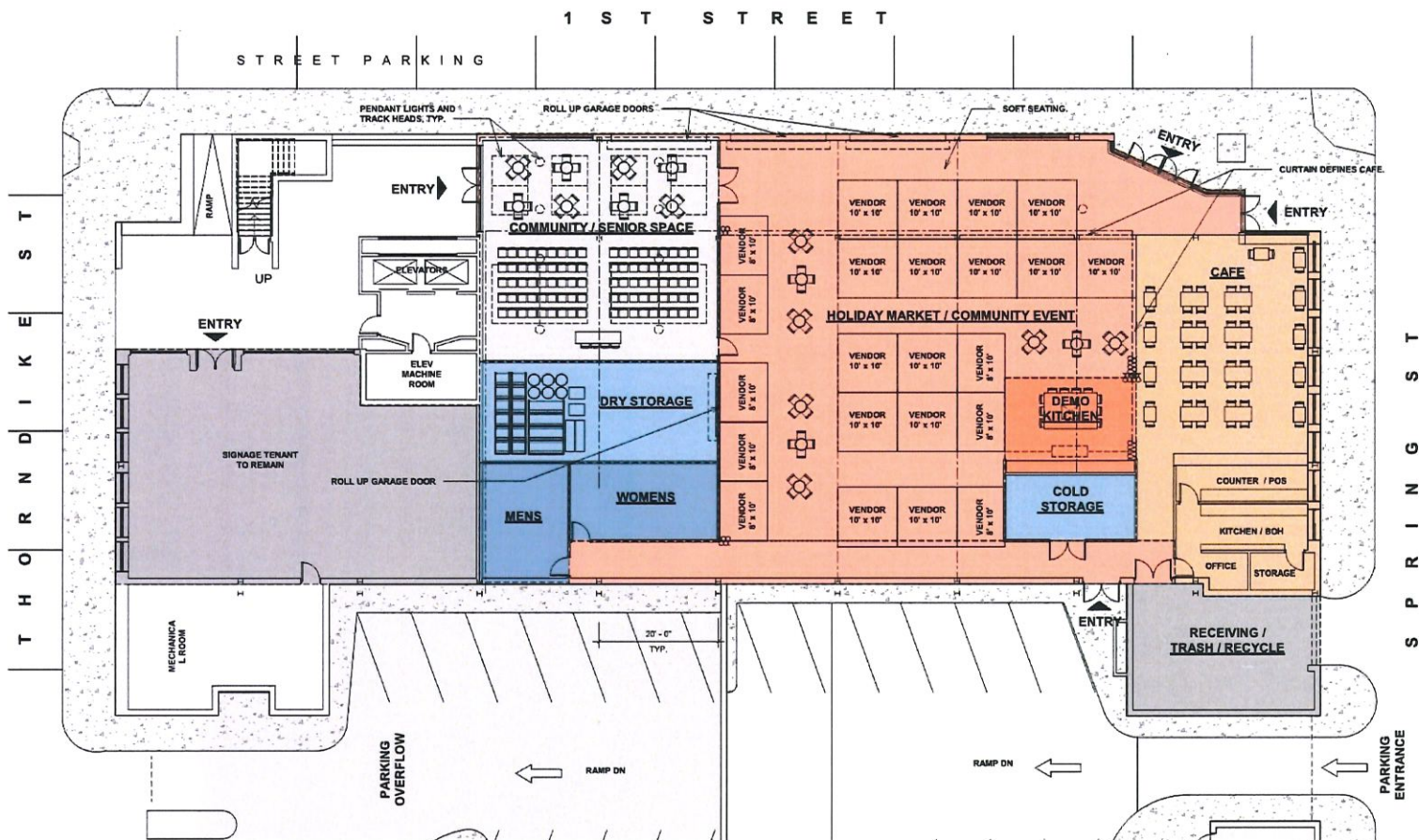
**Market Days:** The following Fit Plan demonstrates how the Retail Space would be laid out on a typical market day. The fixed functions include the café, community room, demonstration kitchen, and back of house areas. The market area would be set up with movable vendor stalls. On days with weather permitting, operable roll-up garage doors along First Street will be opened, allowing the market to be connected to the curb along First Street.

**Retail Space Fit Plan (market day)**  
(see Section 2B for larger image)



**Event Days:** The following Fit Plan demonstrates how the Retail Space would be laid out on a typical event day, when the market is inactive and the entirety of the market space is opened up for community events. The fixed functions include the café, community room, demonstration kitchen, and back of house areas. The market area would be set up with movable kiosks and/or tables to accommodate the exact event needs. There is an option to set up the open public lounge with furniture alongside the First Street façade of the market space, to accommodate additional seating.

**Retail Space Fit Plan (event day)**  
(see Section 2B for larger image)





### Part III: Operations

Please see *Section 2D: Criteria 4: Lease Payment for Ground Floor Retail (page 44)* for associated details on rent and lease terms.

The Offeror will be responsible for the following:

- Operate and maintain the entirety of the Retail Space;
- Coordinate with local community groups to program uses and events for the community / senior space, the demonstration kitchen, and the open market space on days when the market is inactive;
- Engage and oversee a farmer's market operator for the operations of the year-round indoor farmer's market;
- Administer the sub-lease associated with the operator of the café.

In addition, the Offeror will make an annual contribution toward the programming and support of the community / senior space and the demonstration kitchen. Please see *Section 2D: Criteria 7: Support for Community Enhancement (page 47)* for additional information.

### Part IV: Evolution from Original Grocery Store Discussions

During the Special Permit process for 40 Thorndike in 2013 and 2014, the Offeror engaged in significant community discussions regarding aspirations for the First Street Garage, with particular focus on the then, and still currently, vacant Retail Space. The findings from that exercise revealed a strong stakeholder desire for a grocery store in the space, with emphasis on affordable fresh food, and a corresponding push for the beautification and activation of the building along the First Street edge.

Upon reengaging in community conversations and grocery store due diligence in 2018, the Offeror has determined that a traditional grocery store in the First Street Garage is not likely feasible. This determination is based on (i) the specific neighborhood context, (ii) the evolution of the grocery store segment over the past five years, and (iii) the determination by interested grocery operators that the space footprint is not sufficient to carry out all required operations. In particular, the East Cambridge community will soon have more access to groceries and household products than was the case in 2013. The opening of CVS on Cambridge Street at Third Street and Brother's Market at One Broadway are significant developments in this respect, as is the emergence of more dependable and affordable online/delivery grocery options. Both realities are in addition to current and planned retail development occurring on First Street, Cambridge Street, Third Street, Cambridge Crossing and Kendall Square.

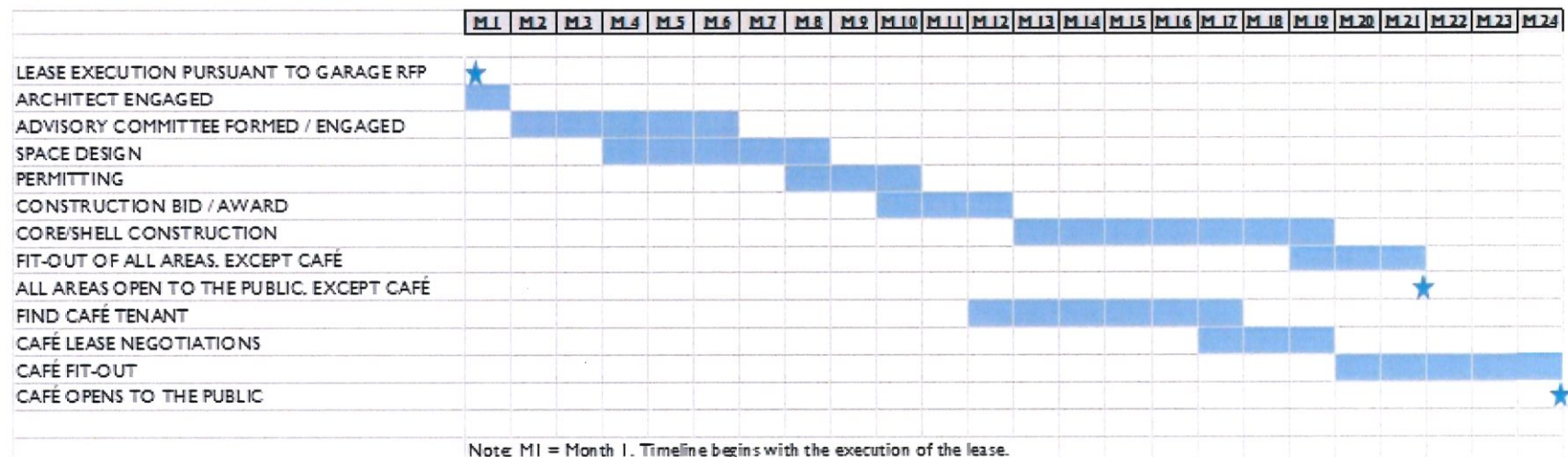
In light of the above, the Offeror strongly believes the best use for the First Street Garage Retail Space at issue is the proposed program which combines an indoor year-round farmer's market, café, community space, and event space. This program mix delivers on many of the grocery needs that are most desired by the neighborhood but not as regularly available at other retail outposts in the area (i.e. affordable farm fresh vegetables and fruits, dairy, and other local products) combined with dynamic programming and events. This plan not only considers the existing context and community aspirations, but also the CDD "Lechmere Square Public Market" study from 2010 and recent feedback from several community events in East Cambridge.

## Part V: Retail Construction and Occupancy Timeline

The below schedule indicates when the proposed ground floor retail operation is projected to be open to the public for business. The Offeror is of the view that zoning relief should not be needed for the issuance of a building permit for the construction work contemplated for the Retail Space, but the Offeror is committed to seeking all zoning approvals and permits required. The Offeror acknowledges that all proposed capital improvements to the Retail Space, upon lease execution and at any time during the duration of the lease, will require City approval and the submittal of an execution timeline.

The projected execution timeline below is for a total of 24 months from lease execution to initial occupancy and the start of business and program operations. The goal would be to complete this Retail Space project ahead of the Certificate of Occupancy for the 40 Thorndike project. The schedule includes time at the beginning of the process for an Advisory Committee of area residents and business owners to participate in the schematic design and programming of the space.

**Retail Construction and Occupancy Timeline**





### Criteria 3: Lease Payment for 420 Parking Spaces

The Offeror proposes the following lease terms associated with leasehold of the 420 parking spaces:

- The rent shall be \$136,920 per month for 420 spaces, at a Year 1 rate of \$326/space/month. The current commercial passholder rate is \$225/space/month, so the offered rate of \$326/space/month constitutes a \$101 per month or 44% premium over the current City rate.
- The terms shall be in accordance with the City requirements as set forth in Section V of the RFP.

## Criteria 4: Lease Payment for Ground Floor Retail

The Offeror proposes the following lease terms associated with leasehold of the Retail Space:

- The rent shall be \$112,500 per year based on a Year 1 rate of \$12.50/SF times an estimated 9,000 SF of retail space.
- The terms shall be in accordance with the City requirements as set forth in Section V of the RFP.

The Offeror has also proposed contributions toward core / shell and fit-out improvements to the Retail Space in addition to programming that serves the surrounding community, pursuant to Criteria 2 (please see *Section 2D: Criteria 2: Ground Floor Retail (page 37)*). At the above lease terms and rent level, the Retail Space will operate at an annual deficit. The Offeror has taken on the responsibility to program and operate the Retail Space, so that it can serve as an amenity to the surrounding community.

In addition, the Offeror will make an annual contribution toward the programming and support of the community / senior space and the demonstration kitchen. Please see *Section 2D: Criteria 7: Support for Community Enhancement (page 47)* for additional information.



## **Criteria 5: Support for Capital Projects on a Lump Sum Basis**

### **Part I: Improvements to Garage's Parking Area**

The Offeror will provide funds toward overall improvements of the Garage, with separate contributions toward the Retail Space in Part II below, through a contribution of \$500,000.

### **Part II: Improvements to Garage's Retail Space**

The Offeror will contribute an estimated \$2.5 million toward the improvement of the Garage's Retail Space to get to core/shell and contribute an additional estimated \$1.5 million forward the fit-out of the space.

### **Part III: Improvements Linked to Green Initiatives**

The Offeror will also contribute toward Garage improvements linked to the City's Green Initiatives. Details on the scope of such improvements can be found under *Section 2D: Criteria 8: Green Initiatives (page 49)*.

Improvements include: (i) contribution toward installation of a Solar Array on the Garage's roof ("Solar Array"), and (ii) contribution toward the installation of 20 electric charging stations to serve 40 parking spaces. Additionally, the City shall be the sole beneficiary of energy savings and associated cash payments linked solar energy generation resulting from the Solar Array.

### **Part IV: Carrying Out Garage Improvements**

Should the City deem it desirable, the Offeror is prepared to act as the entity to carry out the Garage improvements associated with the Offeror's contributions. The Offeror understands that all improvements shall be approved in writing by the City, conducted in conformance with public design and construction procurement statutes, and adhere to the requirements found in the Massachusetts public construction laws (M.G.L. c. 149, §§44A-H), as well as the statutory requirements for design professional service procurement (M.G.L. c. 7C).

## **Criteria 6: Support for Capital Projects on an Annual Basis**

### **Part I: Improvements to Garage's Parking Area**

In addition to the contribution specified in *Section 2D: Criteria 5: Support for Capital Projects on a Lump Sum Basis* (page 45), the Offeror will contribute \$26,000 annually for the 30-year duration of the lease toward Garage capital improvements.

### **Part II: Improvements to Garage's Retail Space**

The Offeror will be responsible for all ongoing capital improvements linked to the Retail Space for the 30-year duration of the lease.

### **Part III: Improvements Linked to Green Initiatives**

The Offeror will contribute up to \$10,000 annually toward the maintenance and servicing of the Solar Array for the duration of the array's 25-year projected useful life. The Offeror has been advised that such annual maintenance and servicing typically costs between \$5,000 and \$8,000.

Details on the scope of the Solar Array can be found under *Section 2D: Criteria 8: Green Initiatives* (page 49).

### **Part IV: Carrying Out Garage Improvements**

Should the City deem it desirable, the Offeror is prepared to act as the entity to carry out the Garage improvements associated with the Offeror's contributions. The Offeror understands that all improvements shall be approved in writing by the City, conducted in conformance with public design and construction procurement statutes, and adhere to the requirements found in the Massachusetts public construction laws (M.G.L. c. 149, §§44A-H), as well as the statutory requirements for design professional service procurement (M.G.L. c. 7C).



## Criteria 7: Support for Community Enhancement

The proposed lease of the First Street Garage provides required parking for the 40 Thorndike project that will enable the 40 Thorndike project to be redeveloped and occupied. Accordingly, there are significant community enhancements enabled by the lease associated with the 40 Thorndike project. However, the focus of this section is on those community enhancement elements proposed with and linked to the First Street Garage lease as set forth separately below.

### Affordable Housing

Contributions as part of lease proposal, in addition to the 40 Thorndike commitments, include:

- \$5 to \$6 million estimated contribution value: The Offeror will modify its affordable unit mix at 40 Thorndike (Special Permit 288) from 8 affordable, 8 moderate-income, and 8 market rate units to 24 affordable dwelling units. The estimated contribution value is based on the Final Report: Cambridge Inclusionary Housing Study, by David Paul Rosen & Associates, dated 03/27/2016.
- \$4.5 million: The Offeror will contribute \$4.5 million to the Cambridge Affordable Housing Trust beyond any Incentive Zoning requirements at 40 Thorndike. The contributions will be funded upon the Offeror obtaining the certificate of occupancy at 40 Thorndike.

### Workforce Development

Contributions as part of lease proposal, in addition to the 40 Thorndike commitments, include:

- \$200,000: The Offeror will contribute \$20,000 annually for 10 years to support the establishment and programming of a Cambridge Pathways to Apprentice Program which provides local residents, minorities, and women with training, educational, and job placement services.
- \$500,000 value: annual contribution of \$50,000 for 10 years towards the Just a Start workforce development.
- \$250,000 value: annual contribution of \$25,000 for 10 years to support Cambridge Housing Authority workforce development programs.
- The Offeror pledges to carry out any Garage improvements with a General Contractor who is signatory to major trade unions.
- The Offeror pledges to support an educational program for Cambridge school students to learn from the development and construction process linked to relevant Garage improvements.

Timing of annual contributions outlined above: The first annual contribution will occur upon Offeror obtaining the building permit for 40 Thorndike. The remaining annual contributions will begin upon the Offeror obtaining the certificate of occupancy at 40 Thorndike.

## Community Benefits

Contributions as part of lease proposal, in addition to the 40 Thorndike commitments, include:

- \$500,000: The Offeror will contribute \$50,000 annually for 10 years toward the City of Cambridge Community Benefits Stabilization Fund. The annual contributions will begin upon the Offeror obtaining the certificate of occupancy at 40 Thorndike.
- \$750,000: The Offeror will contribute \$25,000 annually for the 30-year term of the lease toward the operation of the community / senior space and demonstration kitchen in the First Street Retail Space. Should collaboration with East End House occur, this contribution can directly support East End House programming taking place in the community / senior space and the demonstration kitchen. The annual contributions will begin upon the Offeror obtaining the certificate of occupancy for the Retail Space. *(Note: this contribution has also been referenced under Criteria 2 and Criteria 4.)*
- Up to \$1,080,000: The Offeror will contribute up to \$36,000 annually for the 30-year term of the lease toward a program to provide East Cambridge seniors aged 65+ with subsidy vouchers to use toward the cost of parking in the First Street Garage. The Offeror suggests the following eligibility and prioritization criteria for the aforementioned senior parking program:
  - Age;
  - Proximity to the First Street Garage;
  - Income;
  - Access to parking at current residence;
  - Special needs (such as physical infirmity, etc.);

These criteria would determine whether a resident receives full or partial subsidy toward the cost of parking. At current residential rates at the First Street Garage, the proposed contribution amount of up to \$36,000 a year would fully cover the annual parking costs for 40 seniors. If the subsidy recipients are mixed between those receiving full vs. partial parking subsidy, the parking program would support more than 40 seniors.

The annual contributions will begin upon commencement of the Offeror's Lease at the First Street Garage.



## Criteria 8: Green Initiatives

### Part I: Solar Array

The Offeror will contribute up to \$1.5 million toward the installation of a solar array system for the Garage's roof (henceforth "Solar Array"). The up to \$1.5 million amount is estimated to cover hard and cost construction costs associated with the Solar Array, per studies done by the Offeror's solar installation consultant. In addition, the Offeror will contribute up to \$10,000 annually for the maintenance and servicing of the Solar Array for the duration of the array's 25-year projected useful life. The Offeror has been advised that such annual maintenance and servicing costs typically are between \$5,000 and \$8,000. *(Note: The Solar Array has been referenced under Criteria 5, and annual contributions to Solar Array maintenance has been referenced under Criteria 6.)*

#### Conceptual diagram of how Solar Array can be arranged on Garage roof



The system consists of a canopy structure with gutters and snow guards and will cover less than 50% of the Garage's roof area. The Offeror projects that all parking at the roof level of the Garage will be preserved and will operate as normal, because the Solar Array canopy structure spans above parking spaces. As an additional benefit, the canopy protects cars parked on the roof from snow and lowers the cost of roof snow removal during winter months.

The Solar Array is estimated to produce at least 335,000 kilo watt hours (kWh) of electricity per year.

The Offeror proposes an installation, maintenance, and energy savings model as follows:

- Installation: The Offeror is responsible for the installation of the Solar Array, subject to City approvals.

- **Maintenance:** As stated above, the Offeror will contribute up to \$10,000 annually for the maintenance and servicing of the Solar Array for the duration of the array's 25-year projected useful life.
- **Energy Savings:** The City will be the sole entity to receive all energy savings and associated cash payments linked to solar energy generation resulting from the Solar Array. (Note: this is also referenced under Criteria 5.)

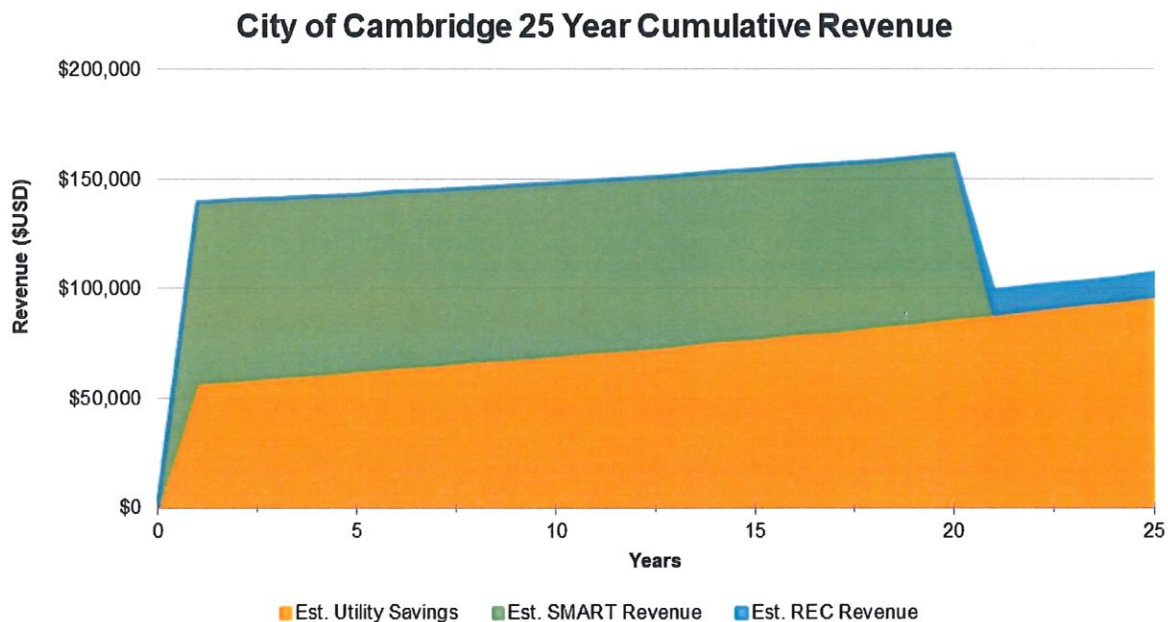
## Part II: Annual Energy Savings

The Solar Array is estimated to yield a minimum of 350,000 kWh of energy annually, resulting in an estimated average annual benefit of \$140,000 for the Garage. This annual benefit consists of (i) utility savings and revenue from (ii) the Solar Massachusetts Renewable Target (SMART) Incentive and (iii) Renewable Energy Certificates (RECs). The savings and revenue would go directly to the City. Over a twenty-five (25) year useful life for the solar array, such savings is estimated at a total of \$3.5 million.

The process works as follows:

- The electricity generated by the Solar Array can directly serve the Garage, offsetting current electricity usage from the grid.
- Any electricity generated in excess of the Garage's needs will be received by the relevant utility company and be refunded to the City through cash payments.
- Cash payments to the City are received quarterly and come from two sources: the Solar Massachusetts Renewable Target (SMART) Incentive<sup>4</sup>, and Renewable Energy Certificates (RECs).

The following graph demonstrates projected levels of savings for the City over the 25-year lifetime of the Solar Array<sup>5</sup>.



<sup>4</sup> This program becomes effective November 26, 2018. It will be in effect when the Solar Array is installed.

<sup>5</sup> Calculations assume a starting applicable utility rate of \$0.143/kWh and a starting Solar Array annual output of 399,990 kWh.



### **Part III: Electric Charging Stations**

The Offeror will contribute up to \$400,000 toward the complete installation cost of 20 electric vehicle charging stations (EV stations) in the Garage, which would serve 40 parking spaces.

The Offeror estimates each charging to cost between \$10,000 and \$20,000 to install, depending upon the existing utility systems and general conditions of the installation areas. The installation cost, in totality, is estimated range from \$200,000 to \$400,000.

### **Part IV: Carrying Out Green Initiative Improvements**

Should the City deem it desirable, the Offeror is prepared to act as the entity to carry out the Green Initiatives improvements associated with the Offeror's contributions. The Offeror understands that all improvements shall be approved in writing by the City, conducted in conformance with public design and construction procurement statutes, and adhere to the requirements found in the Massachusetts public construction laws (M.G.L. c. 149, §§44A-H), as well as the statutory requirements for design professional service procurement (M.G.L. c. 7C).

### 3. Appendix

In this Appendix, the Offeror provides background information and materials on our 40 Thorndike project. Please note that this information is intended as background information only, as Offeror's desire to Lease 420 parking spaces stems from the requirements of Offeror's Special Permit for 40 Thorndike. The information and documents provided as part of this Appendix do not in any way modify or change the Offeror's proposal. All information specifically responsive to this RFP (addressed under File No. 8268, Real Estate Disposition Parking Spaces and Ground Floor Retail Space, First Street Garage; elsewhere referred to as "RFP") is in *Section 2: Bid Proposal (page 7)*. This Appendix consists of the following.

- A) A brief overview of the 40 Thorndike project and the parking process,
- B) 40 Thorndike project images, and
- C) A copy of the Special Permit 288's Decision granting approval of the project in the fall of 2014 for reference.
- D) A copy of the approved Parking and Transportation Demand Management Plan with project number F-56.

#### 3A. Overview of the 40 Thorndike project and the parking process

40 Thorndike will involve the complete renovation (interior and exterior) of the existing Brutalist designed courthouse/jail to a vibrant mixed-used development that is integrated into the East Cambridge commercial and residential neighborhood. The ground level of the building will be transformed into a series of storefronts and intimate landscape spaces that will serve both the surrounding community and building tenants. A residential entry on Third Street will provide access to 24 dwelling units (in Special Permit 288, Offeror would develop 8 affordable, 8 moderate, and 8 market at the 40 Thorndike project; in this bid Offeror would develop 24 affordable dwelling units). The upper floors of the building will contain office and R&D space geared toward the types of innovative technology firms that are located throughout East Cambridge.

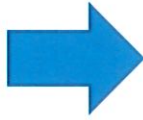
Approved by the Planning Board in the fall of 2014, the current 40 Thorndike design and program is the culmination of more than a year of community engagement. Based on extensive neighborhood discussions and specific feedback from the Working Group assembled by Councilor Toomey in the spring of 2014, Leggat McCall modified the redevelopment plans to address issues of height, bulk, façade treatment, Spring Street entry and the landscape open space on the south side of the project. Those revisions include the removal of two floors (from the existing 22 stories to 20 stories), the introduction of the terra cotta facade to the building tower (which was originally all glass), a scaled back office entrance off Spring Street, and the creation of a more community oriented landscaped space at the sidewalk level along Spring Street.



**Existing Vacant Courthouse**



**LMP Approved Redevelopment**



### **Project Summary**

- Building Height: **20 stories** (after removing two stories)
- Office/R&D Space: **430,000 SF**
- Activated street level retail and childcare space: **15,000 SF**
- Multi-purpose and flexible community/conference room: **2,500 SF**
- Residential space: **24 dwelling units** (in Special Permit 288, Offeror would develop 8 affordable, 8 moderate, and 8 market at the 40 Thorndike project; in this bid Offeror would develop 24 affordable dwelling units)
- Car Parking: 92 parking spaces in the building that will include 24 residential unit spaces, 7 HOV spaces, and 5 hybrid/electric spaces
- Bike Parking: 216 bicycle spaces on-site including 166 long-term spaces in dedicated bike room with shower and locker facility and 50 spaces on the site
- Designed to LEED Gold standard

### **Project Benefits**

Distinctive from the benefits directly linked to the Offeror's Lease proposal for the First Street Garage, the 40 Thorndike project will generate the following benefits to the East Cambridge community:

- An estimated \$7 million payment to the Affordable Housing Trust, pursuant to the Incentive Zoning provisions.
- Development of 24 dwelling units: in Special Permit 288, Offeror would develop 8 affordable, 8 moderate, and 8 market at the 40 Thorndike project; in this bid Offeror would develop 24 affordable dwelling units
- A new ground floor plan covering Spring Street, Thorndike Street, Second Street, and Third Street that includes:
  - New accessible green landscaped open space on Spring Street;
  - Community room;
  - Childcare center.
- Expansive PTDM obligations (under PTDM F-56).
- Estimated annual new property tax revenue of \$3.8 million (\$8/SF times 470,000 SF).

- Reduction of two floors, 40,000 SF, from the existing structure.



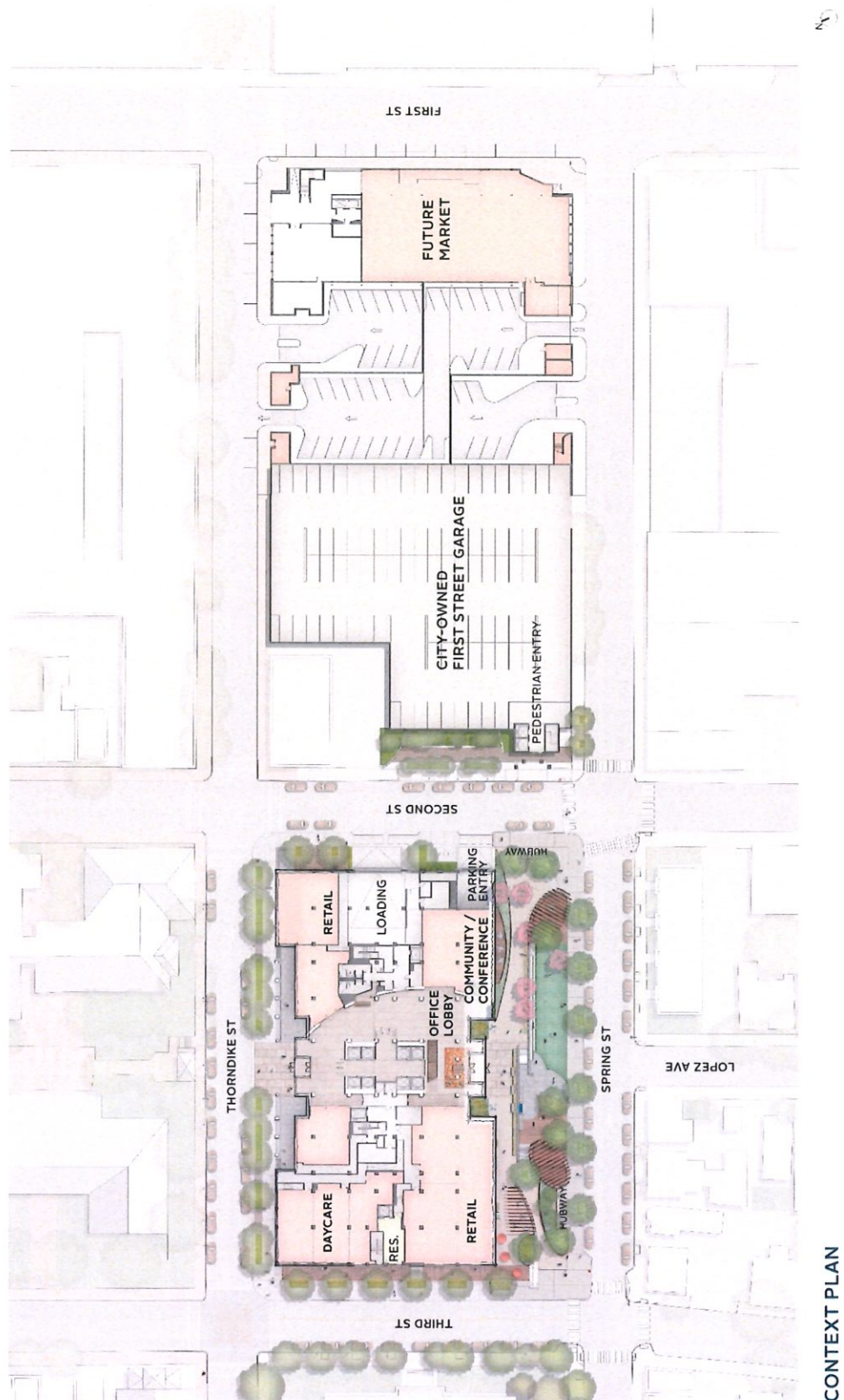
### 3B. 40 Thorndike Project Images

Project View from First and Spring Streets





## Project and First Street Garage Context Plan



CONTEXT PLAN

Project Street Level View from First and Spring Streets





View of Project Green Landscaped Plaza on Spring Street



### **3C. Special Permit 288's Decision granting approval of the project in October 2014**





CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

## NOTICE OF DECISION

Case Number:	288
Address:	40 Thorndike Street
Zoning:	Business B
Applicant:	LMP GC Holdings LLC c/o Leggat McCall Properties LLC 10 Post Office Square, Boston, MA 02109
Owner:	Commonwealth of Massachusetts, Division of Capital Asset Management and Maintenance One Ashburton Place, Boston, MA 02108
Application Date:	November 21, 2013
Date of Planning Board Public Hearing:	January 7, 2014
Date of Planning Board Decision:	September 30, 2014
Date of Filing Planning Board Decision:	October 30, 2014

**Application:** Request for Project Review Special Permit (Section 19.20), Alteration of Non-conforming Structure (Section 8.22.2.a), Conversion of Non-Residential Structure to Residential Use (Section 5.28.2) and Off-Site Accessory Parking (Section 6.22.2) to permit the conversion of the former Sullivan Courthouse building to a mixed-use building with 476,303 square feet of Gross Floor Area occupied by office, multifamily residential and retail uses.

**Decision:** GRANTED, with Conditions.

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after filing of the above referenced decision with the City Clerk. Copies of the complete decision and final plans, if applicable, are on file with the Community Development Department and the City Clerk.

Authorized Representative of the Planning Board: Jeffrey C. Roberts *JCR 10/30/14*

For further information concerning this decision, please contact Liza Paden at 617-349-4647, or [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov).

## **DOCUMENTS SUBMITTED**

### Application Documents and Supporting Material

1. Special Permit application dated 11/21/14, containing the Project Description, Traffic Narrative, Infrastructure Systems, Noise Narrative, Conformance and Appendices, Volume One
2. Special Permit application dated 11/21/14, containing Existing and Proposed plans, Volume Two
3. Green Building report dated 2/25/14
4. Construction Mitigation submission dated 2/27/14
5. Letter to the Planning Board from Martin R. Healy, Goodwin Proctor LLC, dated 4/22/14
6. Planning Board presentation for 4/29/14, including Environmental Notification Form, filed 1/15/14 and MEPA Review, views, and lighting study
7. Letter to the Planning Board from Martin R. Healy, Goodwin Procter, LLP, dated 5/15/14
8. Revised Planning Board submittal dated 7/22/14
9. Planning Board presentation dated 7/29/14
10. Letter and materials to the Planning Board from Robert M. Dickey, Executive Vice President/Partner of Leggat McCall Properties, dated 9/23/14, including a letter to the Planning Board from Martin R. Healy, Goodwin Procter LLP, dated 9/23/14 and a list of letters and petitions in support

### City of Cambridge Documents

11. City Manager Letter dated 10/7/13
12. City Council Order dated 10/7/13
13. Memo to the Planning Board from Susan Clippinger, Director of TP&T, dated 1/7/14
14. Memo to the Planning Board from John Bolduc, Environmental Planner, dated 2/28/14
15. Memo to the Planning Board from the Cambridge Pedestrian Committee, dated 2/28/14
16. Extension of time to 5/1/14



17. Extension of time to 6/20/14
18. Letter to Richard C. Rossi, City Manager, from Nancy E. Glowa, City Solicitor, dated 5/5/14
19. Extension of time to 8/15/14
20. Memo to the Planning Board from CDD staff, dated 7/23/14
21. Memo to the Planning Board from Susan Clippinger, dated 7/29/14
22. Extension of time to 10/15/14
23. Letter to Richard C. Rossi, City Manager, from Nancy E. Glowa, City Solicitor, dated 9/30/14
24. Extension of time to 10/30/14

Other Documents

25. Letter to the Planning Board from Rhoda Fantasia, dated 1/7/14
26. Email to the Planning Board from Hazel Arnett, dated 1/19/14
27. Letter to the Planning Board from Barbara Broussard, dated 1/21/14
28. Letter to the Planning Board from John Paul, dated 1/23/14
29. Email to the City Council from Michael Hawley, dated 1/26/14
30. Letter to the Planning Board from Joseph Fantasia, dated 1/26/14
31. Email to the Planning Board from Thomas Feraco, dated 1/30/14
32. Letter to the Planning Board from Eric Batcho, dated 1/31/14
33. Letter to the Planning Board from Donna M. Keefe, dated 2/3/14
34. Letter to the Planning Board from Fabrizio Gentili, dated 2/3/14
35. Letter to the Planning Board, et al, from Maya Bittar, et al, The James Diman Green Condominium Association, dated 2/4/14
36. Letter to the Planning Board from Barbara Broussard, President of the East Cambridge Planning Team, dated 2/6/14

37. Letter to the Cambridge Public Servants, from Elizabeth Summons, dated 2/9/14
38. Letter to the Cambridge Public Servants, from Roger Summons, dated 2/9/14
39. Email to the Planning Board from Paul Kroner, dated 2/10/14
40. Email to the Planning Board from David de Swaan Arons, dated 2/10/14
41. Email to the Planning Board from Abigail Lewis-Bowen, dated 2/10/14
42. Email to the City of Cambridge from Henry Lieberman, dated 2/10/14
43. Letter to the Planning Board from Maya K. Bittar, dated 2/10/14
44. Letter to the Planning Board from Deborah Johnes and Lesley Boson, dated 2/10/14
45. Letter to the Planning Board from Nina Kanikar Meng You, dated 2/10/14
46. Letter to the Planning Board from Dan Colonnese, dated 2/11/14
47. Email to the Planning Board, with attachment, from Jay Wasserman, dated 2/11/14
48. CC email to Barbara Broussard, East Cambridge Planning Team, from James Rafferty, Adams & Rafferty, dated 2/12/14
49. Email to the Planning board from Ellen Adelson, dated 2/12/14
50. Letter to the Planning Board from Ilan Levy, dated 2/17/14
51. Letter to the Planning Board from Jacob D. Albert, dated 2/17/14
52. Letter to the Planning Board from Seth Teller, Neighborhood Association of East Cambridge, dated 2/19/14
53. Letter to the Planning Board from Bethany and Jack Stevens, dated 2/20/14
54. Email to the Planning Board from Samuel Murphy, dated 2/23/14
55. Email to the Planning Board from Bob Liu and Jinlan Yang, dated 2/23/14
56. Email to the Planning Board from Jack Boesen, dated 2/23/14
57. Letter to the Planning Board, et al, from Karen and Frank Field, dated 2/23/14
58. Email to the Planning Board from Michael Austin, dated 2/25/14



59. Email to the Planning Board from Ken Gaulin, dated 2/24/14
60. Letter to the Planning Board from Peter A. Crawley, et al, dated 2/24/14
61. Letter to the Planning Board from Councilor Leland Cheung, dated 2/24/14
62. Letter to the Planning Board from Alan Greene, dated 2/24/14
63. Letter to the Planning Board, et al, from Anne and Richard Taylor, dated 2/24/14
64. Email to the Planning Board from Monica Raymond, dated 2/24/14
65. Email to the Planning Board from Carolyn V. Oatley, dated 2/24/14
66. Email to the Planning Board from Abe Lateiner, dated 2/24/14
67. Email to the Planning Board from Yumi Izuyama, dated 2/24/14
68. Email to the Planning Board from Rajiv Manglani, dated 2/24/14
69. Email to the Planning Board from Kate Skubecz, dated 2/24/14
70. Email to the Planning Board from Deborah A. Colburn, dated 2/24/14
71. Letter to the Planning Board from Jan Devereux, dated 2/24/14
72. Email to the Planning Board from Carole Bellew, dated 2/24/14
73. Email to the Planning Board from Kennie Lyman, dated 2/24/14
74. Email to the Planning Board from Amy Stone, dated 2/24/14
75. Email to the Planning Board from Gaylen Morgan, dated 2/24/14
76. Email to the Planning Board from Agnes Criss, dated 2/24/14
77. Email to the Planning Board from H. Susan Freireich, dated 2/24/14
78. Email to the Planning Board from Remy Trahant, dated 2/25/14
79. Email to the Planning Board from Catherine B. Hoffman, dated 2/25/14
80. Email to the Planning Board from Paul Stone, dated 2/25/14
81. Email to the Planning Board from Jeanne Koopman, dated 2/25/14

82. Email to the Planning Board from Ovadia R Simha, dated 2/24/14
83. Letter to the Planning Board from Patrick Magee, Atwood's Tavern, East Cambridge Business Association, dated 2/25/14
84. Email to the Planning Board from Genevieve Coyle, dated 2/25/14
85. Email to the Planning Board from Annette Ghelfi, dated 2/25/14
86. Email to the Planning Board from Peter Fougere, dated 2/25/14
87. Letter to the Planning Board from Marie Elena Saccoccio, Attorney At Law, dated 2/25/14
88. Letter to the Planning Board from Patrick Magee, East Cambridge Business Association, dated 2/25/14
89. Letter to the Planning Board from Tom Stohlman, dated 2/25/14
90. Email to the Planning Board from Ben Morse, dated 2/25/14
91. Email to the Planning Board from Bill Morse, dated 2/25/14
92. Email to the Planning Board from Mike Connolly, dated 2/25/14
93. Email to the Planning Board from Carolyn Shipley, dated 2/25/14
94. Email to the Planning Board from Jay Featherstone, dated 2/25/14
95. Email to the Planning Board from Michael Hawley, dated 2/25/14
96. Email to the Planning Board from Sheli and Henry Wortis, dated 2/25/14
97. Email to the Planning Board from Christopher Keppelman, dated 2/25/14
98. Email to the Planning Board from Susan Redlich, dated 2/25/14
99. Email to the Planning Board from Shelley Rieman, dated 2/25/14
100. Email to the Planning Board from David Whelan, dated 2/25/14
101. Email to the Planning Board from Albert Huang, dated 2/25/14
102. Email to the Planning Board from Mark Eastly, dated 2/25/14
103. Email to the Planning Board from Lee Farris, dated 2/25/14



104. Email to the Planning Board from Joel Springer, dated 2/25/14
105. Email to the Planning Board from James Madden, dated 2/26/14
106. Letter to the Planning Board from Michael S. Nuesse, attorney at law, dated 2/26/14
107. Email to the Planning Board from James Madden, dated 2/26/14
108. Email to the Planning Board from Carol O'Hare, 2/27/14
109. Letter to the Planning Board from Barbara Broussard, President of the East Cambridge Planning Team, dated 2/27/14
110. Email to the Planning Board from Carol O'Hare, dated 2/27/14
111. Email to the Planning Board from Seth Zeren, dated 2/28/14
112. Email to the Planning Board from Susan Strang, dated 3/1/14
113. Email to the Planning Board from Seth Teller, dated 3/3/14
114. Email to the Planning Board from Stephen Kaiser, dated 3/3/14
115. Email to the Planning Board from Chris Matthews, dated 3/3/14
116. Letter to the Planning Board from Stephen H. Kaiser, dated 3/3/14
117. Email to the Planning Board from Matt Moran, dated 3/4/14
118. Email to the Planning Board from Alex Papazian, dated 3/4/14
119. Email to the Planning Board from Stephen Kaiser, dated 3/6/14
120. Letter to Mr. Dickey, from Councilor Timothy J. Toomey, Jr., dated 3/10/14
121. Copy of letter to Abigail Lewis-Brown, Acting President, Neighborhood Association of East Cambridge, from Barbara Broussard, President of the East Cambridge Planning Team dated 3/18/14
122. Email to the Planning Board from Michael Hawley, dated 3/19/14
123. Letter to the Planning Board from Michael Hawley, dated 3/19/14
124. Letter to the Planning Board from Michael Hawley and Nina You, The James Diman Green Condominium Association, dated 3/31/14

125. Letter and attached cases to the City Council and the Planning Board from Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, dated 4/9/14.
126. Letter to the Planning Board from Michael Hawley, Concerned Abutters and the James Green Association, dated 4/9/14
127. Email to the Planning Board from Michael Hawley, for James Capano, dated 4/17/14
128. Letter to the Planning Board from Robert M. Dickey, Executive Vice President/Partner of Leggat McCall Properties , applicant, dated 4/23/14, and attached letter from Martin R. Healy, Goodwin Proctor LLP, dated 4/22/14
129. Email to the Planning Board from Landan Khamisi, dated 4/23/14
130. Email to the Planning Board from Adam Mara, dated 4/22/14
131. Email to the Planning Board from Greg Zaff, dated 4/18/14
132. Email to the Planning Board from Rachel Gould, dated 4/18/14
133. Letter to the Planning Board from Shelley Neill, Executive Director, Multicultural Arts Center, dated 4/18/14
- 134.
135. Letter to the Planning Board from Peter Mayfield, Associated Beverage Group, dated 4/25/14
136. Letter to the Planning Board from Robert Veley, David's Famous Name Shoes, Inc. dated 4/25/14
137. Letter to the Planning Board from Andrew G. Montone, Cambridge Art and Frame, dated 4/25/14
138. Letter to the Planning Board from Morgan Pierson, dated 4/25/14
139. Email to the Planning Board from Pam Latimer, dated 4/27/14
140. Letter to the Planning Board from Gregory Golding, dated 4/23/14
141. Email to the Planning Board from Stephen H. Gardiner, dated 4/24/14
142. Email to the Planning Board from Arleen Henry, dated 4/25/14
143. Email to the City Council, from Minga Claggett-Borne, dated 4/27/14
144. Email to the Planning Board from Hazel Arnett, dated 4/24/14



145. Email to the Planning Board from Councilor Craig Kelley, dated 4/24/14
146. Email to Liza Paden from Michael Hawley, dated 4/26/14
147. Letter to the Planning Board from William J. Beckman, Linear Retail Properties, dated 4/28/14
148. Email to the Planning Board, Kate McDonough, dated 4/28/14
149. Letter to the Planning Board from Graham Gund, dated 4/24/14
150. Email to the Planning Board from Dennis Warren, Warren Business Media, dated 4/28/14
151. Letter to the Planning Board from Marie Elena Saccoccio, Attorney at Law, dated 4/27/14, with additional signatories
152. Letter to the Planning Board from Michael Hawley, The James Diman Green Condominium Association, dated 4/28/14
153. Response to Attorney Healy, from Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, dated 4/29/14
154. Letter to the Planning Board from Councilor Timothy J. Toomey, Jr., dated 4/29/14
155. Letter to the Planning Board from Alan Green, dated 4/29/14.
156. Email to the Planning Board from Sheli Wortis, dated 4/28/14.
157. Email to the Planning Board from tony Wagner, Ed.D, dated 4/28/14.
158. Email to the Planning Board from Torgun Austin, dated 4/28/14.
159. Email to the Planning Board from Martha Older, dated 4/28/14.
160. Email to the Planning Board from Kelly Courtney, dated 4/29/14
161. Email to the Planning Board from Marilyn Wellons, dated 4/29/14.
162. Email to the Planning Board from Susan Strang, dated 4/29/14.
163. Letter to the Planning Board from O. Robert Simha, dated 5/10/14
164. Letter to the Planning Board from Michael Hawley, The James Diman Green Condominium; Association, dated 5/19/14
165. Letter to the Planning Board, et al from Michael S. Nuesse, dated 5/19/14

166. Email to the Planning Board from Robert Buderl, dated 5/29/14
167. East Cambridge Businesses for A Smaller Sullivan Courthouse Redevelopment, dated June 2014
168. Letter to the Planning Board from Helen Kobeck, et al, dated 6/1/14
169. Letter to the Planning Board from Judith Vreeland, dated 6/2/14
170. Letter to the Planning Board from Mark P. Rogers, et al, dated 6/9/14
171. Letter To Whom It May Concern from Tony Marques, dated 6/18/14
172. Email to the Planning Board from Ellen Huang, dated 6/19/14
173. Email to the Planning Board from Mark Tang, dated 6/23/14
174. Email to the Planning Board from Alice Lin, dated 6/24/14
175. Email to the Planning Board from Selene Angier, dated 6/25/14
176. Email to the Planning Board from Olga Sokolova, dated 7/1/14
177. Letter to the Planning Board, et al from Michael Hawley, the James Diman Green Condominium Association, dated 7/10/14
178. Email to the Planning Board from Michael Hawley, dated 7/11/14
179. Letter to the Planning Board, et al, from Neighborhood Association of East Cambridge, dated 7/16/14
180. Letter to the Planning Board from Mary Ellen Doran, dated 7/18/14
181. Email to the Planning Board from Frances Antupit, dated 7/19/14
182. Letter to the Planning Board from Roberta and Tatsuya Goto, dated 7/20/14
183. Letter to the Planning Board from Barbara Broussard, East Cambridge Planning Team, dated 7/21/14
184. Letter to the Planning Board from the East Cambridge Planning Team, dated 7/21/14
185. Letter to the Planning Board from Barbara Broussard, dated 7/21/14
186. Letter to the Planning Board from Stephen H. Kaiser, dated 7/22/14



187. Email to the Planning Board from Jay Wasserman, dated 7/22/14
188. Email to the Planning Board from David de Swaan Arons, dated 7/22/14
189. Email to the Planning Board from Bethany Stevens, dated 7/22/14
190. Letter to the Planning Board from Neighborhood Association of East Cambridge, dated 7/22/14
191. Letter to the Planning Board from the Neighborhood Association of East Cambridge, dated 7/22/14
192. Copy of Letter to Maeve Valleyly Bartlett, Secretary of Executive Office of Energy and Environmental Affairs, from Stephen H. Kaiser, PhD, dated 7/23/14
193. Letter to the Planning Board from Charles J. Marquardt, dated 7/24/14
194. Letter to the Planning Board from Sarah E. Kennedy, director of Government Affairs, Cambridge Chamber of Commerce, dated 7/24/14
195. Email to the Planning Board from Joseph Aiello, dated 7/28/14
196. Petition of supporters dated 7/29/14
197. Letter To Whom It May Concern from John Levantakis, Arams #2 House of Pizza, dated 7/29/14
198. Email to the Planning Board from Chris Matthews, dated 7/29/14
199. Email to the Planning Board from Susan Markowitz, dated 7/29/14
200. Email to the Planning Board from Carol O'Hare and Walter McDonald, dated 7/29/14
201. Email to the Planning Board from Jacquelyn Smith, dated 7/29/14
202. Email to the Planning Board from Shelley Rieman, dated 7/29/14
203. Letter To Whom It May Concern from R and Caye Kafofo, dated 7/29/14
204. Letter To Whom It May Concern from Bill Strazzullo, and Family, dated 7/29/14
205. Public Comment to the Planning Board from Stephen Kaiser, dated 7/29/14
206. Letter to the Planning Board from John M. Braithwaite, dated 8/23/14

- 207. Email to the Planning Board from Robert L. Doyle, MD, dated 8/24/14
- 208. Email to the Planning Board from John Filoon, dated 8/24/14
- 209. Email to the City Council from Michael Hawley, dated 9/8/14
- 210. Email to the Planning Board from Susan Johansen, dated 9/13/14
- 211. Letter to the Planning Board, et al, from Abigail Lewis-Bowen for the Neighborhood Association of East Cambridge, dated 9/18/14
- 212. Email to the Planning Board from Ladan Khamsi, dated 9/20/14
- 213. Letter to the Planning Board from George N.J. Sommer, III, dated 9/22/14
- 214. Letter to the Planning Board from Stephen H. Kaiser, dated 9/23/14
- 215. Email to the Planning Board from Susan Koechner, dated 9/23/14
- 216. Email to the Planning Board from Farhad Khamsi, dated 9/24/14
- 217. Letter to the Planning Board from Councilor Mark McGovern, dated 9/25/14
- 218. Email to the Planning Board from Ed & Carol Green, dated 9/25/14
- 219. Email to the Planning Board from Bill Johansen, dated 9/25/14
- 220. Letter to the Planning Board from Barbara Broussard, dated 9/27/14
- 221. Email to the Planning Board from Susan Strang, dated 9/29/14
- 222. Email to the Planning Board from Heather Hoffman, dated 9/29/14
- 223. Email to the Planning Board from Kathy Desmond, dated 9/29/14
- 224. Email to the Planning Board from Ivy A. Turner, dated 9/29/14
- 225. Email to the Planning Board from Michael Connolly, dated 9/29/14
- 226. Email to the Planning Board from Jeanne Koopman, dated 9/29/14
- 227. Letter to the Planning Board from Nancy Stiening, dated 9/29/14
- 228. Email to the Planning Board from Al and Teresa Jacobson, dated 9/29/14



- 229. Email to the Planning Board from Jeff DaSilva, dated 9/29/14
- 230. Email to the Planning Board from Jacquelyn Smith, dated 9/29/14
- 231. Email to the Planning Board from Lauren O'Neal, dated 9/30/14
- 232. Email to the Planning Board from Roger Summons, dated 9/30/14

## **APPLICATION SUMMARY**

The Special Permit Application, as modified by supplemental Application Materials, proposes to convert the existing Sullivan Courthouse building at 40 Thorndike Street, containing 513,241 square feet of Gross Floor Area occupied (prior to its vacancy) by governmental facilities including offices, courtrooms and detention facilities (the "Sullivan Courthouse"), to a mixed-use building with 452,237 square feet of Gross Floor Area occupied by commercial office and retail uses and 24,066 square feet occupied by residential uses.

The proposed change in use will involve the following alterations to the building and site, among alterations, which are described in detail in the Application Materials:

- Demolition and removal of the top two stories;
- Removal of the existing building façade and replacement with new materials;
- Installation of new mechanical systems at the roof level;
- Reconfiguration and reconstruction of interior spaces, most notably at the ground level, where new building entries will be created;
- Installation of bicycle parking facilities within the below-grade portion of the building and on outdoor portions of the site;
- Replacement of an existing at-grade parking facility with a publicly beneficial open space along Spring Street; and
- Construction of outdoor open spaces on portions of the building roof.

Accessory parking will be provided by maintaining ninety-two (92) parking spaces in the existing on-site parking facility below-grade, and by securing a long-term lease arrangement to provide four hundred twenty (420) spaces either from the municipal parking garage on First Street, which would meet the as-of-right standards for location of accessory parking, or within the parking facility at the Cambridgeside Galleria mall, also on First Street, which requires a special permit due to the greater distance between the facility and the principal use.

The requested special permits are described below.

- A Project Review Special Permit is required pursuant to Section 19.20, because the project involves a change of use of a building to include new uses exceeding fifty thousand (50,000) square feet of Gross Floor Area.

- A special permit is required pursuant to Section 8.22.2, Paragraph (a), to allow the alteration of a pre-existing nonconforming structure to accommodate a new use. Such special permit is normally within the purview of the Board of Zoning Appeal, but in this case may be granted by the Planning Board pursuant to Section 10.45 because the application also requires special permits under the purview of the Planning Board.
- A special permit is required pursuant to Section 5.28.2 for the proposed residential portions of the building in order to modify the yard and open space requirements normally applicable to a residential building in the district.
- A special permit is required pursuant to Section 6.22.2 to permit off-site accessory parking for non-residential uses on a lot that is greater than three hundred (300) feet, but not greater than one thousand (1,000) feet, from the lot on which the principal use is located. Such special permit is normally within the purview of the Board of Zoning Appeal, but in this case may be granted by the Planning Board pursuant to Section 10.45 because the application also requires special permits under the purview of the Planning Board.

## **PUBLIC HEARING PROCESS**

The public hearing for this special permit case was opened and testimony heard on January 7, 2014. The hearing was then continued to March 4, 2014. On March 4, no testimony was taken and no substantive discussion was held, and the Applicant and Planning Board mutually agreed to an extension of the time period for final action to May 1, 2014. The hearing was continued on April 29, 2014, at which time public testimony was heard, and the Applicant and Planning Board mutually agreed to an extension of the time period for final action to June 20, 2014. At the Planning Board meeting on June 17, 2014, as a matter of general business, the Applicant and Planning Board mutually agreed to an extension of the time period for final action to August 15, 2014. During the intervening time, the Applicant engaged in discussion with community members outside of the hearing process.

The Planning Board hearing was continued on July 29, 2014, at which the Applicant presented revised application materials and public testimony was heard. The Applicant and Planning Board mutually agreed to an extension of the time period for final action to October 15, 2014. The Planning Board continued its deliberation on September 30, 2014, after which the Board stated findings, voted to grant the requested special permits, with conditions, and the Applicant and Planning Board mutually agreed to an extension of the time period for filing the Special Permit Decision to October 30, 2014. All time extensions referred to above were recorded and filed with the City Clerk.



## FINDINGS

After review of the Application Materials and other documents submitted to the Planning Board, testimony given at the public hearing, and review and consideration of the applicable requirements and criteria set forth in the Zoning Ordinance with regard to the special permits being sought, the Planning Board makes the following Findings:

### 1. Alteration of a Nonconforming Structure (Section 8.22)

The Board first addressed the question of whether the project meets the standards for approval of alterations to a pre-existing nonconforming structure. In making its findings the Board is instructed by Section 8.22.2 of the Zoning Ordinance and subsequent Paragraph (a), copied below.

*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.*

The current structure does not conform to the dimensional requirements of the Business B district with regard to Floor Area Ratio (FAR) and height. When the Sullivan Courthouse was constructed, it was not required to comply with local zoning requirements for either the construction of the building or its use as a courthouse and jail facility. Questions were raised in public testimony as to whether the building can be considered a lawful pre-existing nonconforming structure. The Cambridge City Solicitor has provided a legal opinion on the matter, which was entered into the record during the public hearing and taken into consideration by the Planning Board. In her opinion dated May 5, 2014, the City Solicitor concluded that the building is a lawful pre-existing nonconforming structure and therefore is protected by and may be used pursuant to the provisions of Section 6 of the Zoning Act and Section 8.22 of the Zoning Ordinance. The Board accepts this conclusion as a basis for its further Findings, with reference to letters from the City Solicitor to the City Manager dated



May 5, 2014 and September 30, 2014, which are included as an appendix to this Special Permit Decision.

The building is located in the Business B zoning district, and the proposal is to alter the existing structure and to change its use from a government courthouse and jail facility to a mix of office, residential and retail uses with publicly beneficial open space. All existing and proposed uses are allowed as-of-right in the Business B district, and therefore no alteration or enlargement of a nonconforming use is proposed. The proposed alteration will not result in any increase in floor area, volume or height, and will not decrease yard setbacks or open space. To the extent that new nonconformities may be created, they would result from the addition of residential uses to the site, because residential uses have different dimensional requirements than non-residential uses in the Business B district; however, because the residential uses will occupy an existing structure built for non-residential use, the project is eligible for special permit relief pursuant to Section 5.28.2 of the Zoning Ordinance, which has been requested in the Special Permit Application and is addressed further below in these Findings. The proposal describes how parking and bicycle parking requirements for the proposed new uses will be met, and those are discussed further below in these Findings. Therefore, the Board concludes that the proposed alteration is eligible for special permit relief pursuant to Section 8.22.2, Paragraph (a). Because this special permit is normally within the purview of the Board of Zoning Appeal, but the proposal also requires special permits for which the Planning Board is the designated granting authority, it is within the Planning Board's purview to grant this special permit pursuant to Section 10.45 of the Zoning Ordinance.

The criterion informing whether the Board should grant the requested special permit is whether the Board finds the alteration not to be "substantially more detrimental to the neighborhood than the existing nonconforming use," a standard which the Board finds reasonably applies to the structure, given that the existing and proposed uses are both conforming to the Zoning Ordinance but the dimensional nonconformities of the structure are significant. The Board acknowledges that a new structure of this size and intensity would not be permitted at this location, with its proximity to lower-scale residential uses, given current zoning restrictions and planning guidelines for the area. However, given that it is a pre-existing structure, the Board is basing its judgment on the impact of the proposed alterations as they compare to the existing conditions of the site.

The Board finds that the proposed new uses in the building, primarily office with smaller amounts of residential and ground-floor retail, will not be substantially more detrimental than the existing courthouse and jail uses. At the present time, the courthouse and jail facilities have been vacated from the building, but when they were operating at full capacity the character and intensity of use was comparable to what would be expected for an office building of a similar size. The proposed reduction in the size of the building will mitigate any potential impacts related to the intensity of the office use. Residential uses in the lower parts of the building will help to make the building more compatible with surrounding residential uses, and the retail and publicly beneficial open space proposed at the ground floor will help to make the building more welcoming to the surrounding neighborhood. It should be noted



that traffic impacts of the proposed new uses have been studied as required under the Project Review Special Permit provisions of Section 19.20 of the Zoning Ordinance, and are discussed further below in these Findings. For these reasons, and because the proposed uses are permitted in the zoning district, the Board finds that the proposed change in the use of the building will not be more detrimental than the existing use.

The Board acknowledges that the existing structure has many detrimental aspects, including the height and shadow impacts on surrounding lower-scale buildings, the “brutalist” architectural style of the building, the fortress-like character of the podium element, and the visible on-grade parking facilities. In many respects, the proposed alteration will remedy these impacts. The height of the building will be reduced by two stories, which will only slightly reduce the impacts of height, shadows, wind and overall massing, but will certainly not be more detrimental than the existing building. The proposed replacement of the building’s cladding will result in a warmer, more contextual aesthetic that is preferable to the exposed concrete construction associated with the brutalist style of the existing building. The alterations at the ground level will provide greater pedestrian access to the ground floor of the building, replace surface parking with open space and improve pedestrian and bicycle connections around the site, which will be substantial improvements over the existing conditions. Therefore, the Board finds that the proposed alterations to the structure will not be more detrimental to the neighborhood than the existing structure, and are expected to mitigate many of the detrimental aspects of the building as it exists today.

For the reasons set forth above, the Board finds that the proposal meets the standards and criteria for issuance of a special permit pursuant to Section 8.22.2, Paragraph (a).

## 2. Conversion of a Non-Residential Structure to Residential Use (Section 5.28.2)

Although the special permit criteria for alteration of a nonconforming structure applies generally to the project, the proposed addition of residential uses introduces new dimensional requirements in the Business B district that would not apply if the building were entirely non-residential. Specifically, according to Section 5.28.1, Paragraph (c) of the Zoning Ordinance, “A dwelling in a Business B district shall be subject to the same dimensional requirements and other restrictions as a dwelling in a Residence C-3 district.” Based on the dimensions of the existing structure, the proposed residential spaces within the building would not meet the Residence C-3 requirements for minimum yards (which are determined by a mathematical formula) and private open space.

For this reason, the Applicant has requested a special permit pursuant to Section 5.28.2 of the Zoning Ordinance, which permits modifications to base zoning requirements in order to convert a non-residential structure to residential use. Specifically, Sections 5.28.23 and 5.28.25 allow the following modifications:

### *5.28.23 Yard Requirements*



*The required yards shall be those of the structure existing at the time of the conversion to residential use. However, any construction occurring outside the limits of the existing structure shall be subject to the yard requirements of the district in which the structure is located.*

**5.28.25 Private Open Space Requirements**

*The Private open space requirement shall be that required in the district in which the structure is located, except as modified herein.*

*The dimensional and locational limitations for Private open space set forth in Section 5.22 shall not apply; any combination of at-grade private open space and decks and balconies at other levels shall be permitted as shall walks intended for non vehicular use. However, in every case where those requirements of Section 5.22 waived by this Paragraph (a) are not met, all portions of the surface of the lot shall be Green Area as defined in Article 2.000 that are (1) not covered by the building or (2) devoted to the minimum area necessary to provide at grade, conforming parking spaces and the minimum necessary circulation and driveways for no more than one parking space per dwelling unit. The amount of Private open space required may be reduced by the Planning Board should the Board find that full compliance cannot reasonably be expected given the existing development of the lot and the provision of parking necessary to serve the dwelling units.*

*However, where open space requirements are not met, the Applicant shall explore the use of portions of the interior of the building to provide recreational opportunities not possible on the exterior.*

The Board finds that the proposal is eligible for this special permit relief because the proposed yard is that of the existing building, and the complex nature of the project does not allow for the provision of private open space meeting the requirements of Section 5.22 of the Zoning Ordinance. Moreover, portions of the site not covered by the building shall be occupied by publicly beneficial open space that will be usable by residents of the building.

In making its findings the Board is instructed by the Criteria for Approval of a Special Permit set forth in Section 5.28.28, copied below with the Board's commentary provided.

**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.*

The number of dwelling units will be far below the maximum number permitted in the base zoning regulations. Parking for residents will be provided on-site, within the building, at the required ratio of one space per dwelling unit.

- (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.*

The closest residential neighbors to the proposed residential units are on other blocks separated by Spring Street, Third Street and Thorndike Street. The proposed residential units will not impact the privacy of residential neighbors as they will primarily face a public way across from non-residential uses. Design modifications that were made to reduce the amount of glass in the proposal will also mitigate privacy impacts on abutters. Issues regarding the placement and potential impacts of lighting were discussed in the public hearing, and the final design of outdoor and indoor lighting systems will be reviewed as a Condition of this Special Permit to ensure that impacts are mitigated. Furthermore, as stated in the submitted Acoustical Report, the impacts of noise from the former jail facility will be mitigated in the new proposal.

- (c) *Reduction in Private Open Space. Where it is proposed to reduce the amount of on-site 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*

Although private open space is not provided for residents, a new publicly beneficial open space will be provided on the site that will provide recreational opportunities for residents. That space will also serve as a landscaped buffer between the building and neighboring residential buildings on the opposite side of Spring Street.

- (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.*

Extensive community outreach was conducted before and during the course of review of this project, as evidenced in Application Materials and supplements as well as in the extraordinary volume of correspondence received by the Planning Board from the public. The proposal, especially as it was revised during the course of review, provided reasonable responses to comments and concerns voiced by community members.

#### *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.*

As previously noted, the number of dwelling units will be far below the maximum permitted in the base zoning regulations. On-site parking will be provided at a ratio of one space per dwelling unit.



- (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.*

The design and layout of units is not typical of residential development in the area as a result of the unique conditions of the structure itself, which lends itself to more “studio-loft” types of units. Nonetheless, the Board finds that the addition of units to the base of the building is a positive element of the project and the Board does not find that the unit configuration would result in a detrimental impact on parking or quality of life for neighbors. Some larger, two-bedroom units are provided, which is an added benefit, though some three-bedroom units would have been preferred. Also, the Applicant has agreed to provide affordable units and middle-income units above and beyond the inclusionary housing requirements, which has been made a Condition of this Special Permit.

- (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.*

There are no special occupancy restrictions proposed for the dwelling units except for the aforementioned units set aside for low, moderate and middle-income households. Although the number of units will be small, they will provide some unique housing options that are not otherwise available to Cambridge residents. Overall, the proposed dwelling units are not expected to negatively impact the surrounding neighborhood.

For the reasons set forth above, with reference to the additional Findings set forth in this Decision, the Board finds that the proposal meets the standards and criteria for issuance of a special permit pursuant to Section 5.28.2.

### 3. Project Review Special Permit (19.20)

The project requires a Project Review Special Permit pursuant to section 19.20 of the Zoning Ordinance given that it proposes a change of use where the total Gross Floor Area of the new uses exceeds fifty thousand (50,000) square feet. In granting a Project Review Special Permit, the Planning Board must evaluate the traffic and urban design impacts of the proposal according to the criteria and objectives set forth in the zoning, copied below.



*(19.25.1) Traffic Impact Findings. Where a Traffic Study is required as set forth in Section 19.24 (2) the Planning Board shall grant the special permit only if it finds that the project will have no substantial adverse impact on city traffic within the study area as analyzed in the Traffic Study. Substantial adverse impact on city traffic shall be measured by reference to the traffic impact indicators set forth in Section 19.25.11 below.*

*(19.25.11) Traffic Impact Indicators. In determining whether a proposal has substantial adverse impacts on city traffic the Planning Board shall apply the following indicators. When one or more of the indicators is exceeded, it will be indicative of potentially substantial adverse impact on city traffic. In making its findings, however, the Planning Board shall consider the mitigation efforts proposed, their anticipated effectiveness, and other supplemental information that identifies circumstances or actions that will result in a reduction in adverse traffic impacts. Such efforts and actions may include, but are not limited to, transportation demand management plans; roadway, bicycle and pedestrian facilities improvements; measures to reduce traffic on residential streets; and measures undertaken to improve safety for pedestrians and vehicles, particularly at intersections identified in the Traffic Study as having a history of high crash rates.*

*The indicators are: (1) Project vehicle trip generation weekdays and weekends for a twenty-four hour period and A. M. and P.M. peak vehicle trips generated; (2) Change in level of service at identified signalized intersections; (3) Increased volume of trips on residential streets; (4) Increase of length of vehicle queues at identified signalized intersections; and (5) Lack of sufficient pedestrian and bicycle facilities. The precise numerical values that will be deemed to indicate potentially substantial adverse impact for each of these indicators shall be adopted from time to time by the Planning Board in consultation with the TPTD, published and made available to all applicants.*

The project exceeds the threshold for a Traffic Impact Study (TIS), and such study was completed, included within the Application Materials and certified complete by the Traffic, Parking and Transportation Department (TPT) on November 21, 2013. A report was provided by TPT to the Planning Board on January 7, 2014. Additionally, after modifications were made to the proposal during the course of review, an amendment to the TIS was provided with a revised Vehicle Trip Summary, and TPT provided a report on such revisions to the Planning Board on July 29, 2014.

The original TIS identified exceedences of the indicators for vehicle trip generation throughout the day and during A.M. and P.M peak hours, as well as pedestrian level of service at various locations around the project site. No indicators were exceeded for vehicular level of service at signalized intersections or increased volume of trips on residential streets. The revisions to the TIS noted that with the reduction in project size (which occurred when the Applicant revised the design to remove the existing top two stories of the building), the project would no longer exceed the indicator for vehicle trip generation in the A.M. peak hour. Other indicators are not affected by that project revision.



To mitigate the anticipated impacts, the aforementioned reports from TPT recommend forward-thinking measures that anticipate a greater shift over time to non-auto modes of transportation. Along with providing convenient, easily accessible bicycle parking facilities as required by zoning, TPT recommends providing a bicycle repair station and public bicycle sharing (*i.e.*, Hubway) station. TPT also recommends improving the usability and attractiveness of pedestrian facilities by improving sidewalks and crosswalks around the site and funding improvements to the open space at the adjacent City parking garage as well as creating open space on the project site itself. Although the project proposes to utilize existing parking spaces, the commercial uses will be subject to ongoing programmatic requirements to encourage non-auto transportation under the Parking and Transportation Demand Management (PTDM) Ordinance and TPT further recommends that Transportation Demand Management requirements be applied to the residential units. TPT also recommends funding the installation of EZRide bus shelters, installing an electric vehicle charging station and conducting a study to recommend safety improvements at Third and Spring Streets. The Board finds that these recommended mitigation measures are appropriate to the impacts identified in the TIS, and should be incorporated as Conditions of this Special Permit.

Looking more broadly at transportation impacts, the Board acknowledges the point raised by many members of the public that traffic on Third Street already appears congested during peak travel times. However, the proposed parking for the project (which is discussed further in these Findings) will be accessed from First Street, which is planned to be extended to connect directly to the regional highway system following the relocation of the MBTA Lechmere Station, a project that is currently in the design phase. Therefore, there will not be much incentive for traffic coming to and from the project to use Third Street or other neighborhood streets. The results of the TIS support this expectation. Furthermore, although not addressed in the TIS, the Board notes that the existing courthouse facility (before it was vacated) had its own set of negative traffic and parking impacts that will be eliminated by the proposed conversion.

For the reasons set forth above pertaining to the application of traffic impact indicators, mitigating measures and other considerations, the Planning Board finds that the project will have no substantial adverse impact on city traffic within the area studied in the TIS.

*(19.25.2) Urban Design Findings. The Planning Board shall grant the special permit only if it finds that the project is consistent with the urban design objectives of the city as set forth in Section 19.30. In making that determination the Board may be guided by or make reference to urban design guidelines or planning reports that may have been developed for specific areas of the city and shall apply the standards herein contained in a reasonable manner to nonprofit religious and educational organizations in light of the special circumstances applicable to nonprofit religious and educational activities.*

In evaluating whether the proposed project is consistent with the urban design objectives set forth in Section 19.30 of the Zoning Ordinance, the Board acknowledges that the intent of the urban design objectives is to provide guidance but not to establish strict requirements, as set forth in Section 19.30:



*A project need not meet all the objectives of this Section 19.30 where this Section serves as the basis for issuance of a special permit. Rather the permit granting authority shall find that on balance the objectives of the city are being served.*

In this case, the proposal is not to construct a new building but to alter a pre-existing nonconforming structure that would not be permissible given the City's current planning and zoning. Therefore, the Board has based its evaluation on the quality and effectiveness of efforts that have been made to improve the building so that it better aligns with the City's objectives, and has based its ultimate Finding on whether, on balance, the City's objectives are being met by the proposed alteration.

*(19.31) New projects should be responsive to the existing or anticipated pattern of development.*

The project is responsive to the existing pattern of development in the sense that it reuses an existing building. However, as the Board has noted in a prior section of these Findings, the existing building itself is out of conformance with the plans and zoning regulations established for the area. Given the Board's finding that the project meets the criteria for granting a special permit to alter the existing building to accommodate a new conforming use, it is rational to evaluate the proposal in light of efforts made to bring the building into greater harmony with surrounding uses.

The proposed modification to the building establishes a podium that better responds to the scale, character and use of surrounding development. The proposed new façade treatment will soften what is now a hard edge to the building and will be more sensitive to adjacent historic structures. The proposed materials, relying on an earth-based terra cotta cladding, will also be more compatible with surrounding buildings by making reference to their red brick and stone materials without directly copying them.

In evaluating the project relative to anticipated patterns of development, the Board considered the objectives set forth in the Eastern Cambridge Design Guidelines, which are applicable in this area. The proposal meets the guideline of providing active retail uses at the ground floor, and providing a mix of spaces to accommodate a range of specific use types. The Board encourages the Applicant to refer to the list of desired retail uses set forth in the guidelines when identifying retail tenants for the spaces. Although the overall height of the existing building is not consistent with the guideline to encourage a transition from higher-scale commercial areas to lower-scale residential areas, the proposal will make a positive change by reducing the height of the building. The existing building does meet the guideline of establishing a cornice line at about sixty-five feet and stepping-back taller portions of the building in order to shield building mass from pedestrians, and the proposed modification preserves and enhances this condition. The building also follows the recommended pattern of bay widths, and the proposed modifications provide greater articulation on the façade to achieve a less monolithic appearance. The project follows the guidelines by providing vehicular access and service



functions on the least sensitive side of the building, facing the municipal parking garage. Bicycle facilities are provided as previously described, and the project will not impact future rights-of-way for the Urban Ring. The project also serves environmental objectives by preserving an existing structure, which conserves the embodied energy in the building frame. For these reasons the Board finds that the proposed modification is responsive to the Eastern Cambridge Design Guidelines.

*(19.32) Development should be pedestrian and bicycle-friendly, with a positive relationship to its surroundings.*

The aforementioned modifications to the podium of the building will result in a much more pedestrian and bicycle-friendly building. The ground floor will be brought closer to grade, with more accessible pedestrian entrances, inviting ground-floor lobby and retail spaces, publicly beneficial open space, and transparent glazing at the lower floors. As previously noted, bicycle facilities will be provided in the form of conveniently located short-term and long-term bicycle parking spaces as required by zoning, a bicycle repair station and a public bicycle sharing station.

*(19.33) The building and site design should mitigate adverse environmental impacts of a development upon its neighbors.*

As previously noted in these Findings, vehicular access, loading and service will be provided on the east side of the building where the abutting uses – the municipal parking garage and some commercial buildings – will be the least sensitive to those impacts. The exact screening of those facilities will be reviewed as part of ongoing design review by Community Development Department staff.

Stormwater will be managed pursuant to Department of Public Works regulations, which are intended to reduce the impact on the city's drainage system through the use of collection tanks and increased permeable area.

Shadow impacts will be slightly mitigated by the reduction in height of the building. Existing retaining walls will be brought into the proposed site landscaping and buffered to reduce their visual impact. The proposed articulation of the façade will help to break down the length, scale and monotonous character of the existing building. The blank walls of the original proposal will be broken down through the vertical expression of bays and two-story horizontal banding to help provide more appropriate scale to the building.

Lighting impacts and wind impacts were the topics of much discussion at the public hearings. The Applicant provided a study of the potential impacts of indoor lighting, and the Board will include in the Conditions of this Special Permit a requirement for ongoing review of outdoor and indoor lighting systems with the aim of minimizing off-site light spillage, especially where it impacts abutting residential properties. The Applicant has also provided a study of the potential wind impacts, which will not be substantially different from the impacts of the existing building in its present use. Nonetheless, the



Board will also include a requirement to fund a peer review of the Applicant's wind impact study with the goal of identifying additional mitigating measures that could further reduce wind impacts on pedestrians.

A tree replacement plan is provided in the proposal. Some existing marginal trees on the site will be removed, and new trees will be planted in landscaped areas and other locations where they will help to mitigate wind impacts.

Environmental improvements to the site will be achieved by removal of toxic materials that are present in the existing building, replacement of existing building systems with modern systems that have greater energy and water efficiency, and Transportation Demand Management (TDM) measures that will help reduce auto emissions. The project will be subject to the Green Building Requirements of the Cambridge Zoning Ordinance, and the Applicant has indicated a goal of achieving LEED certification at the Gold level.

*(19.34) Projects should not overburden the City infrastructure services, including neighborhood roads, city water supply system, and sewer system.*

Traffic impact findings have been previously set forth in these Findings, which provide the Board's rationale for finding that the project will not overburden neighborhood roads. As previously noted, the project will adhere to Department of Public Works stormwater management standards to reduce impacts on the city sewer system, and will meet LEED standards for energy and water efficiency to reduce impacts on other utilities and services.

*(19.35) New construction should reinforce and enhance the complex urban aspects of Cambridge as it has developed historically.*

The project does not propose new construction but rather the alteration of an existing structure to accommodate new conforming uses. Nonetheless, the change will result in a transformed building with a varied mix of uses. The office component of the building will include space for smaller innovation companies. The residential component (discussed further below) will provide different unit types and different levels of affordability. The ground-floor section, which is the most public-facing part of the project, will include retail and community uses with a variety of spaces and configurations to serve different needs. The Board encourages an ongoing dialogue with neighbors to identify specific retail uses that will enhance the offerings and services to the community.

*(19.36) Expansion of the inventory of housing in the city is encouraged.*

The project includes twenty-four (24) residential dwelling units on the lower floors of the building facing Third Street, in a configuration of mainly loft-style studio apartments with some two-bedroom units also provided. Although the number of dwelling units is small in relation to the overall development, the dwelling units enhance the urban



character of the project and provide unique residential opportunities. The dwelling units are designed to make best use of the existing structure, which, due to its large floor plates and tall ceilings, is not conducive to conventional residential unit types.

At the suggestion of the Board, the Applicant has agreed to exceed the minimum requirement for the number of inclusionary housing units required by Section 11.200 of the Zoning Ordinance ("Affordable Units") by providing one-third of the total number of dwelling units as Affordable Units (made affordable and available to low-to-moderate-income households in accordance with the provisions of Section 11.200 of the Zoning Ordinance) and to provide an additional one-third of the total number of the dwelling units as units that will be affordable to middle-income households, while allowing the remaining one-third of the dwelling units to be market-rate units without price restrictions.

*(19.37) Enhancement and expansion of open space amenities in the city should be incorporated into new development in the city.*

A publicly beneficial open space is proposed along Spring Street where existing parking is located, which will provide unique and attractive opportunities for use by occupants of the building as well as neighborhood residents. The design of the space has been improved during the course of review, with a large portion of the space provided at sidewalk level to encourage use by the general public, and some partially elevated portions providing opportunities for outdoor dining and other amenities associated with the retail spaces in the building. Along with providing recreational opportunities, the open space will serve as a link in the network of public open spaces throughout the neighborhood. The Board suggests further work with City staff on the detailed design and activation strategies for the space, including potential way finding systems. Additionally, as a traffic mitigation condition, the Applicant has agreed to undertake improvements to the open space adjacent to the municipal parking garage along Second Street.

For the reasons set forth above, the Planning Board finds that the proposed alterations to the structure, the site and the use are consistent with the urban design objectives of the City as set forth in Section 19.30 of the Zoning Ordinance.

#### 4. Off-Site Accessory Parking

The Applicant proposes that off-site accessory parking will be most preferably provided by way of a long-term lease agreement with the City of Cambridge to guarantee the use of up to four hundred twenty (420) parking spaces in the municipal parking garage located on First Street, in addition to the ninety-two (92) spaces provided on-site within the building. That municipal garage had previously served, to a great extent, the parking needs associated with the building when it operated as a courthouse facility. However, since such a lease arrangement shall require City authorization of a disposition of municipal property and is therefore not yet secured, the Applicant has requested a special permit to approve an



alternative arrangement, which would be to provide those four hundred twenty (420) parking spaces in the parking facility at the Cambridgeside Galleria, also located on First Street.

The Board acknowledges that the original proposal to provide parking in the municipal garage remains the preferred option of both the Applicant and the Planning Board, given its closer proximity to the building and its opportunities for mutually beneficial public-private partnerships.

With regard to the alternate proposal, the Board makes the following findings, with reference to the standards set forth in Section 6.22.2, copied below.

*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.*

The more preferable parking location, at the municipal garage on First Street, would be permitted as-of-right pursuant to Subsection 6.22.1 because it would serve non-residential uses and because it is located within three hundred (300) feet of the uses that it would serve.

The proposed alternative parking facility, at the Cambridgeside Galleria, is within one thousand (1,000) feet of the lot on which the principal uses are proposed, and the proposed uses are permitted in the district where the parking facility is located (which has designations of Business A and PUD-4). Accessory parking for proposed residential uses will be provided on-site in the below-grade garage, and therefore the off-site facility will serve only non-residential uses. Safe and convenient sidewalk connections will provide pedestrian access from the principal uses to the off-site parking facility. Therefore, the Board finds that the alternative off-site parking location at the Cambridgeside Galleria meets the standards set forth in Section 6.22.2 necessary to grant a special permit.

In the case of either potential off-site parking facility, in accordance with Section 6.23 of the Zoning Ordinance pertaining to control of parking facilities, the Board finds that a long-term lease agreement that complies with Section 6.23, evidence of which shall be provided to the City prior to issuance of a Building Permit to construct the uses that are served by that parking, shall be satisfactory to demonstrate control of the accessory parking spaces as required in Section 6.23.



5. General Criteria for Issuance of a Special Permit (10.43)

The Planning Board finds that the project meets the General Criteria for Issuance of a Special Permit, as set forth below.

*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 ...*

The Board finds that after receiving the requested special permits, the proposed development will meet the requirements of the Ordinance.

*(b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or ...*

With reference to the traffic impact findings previously set forth, the Board finds that the traffic impacts of the project will not cause congestion, hazard or change in established neighborhood character.

*(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 ...*

With reference to the findings previously set forth, and the additional requirements set forth as Conditions of this Special Permit Decision, the continued operation or development of adjacent uses will not be adversely impacted by the proposed alterations to the pre-existing nonconforming structure and its occupancy by new uses that are permitted as-of-right in the district.

*(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 ...*

With reference to the findings previously set forth, and with the understanding that all applicable health, safety and environmental regulations shall be met during the course of construction along with construction management requirements that will be made Conditions of this Special Permit Decision, the Board finds that the proposed new uses and building alterations will not cause detriment to the health, safety or welfare of occupants of the building or citizens of Cambridge. Moreover, the proposed alterations will ameliorate the potential risks to health, safety and welfare that the existing building may present if it remains unoccupied.

*(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 ...*

With reference to the findings previously set forth, the Board finds that the proposed new uses and alterations to the pre-existing nonconforming structure will not impair the integrity of the district or adjoining district and will not otherwise derogate from the intent and purpose of this Zoning Ordinance.

- (f) *the new use or building construction is inconsistent with the Urban Design Objectives set forth in Section 19.30.*

With reference to the urban design findings previously set forth, the proposed new uses and building alterations will be consistent with the urban design objectives set forth in Section 19.30 of the Zoning Ordinance.



## DECISION

Based on a review of the Application Documents, testimony given at the public hearings, and the above Findings, the Planning Board hereby GRANTS the requested Special Permits subject to the following conditions and limitations. Hereinafter, for purposes of this Decision, the Permittee shall mean the Applicant for the requested Special Permits and any successor or successors in interest.

1. All use, building construction, and site plan development shall be in substantial conformance with the Application Documents dated November 21, 2013 as modified in the Application Documents dated July 22, 2014, in accordance with all supplemental documents and information submitted by the Applicant to the Planning Board as referenced above and in accordance with all other Conditions set forth in this Special Permit Decision. Appendix I summarizes the dimensional features of the project as approved.
2. The project shall be subject to continuing design review by the Community Development Department (CDD). Before issuance of each Building Permit for the project, CDD shall certify to the Superintendent of Buildings that the final plans submitted to secure the Building Permit are consistent with and meet all conditions of this Decision. As part of CDD's administrative review of the project, and prior to any certification to the Superintendent of Buildings, CDD may present any design changes made subsequent to this Decision to the Planning Board for its review and comment.

Elements of the proposed design that shall require explicit approval by CDD prior to issuance of a building permit include the following:

- a. Treatment of the ground-floor façade on Second Street, where loading and service activities are located, to minimize visual and other impacts on the public realm.
  - b. Outdoor and indoor lighting systems, with the goal of minimizing light spillage onto adjacent sites and into the night sky.
  - c. Rooftop mechanical systems, including any enclosures, screening devices and other appurtenances.
  - d. Detailed landscape plans for the publicly beneficial open space on Spring Street, including any wayfinding systems that may be implemented.
3. All authorized development shall abide by all applicable City of Cambridge Ordinances, including the Noise Ordinance (Chapter 8.16 of the City Municipal Code).
  4. Throughout design development and construction, the project shall conform to the Green Building Requirements set forth in Section 22.20 of the Cambridge Zoning Ordinance. Compliance with such requirements shall be certified by the Community Development Department prior to issuance of a Building Permit and again prior to issuance of a Certificate of Occupancy for development authorized by this Special Permit, pursuant to the procedural requirements of Section 22.20.



5. The Transportation Mitigation requirements set forth in the memorandum from Susan Clippinger, Director of Traffic, Parking and Transportation, dated January 7, 2014 and attached to this Special Permit Decision, shall be made Conditions of this Special Permit. The Traffic, Parking and Transportation Department (TPT) shall certify that all applicable Conditions are being met prior to issuance of any Building Permit or Certificate of Occupancy for development authorized by this Special Permit. Any minor alterations to the specific location or design of any required Transportation Mitigation improvements shall be subject to final approval by TPT.
6. The Permittee shall produce evidence of a long-term lease agreement subject to the requirements of Section 6.23 of the Zoning Ordinance guaranteeing use of up to four hundred (420) parking spaces in an existing off-site parking facility, either at 14 Thorndike Street (otherwise known as the First Street Municipal Parking Garage) or at 100 Cambridgeside Place (otherwise known as the Cambridgeside Galleria mall), to serve the principal non-residential uses authorized by this Special Permit, which shall be certified by the Community Development Department prior to issuance of a Building Permit to construct such uses.
7. The permitted development shall be subject to the requirements of the Parking and Transportation Demand Management (PTDM) Ordinance. The Cambridge PTDM Officer shall certify that all applicable PTDM requirements are being met prior to issuance of a Certificate of Occupancy for uses authorized by this Special Permit, and ongoing compliance with applicable PTDM requirements shall be a Condition of this Special Permit.
8. The Permittee shall be required to incur the cost of retaining a consultant specializing in analysis of wind impacts, selected at the discretion of the City, for the purpose of conducting a peer review of the wind analysis provided in the Application Materials and assessing whether additional measures should be employed that would further mitigate the wind impacts resulting from the presence of the building as it has been approved. Any such mitigating measures shall be implemented, subject to approval by the Community Development Department, so long as such measures would not result in a substantial deviation from the plans approved by the Planning Board in this Special Permit Decision.
9. Of the twenty-four (24) dwelling units authorized by this Special Permit, no less than one-third of the units shall be designated Affordable Units, as defined in Section 11.200 of the Zoning Ordinance, and in addition to those Affordable Units, no less than one-third of the dwelling units shall be provided as Middle-Income Units, for which occupancy shall be restricted to households whose income does not exceed one hundred twenty percent (120%) of area median income, and which shall be priced such that the rent (including utilities) or monthly mortgage payment (including insurance, utilities and real estate taxes) is affordable to households earning between eighty percent (80%) and one hundred twenty percent (120%) of area median income range paying thirty percent (30%) of their income, or other standard as may be established by the Cambridge Affordable Housing Trust. Adherence to this Condition shall be deemed to satisfy and exceed the Inclusionary Housing requirements set forth in Section 11.200 of the Zoning Ordinance. Except for the particular provisions related to occupancy and pricing of Middle-Income Units set forth above, all dwelling units that are



subject to the requirements of this Condition shall be administered in accordance with the standards set forth in Section 11.200 of the Zoning Ordinance and the City's normal practices for administering the Inclusionary Housing Program. The Community Development Department shall certify compliance with this Condition prior to issuance of a Building Permit for development authorized by this Special Permit.

10. The Permittee shall prepare and implement a Retail Tenancy Plan, which shall describe the procedures and timeline by which retail space will be marketed and tenants selected for the retail spaces authorized by this Special Permit and shall identify an individual responsible for implementing such plan on behalf of the Permittee. An initial Retail Tenancy Plan shall be reviewed and certified by the Community Development Department prior to issuance of a Building Permit for development authorized by this Special Permit, but may be amended after that time. A component of the Retail Tenancy Plan shall be the formation of a community advisory committee that shall, at a minimum, provide feedback on the types of uses that are most desired by neighborhood residents, particularly for the smaller retail spaces in the project. An updated Retail Tenancy Plan, including a report on feedback received from the community advisory committee and other outreach efforts, shall be reviewed and certified by the Community Development Department prior to issuance of a Certificate of Occupancy for any retail space authorized by this Special Permit.
11. The Permittee shall prepare and implement a Construction Management Program in accordance with Section 18.20 of the Zoning Ordinance. Such program shall be reviewed and approved by the Department of Public Works and the Traffic, Parking and Transportation Department, along with any other agencies as deemed appropriate by the City, prior to any construction activities. As a component of the Construction Management Program, the Permittee shall institute a community outreach program, which shall include regular meetings with an advisory committee of neighbors to provide updates, receive feedback and address specific concerns during the construction process, as well as a web site and e-mail notification list for construction updates, a designated point of contact to which community members can address questions and receive responses, and other outreach efforts as appropriate.

Voting in the affirmative to GRANT the Special Permits were Planning Board Members H Theodore Cohen, Steve Cohen, Hugh Russell, Tom Sieniewicz, Steven Winter, and Associate Member Catherine Preston Connolly, appointed by the Chair to act on the case, constituting at least two thirds of the members of the Board, necessary to grant a special permit.

For the Planning Board,



Hugh Russell, Chair.

City of Cambridge, MA • Planning Board Decision  
PB # 288 – 40 Thorndike Street (Sullivan Courthouse Building)

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A copy of this decision #288 shall be filed with the Office of the City Clerk. Appeals, if any, shall be made pursuant to Section 17, Chapter 40A, Massachusetts General Laws, and shall be filed within twenty (20) days after the date of such filing in the Office of the City Clerk.

ATTEST: A true and correct copy of the above decision filed with the Office of the City Clerk on October 30, 2014, by Jeffrey C. Roberts, authorized representative of the Cambridge Planning Board. All plans referred to in the decision have been filed with the City Clerk on said date.

Twenty (20) days have elapsed since the filing of the decision. No appeal has been filed.

DATE:

City Clerk of Cambridge



**Appendix I: Approved Dimensional Chart**

	Existing	Allowed or Required	Proposed	Permitted
Lot Area (sq ft)	59,788	5,000 min	No change	No change
Lot Width (ft)	297	none	No change	No change
Total GFA (sq ft)	513,241	See below	476,303	476,303 <sup>1</sup>
Residential Base	n/a	179,364 max	24,066	Consistent with Application Documents and applicable zoning requirements <sup>1</sup>
Non-Residential Base	n/a	164,417 max	452,237	
Inclusionary Bonus	n/a	53,809 max	0	
Total FAR	8.58	See below	7.97	Consistent with Application Documents and applicable zoning requirements <sup>1</sup>
Residential Base	n/a	3.0 max	0.4	
Non-Residential Base	n/a	2.75 max	7.56	
Inclusionary Bonus	n/a	0.9 max	0	
Total Dwelling Units	n/a	259 max	24	24
Base Units	n/a	199 max	20	See below <sup>2</sup>
Inclusionary Bonus Units	n/a	60 max	4	
Base Lot Area / Unit (sq ft)	n/a	300 min	2,989	
Total Lot Area / Unit (sq ft)	n/a	230 min	2,491	
Building Height (ft)	282'-3"	80	258'-3"	Consistent with Application Documents and applicable zoning requirements <sup>1</sup>
Front Setback (ft) – Spring St	46'-2"	n/a	No change	
Front Setback (ft) – Second St	12'-5"	n/a	No change	
Front Setback (ft) – Thorndike	0	n/a	No change	
Front Setback (ft) – Third St	12'-2"	n/a	No change	
Open Space (% of Lot Area)	0%	4.7%	1.4%	Consistent with Application Documents and applicable zoning requirements <sup>1</sup>
Private Open Space	0%	4.7%	1.4%	
Permeable Open Space	0%	2.0%	1.4%	
Off-Street Parking Spaces	40	387 min-750 max	512	512 <sup>3</sup>
Long-Term Bicycle Parking	0	166 min	166	Consistent with Application Documents, PTDM and other applicable requirements
Short-Term Bicycle Parking	10	50 min	50	
Loading Bays	4	3 min	3	

<sup>1</sup> Dimensions permitted as alterations to a nonconforming structure pursuant to Sections 8.22.2(a) and 5.28.2 of the Zoning Ordinance in accordance with this Special Permit Decision.

<sup>2</sup> Affordable housing units shall be provided in excess of the Inclusionary Housing requirements in accordance with Condition #9 of this Special Permit Decision.

<sup>3</sup> Ninety-two (92) spaces shall be provided on-site and four hundred twenty (420) spaces shall be provided in an existing off-site parking facility in accordance with this Special Permit Decision.



**CITY OF CAMBRIDGE**  
**Traffic, Parking and Transportation**  
344 Broadway  
Cambridge, Massachusetts 02139

[www.cambridgema.gov/traffic](http://www.cambridgema.gov/traffic)

Susan E. Clippinger, Director  
Brad Gerratt, Deputy Director

Phone: (617) 349-4700  
Fax: (617) 349-4747

**MEMORANDUM**

**To:** Cambridge Planning Board  
**From:** Susan Clippinger, Director TP&T *As. for Sue Clippinger*  
**Date:** January 7, 2014  
**Re:** 40 Thorndike Street - Edward J. Sullivan Courthouse Redevelopment Project.

The Traffic, Parking & Transportation (TP&T) Department has reviewed the Transportation Impact Study (TIS) for the proposed Sullivan Courthouse Redevelopment Project located at 40 Thorndike Street by LMP GP Holdings LLC/Leggat McCall Properties LLC. We certified the TIS as complete and reliable on November 21, 2013.

The proposed project is to renovate and repurpose the approximately 510,000 s.f. Edward J. Sullivan Courthouse into a mixed-use building consisting of approximately 471,854 s.f. Technical Office use, 15,000 s.f. Retail use, and 24 housing units. The Project proposes 92 on-site parking spaces and proposes to lease 420 spaces in the adjacent City owned First Street Parking Garage, for a total of 512 parking spaces. The project will remove the existing curb cut and garage access on Third Street and provide a new parking entry on Second Street. Three loading zones will also be provided on Second Street as well as a dedicated bicycle parking entry to 166 indoor, weather protected long-term bicycle spaces. The Project will also provide 50 short-term bicycle spaces on-site.

The Courthouse Redevelopment Project will generate the following Trips:  
2,226 daily vehicle trips including, 253 AM and 270 PM peak hour vehicle trips  
1,856 daily transit trips (220 AM Peak/226 PM Peak hour transit trips),  
474 daily pedestrian trips (39 AM/53 PM Peak hour transit trips), and  
256 daily bicycle trips (28 AM/30 PM Peak hour bicycle trips).

**Planning Board Exceedances.** The Traffic Impact Study indicated the Project had 19 Planning Board special permit transportation criteria exceedances. Three exceedances were from exceeding the Weekday, AM and PM peak hour vehicle trip thresholds, and 16 exceedances were from Pedestrian Level of Service Criteria. The full summary is attached. The TP&T Department's comments are below.

**Auto Parking.** The Project proposes 512 parking spaces including, 92 spaces located on-site in two below-grade levels of the existing building and 420 spaces within 300' in the City's First Street Garage (proposed to be leased long-term by the proponent from the City).

The Traffic Impact Study estimated a Project parking need of approximately 529 spaces based on an estimated 1,150 employees (2.5 employees per 1,000 sf, 42% drive-alone and 4% carpool). The actual employee density of the building will vary depending on the tenant. We believe 512 spaces is a reasonable number to meet the Project's



parking needs. We recommend that prior to the Project's first Building Permit, the Proponent be required to show documentation that they have secured 420 spaces to serve employees at the Courthouse Project. The documentation must be approved by the CDD and TP&T Departments.

**Bicycle Parking.** The proposed bicycle parking will meet the zoning requirement.

**Transportation Mitigation.** To mitigate the Project's Planning Board exceedances we recommend the Proponent be obligated to the following:

1. Hubway Station.
  1. The Proponent proposed to fund the installation of a Hubway station on-site. The Proponent should fund the station, which should be done prior to the issuance of the Project's first Certificate of Occupancy Permit.
  2. The Project should at a minimum be a Silver Level Corporate Member of Hubway for all employees, including Retail employees.
2. The Proponent should provide air pumps and other bicycle tools, such as a "fix-it" stand in the Courthouse building's bicycle storage area. This improvement should be installed prior to the first Occupancy Permit.
3. The Proponent should fund the purchase and installation, per City approval, of benches at the inbound and outbound EZ Ride stops at First Street and Otis Street. The Proponent should provide the City a check prior to their first Certificate of Occupancy.
4. In response to the high crash rate at Third and Spring Streets, and in partnership with TP&T, the Proponent should examine police reports of all crashes that occurred between 2002 and 2012 at Third Street and Spring Street intersection, and evaluate the intersection in relation to the trips that will result from the Courthouse development. Based on the analyses, identify engineering and enforcement measures to improve the safety at the Third Street and Spring Street intersection. Reversing the direction of Spring Street will be one of the actions evaluated. This work must be completed prior to first Certificate of Occupancy.
5. In connection with the landscaped courtyard being created at the south side of the Sullivan Courthouse Redevelopment Project along Spring Street, create and maintain a complimentary landscaped courtyard space on Second Street in the open space adjacent to the City's First Street garage, on City land. This improvement will enhance the pedestrian environment for the retail, residential and office uses at the Courthouse Project. The public space will require design approval from the Community Development Department, and the physical improvements and land will continue to be owned by the City. The landscaping improvements should be completed prior to the issuance of the first Certificate of Occupancy for the Project.
6. The Proponent should refresh all pavement markings and rebuild any non-compliant pedestrian ramps at the four corners of the Project site, plus complete any other improvements required by the City's Public Works Department as part of their normal construction process. This should be completed prior to the Project's first Certificate of Occupancy.
7. We recommend the Proponent provide a minimum of one level-2 charging station (two charging points) for employees, visitors, or residents at the Courthouse building. The charging station should have prominent signs in the garage, and employees should be notified of their availability through employee communications. The charging station should be installed prior to the issuance of the first Certificate of Occupancy.

8. Lastly we recommend that Proponent implement the following Residential Transportation Demand Management (TDM) measures to minimize auto trips for the residential units by encouraging walking, bicycling and transit as a preferred mode of transportation:
  - a. Provide an MBTA Charlie Card, with the value of a combined bus/subway pass (currently set at \$70 but is subject to MBTA fare increases) to each adult member of a new household during the first month of initial occupancy of a new household. Up to two Charlie Cards total per household are required. This requirement renews each time a new household moves in to incentivize new households to use public transportation.
  - b. Post information in an area that is central, visible, convenient, and accessible to all residents and visitors such as:
    - Available pedestrian and bicycle facilities in the vicinity of the Project site.
    - MBTA maps, schedules, and fares.
    - Area shuttle (i.e. EZ-Ride Shuttle) map and schedule.
    - "Getting Around in Cambridge" map (available at the Cambridge Community Development office).
    - Bicycle parking.
    - Ride-matching and Car-sharing information.
    - Other pertinent transportation information.
  - c. Designate a Transportation Coordinator (TC) for the site to manage the TDM program. The TC will also oversee the marketing and promotion of transportation alternatives to all residents at the site in a variety of ways including posting information in prominent locations, Project's web site and property newsletter, and responding to individual requests for information.
  - d. The TC should participate in any TC trainings offered by the City of Cambridge or local Transportation Management Associations.

**PTDM Plan.** The project is required to complete a Parking and Transportation Demand Management Plan (PTDM).

cc. Adam Shulman, TP&T, Brian Murphy, Susanne Rasmussen, Cara Seiderman, Liza Paden, Roger Boothe, CDD, Robert Dickey, Leggat McCall Properties.



Nancy E. Glowa  
City Solicitor

Arthur J. Goldberg  
Deputy City Solicitor

Vali Buland  
First Assistant City Solicitor



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Keplin K. U. Allwaters

## CITY OF CAMBRIDGE

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

May 5, 2014

Richard C. Rossi  
City Manager  
City Hall  
Cambridge, MA 02139

***Re: Awaiting Report No. 14-22 Re: Report on Whether the Sullivan Courthouse  
qualifies as a Pre-existing Non-conforming Structure***

Dear Mr. Rossi:

This will respond to the above referenced Council Order, in which the City Council requested that the City Manager seek a legal opinion from this office on whether the Sullivan Courthouse qualifies as a pre-existing nonconforming structure, and to report back to the City Council and Planning Board with this legal opinion.

### **I. Background of the Edward J. Sullivan Courthouse**

The Edward J. Sullivan Courthouse ("Courthouse") was constructed between 1968 and 1974 on approximately 1.37 acres (59,788 square feet) of land then owned by Middlesex County located at 40 Thorndike Street in East Cambridge. Between 1965 and 1968 a former jail at the site was demolished, the site was excavated, and in or about 1968, actual construction of the Courthouse structure began. After several interruptions, the Courthouse was substantially completed in or about 1974. From 1974 until about 2009, the Courthouse was occupied by the Middlesex Superior Court, the Cambridge District Court, associated Court offices and agencies and a jail facility.

In 1997, the Massachusetts State Legislature abolished Middlesex County as a governmental entity. The 1997 legislation transferred ownership of the Courthouse to the Commonwealth of Massachusetts. Between 2007 and 2009 the various court programs were relocated from the Courthouse to a new courthouse in Woburn. The Courthouse is currently being partially utilized by the Commonwealth to house a jail facility. The jail facility is expected to be relocated in the near future.

In 2011 and again in 2012, the Commonwealth of Massachusetts, acting through its Division of Capital Asset Management and Maintenance ("DCAMM") issued a Request for

Proposals ("RFP") for the sale and redevelopment of the Courthouse. A private developer, LMP GP Holdings LLC (the "Developer"), as the successful bidder, entered into a purchase and sale agreement with the Commonwealth for the purchase of the Courthouse. It is anticipated that the sale of the Courthouse will occur after the jail facility is relocated.

In December 2013, the Developer submitted an application to the Planning Board seeking special permits to "[c]onvert the existing nonconforming Courthouse structure at 40 Thorndike Street to a mixed use office building containing ground floor retail uses, 24 dwelling units, and below grade parking." The requested uses are all allowed uses in the Business B zoning district in which the Courthouse is located.<sup>1</sup> The Developer's application is currently pending before the Planning Board.

Whether the Courthouse building qualifies as a lawful pre-existing nonconforming structure under Section 6 ("Section 6") of the Massachusetts Zoning Act, G.L. c. 40A (the "Zoning Act") determines the nature of the zoning relief that will be required in order for the Developer to effectuate its plans for the Courthouse. Section 6 provides in relevant part that local zoning ordinances and by-laws shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued, before the first publication of notice of the public hearing on such ordinance or by-law. If the Courthouse is a lawful pre-existing nonconforming structure, permits for the change, extension, or alteration of the Courthouse structure may be granted in accordance with Section 6 and the provisions of Sections 8.22 of the Ordinance, so long as the proposed change, extension or alteration "will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use."<sup>2</sup> The City Council and the Planning Board have requested guidance from this office as to whether the Courthouse is in fact a lawful pre-existing nonconforming structure and may thus be eligible for the special permits the Developer has requested for the redevelopment of the existing Courthouse structure.

## **II. Legal Analysis**

### **A. The Courthouse is Currently Immune From Local Zoning Regulations**

At the outset it is important to note that when it was constructed, the Courthouse was not required to comply with local zoning requirements for either the construction of the Courthouse structure or its use as a courthouse and jail facility.<sup>3</sup> Because the

<sup>1</sup> See, Cambridge Zoning Ordinance ("Ordinance"), Article 4, Sections 4.31(g), 4.34 and 4.35.

<sup>2</sup> Article 8, Section 8.22 of the Ordinance states: "As provided in Section 6, Chapter 40A, G.L. permits for the change, extension, or alteration of a pre-existing nonconforming structure or use may be granted as permitted in Subsections 8.22.1 and 8.22.2 below. Such a permit, either a building permit in the case of construction authorized in Section 8.22.1 or a special permit in the case of construction authorized in Section 8.22.2, may 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 structure or use."

<sup>3</sup> Massachusetts Courts have held that the Commonwealth and instrumentalities of the Commonwealth are generally immune from municipal zoning regulations unless a statute otherwise expressly provides to the contrary. See e.g., *Inspector of Buildings of Salem v. Salem State College*, 28 Mass. App. Ct. 92 (1989). The



Courthouse was constructed by Middlesex County, which was a governmental entity performing an essential governmental function, i.e. the provision of court programs and a jail facility, the Courthouse was immune from local zoning requirements. *See e.g., County Commissioners of Bristol v. Conservation Commission of Dartmouth*, 380 Mass. 706, 710-11 (1980), (county government is exempt from local zoning regulations). At the time that the 595,000 square foot, twenty-two story Courthouse, which is approximately 280 feet tall, was constructed there were no height limitations in the Business B zoning district in which the Courthouse is located. The Courthouse structure complied with all applicable dimensional requirements of the Ordinance with the exception of the Ordinance's maximum allowed Floor Area Ratio ("FAR"), which at that time was 4.0<sup>4</sup>; the Courthouse structure has an FAR of approximately 9.94. However, because the Courthouse was immune from any such local zoning requirements, zoning relief was not required for its construction. *Id.*

The current dimensional requirements for the district in which the Courthouse is located are more restrictive than those that were in place when the Courthouse building was constructed, and the Courthouse structure now exceeds the currently allowable gross floor area ("GFA"), height, and FAR requirements of the Ordinance.<sup>5</sup> Because the Courthouse is currently still being used by the Commonwealth as a jail facility, which is an essential governmental function, it retains its governmental immunity from local dimensional requirements. *Id.* The Courthouse will lose its governmental immunity once the governmental function ceases and the building is sold to a private developer. *See Village on the Hill Inc. v. Massachusetts Turnpike Authority*, 348 Mass. 107, 118 (1964) (land once immune does not retain its immunity after being conveyed in fee to private parties); *See also, Building Inspector of Lancaster v. Sanderson*, 372 Mass. 157 (1977) (requirement that a private owner of a commercial airport obtain permits, certificates or approvals from municipal, state or other public officials does not change the status of the airport from that of a private enterprise to a governmental function entitled to exemption from zoning by-laws and ordinances). The question that remains is whether the Courthouse structure will acquire the status of a lawful pre-existing nonconforming structure when it loses its governmental immunity.

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immunity applies to an entity or agency that is involved in performing essential governmental functions or an entity or agency authorized by statute to perform such functions. *See, County Commissioners of Bristol v. Conservation Commission of Dartmouth*, 380 Mass. 706, 710-11 (1980); *see also, Greater Lawrence Sanitary District v. Town of North Andover*, 439 Mass. 16 (2003) (entities performing essential governmental functions may be subject only to certain local regulations that do not interfere with the essential governmental function).

<sup>4</sup> *See, Cambridge, Zoning Ordinance, Article 5, Section 5.2* (1962-1970 editions of Ordinance).

<sup>5</sup> *See, Ordinance, Section 5.33, Table 5-3.*



**B. Section 6 and Relevant Caselaw Determine Whether The Courthouse Will Acquire the Status of a Lawful Pre-existing Nonconforming Structure When It Is Sold to a Private Party and Loses its Governmental Immunity**

**1. Section 6 Authorizes Certain Changes to Lawful Pre-existing Nonconforming Uses and Structures**

As noted above, Section 6 of the Zoning Act protects uses and structures that were lawfully in existence or lawfully begun against the applicability of subsequently adopted zoning amendments.<sup>6</sup> If a use or a structure lawfully exists before a zoning change becomes applicable, it acquires the status of a lawful pre-existing nonconforming use or structure when the zoning change becomes applicable, and as such is not required to comply with the provisions of the zoning change or any subsequent zoning change. See *Tamerlane Realty Trust v. Board of Appeals of Provincetown*, 23 Mass. App. Ct. 450, 455 (1987) (the existence of a nonconforming use or structure is determined as of the date of the first publication of notice of the public hearing of a subsequent zoning change). A lawful pre-existing nonconforming use or structure is not extinguished merely by a transfer of property and may remain in existence as a lawful pre-existing nonconforming use or structure. See *Cape Resort Hotels, Inc. v. Alcoholic Licensing Board of Falmouth* 385 Mass. 205 (1982).

**2. The Durkin Case is Applicable Precedent**

Although lawful pre-existing nonconforming uses or structures are typically created when zoning ordinances or by-laws are amended such that the legal status of a use or structure that conformed to the prior zoning becomes nonconforming, the Appeals Court has confirmed that uses or structures of government owned property that never complied with local zoning, but *were lawfully built or established based on governmental immunity* are lawfully nonconforming once they lose their governmental immunity. See, *Durkin v. Board of Appeals of Falmouth*, 21 Mass. App. Ct. 450, 452 (1986) (emphasis added). Contrast, *Cumberland Farms, Inc. v. Zoning Bd. of Appeals of Walpole*, 61 Mass. App. Ct. 124 (2004), (gasoline storage tanks installed *in violation* of zoning regulations were not entitled to Section 6 protections as nonconforming structures because they were *never lawfully in existence*) (emphasis added.) Accordingly, after the property loses its governmental immunity, changes to the formerly immune use or structure may be made so

<sup>6</sup> Section 6 provides in relevant part that: "[a] zoning ordinance or by-law shall not apply to structures or uses *lawfully in existence or lawfully begun*, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by Section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.... Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension, or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood (emphasis added)."



long as they comply with the provisions of Section 6. *See Durkin v. Board of Appeals of Falmouth, supra* at 452.

In *Durkin*, a private land owner applied for a building permit for a structure to be used as a post office under a lease to the Federal government. The structure was subsequently used as a post office for about twenty-five years. In or about 1984, Durkin purchased the structure, which was still being used as a post office, and applied to the town's board of appeals for a special permit to convert the basement to business and professional use and to construct an exterior stair entrance to the basement. Durkin relied on Section 1222 of the town's zoning by-law which essentially mirrored relevant provisions of Section 6.<sup>7</sup> The board denied the special permit sought by Durkin, concluding erroneously that the post office could not be considered a lawful pre-existing nonconforming use because the post office when built was allowed only by application of governmental immunity. The Appeals Court disagreed, finding that the Board's interpretation of what constitutes a lawful pre-existing nonconforming use was too narrow. The Court held as follows:

We are of the opinion that the board too narrowly interpreted the term nonconforming (with respect to uses of the locus) in appraising its powers under Section 1222 of the town's by-law. A use of the locus under a lease for a proper Federal purpose may have been immune from *application* of the town by-law. ... If in substance, however, a post office use was not a permitted use within the particular zoning district because *immune*, it still would have been a use of the locus forbidden by the by-law, and thus "nonconforming" in fact. This would have been so even though the by-law could not have been enforced against it because of the Federal immunity. If, in 1959, post office use could be regarded as a "municipal" use under the then existing zoning by-law, the use became nonconforming when in 1966 the zoning of the locus was changed to residential. If the use beginning in 1959 could then have been regarded as nonconforming, but immune because of the Federal use, it was a lawful use (citations omitted) (emphasis in original.)

*Durkin, supra* at 452. The Land Court has subsequently issued decisions applying the Court's rationale in *Durkin*, finding that uses begun pursuant to governmental immunity are subject to Section 6 protection as lawfully pre-existing nonconforming uses when the property is sold and used for private purposes. *See, Currier v. Smith*, 9 LCR 371 (2001) (Lombardi, J.), (former post office was immune from local zoning regulation but is still legally pre-existing nonconforming); *See also, Tsouvalis v. Town of Danvers*, 6 LCR 252 (1997) (Kilborn, J.), (former fire station had been a legally pre-existing nonconforming use although Court found that the use had been abandoned and therefore could not legally be expanded, changed or altered pursuant to the provisions of Section 6.)

<sup>7</sup> Section 1222 of the town's zoning by-law provided in relevant part that pre-existing nonconforming structures or uses may be extended, altered, changed or rebuilt only by special permit from the board of appeals and that any such extension, alteration, change, or rebuilding shall not be more detrimental than the existing nonconforming use to the neighborhood. *See Durkin, supra* at 452.



### 3. The Courthouse is a Lawful Pre-existing Nonconforming Structure

The Appeals Court's holding in *Durkin* and subsequent cases decided thereunder support the conclusion that the Courthouse is a lawful pre-existing nonconforming structure. The Courthouse, like the post office in *Durkin*, was allowed to be built because of governmental immunity even though it did not satisfy all of the existing dimensional requirements of the Ordinance when it was constructed.<sup>8</sup> The Courthouse, like the post office, was thus nonconforming in fact. After the Courthouse was constructed, subsequent zoning requirements became more restrictive, but as the Courthouse was immune from the Ordinance's dimensional requirements and pre-existed those more restrictive requirements, the Ordinance could not be enforced against it.<sup>9</sup> Moreover, pursuant to the holding in *Durkin*, because the Courthouse structure when built was nonconforming but immune because of its governmental use, it is a lawful nonconforming structure. *Durkin, supra*. As a lawful pre-existing nonconforming structure, then, it may be changed, altered, expanded or rebuilt so long as such changes are done consistently with the provisions of Section 6 of the Zoning Act and Section 8.22 of the Ordinance.

#### C. The Courthouse Structure Is Further Protected Against Enforcement by the Statute of Limitations Set Forth in G.L. 40A, Section 7

Even if it can be argued that the Courthouse was unlawfully built and thus similar to the unlawfully constructed gasoline storage tanks in *Cumberland Farms* and thus not entitled to the Section 6 protections afforded pre-existing nonconforming structures or uses, the Courthouse structure would still be protected against enforcement actions pursuant to the provisions of Section 7 of the Zoning Act ("Section 7"). Section 7 contains two separate limitation periods for actions to redress zoning violations. The first limitation period is the six year statute of limitations applicable to both structural violations and use violations if the property has been improved and used in accordance with the terms of an original building permit. The second limitation is applicable only to structural violations, and applies to structures built without a valid building permit. This limitation states in relevant part: "no action criminal or civil, the effect of which is to compel the removal, alteration or relocation of any structure by reason of any alleged violation of the provisions of ... any ordinance... shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds... within ten years after the commencement of the alleged violation." See also, *Lord v. Zoning Board of Appeals of Somerset*, 30 Mass. App. Ct. 226, 227 (1991), (ten year statute of limitations protects structural violations unsanctioned by a building permit); See also, *Durkin, supra* at 453.<sup>10</sup>

<sup>8</sup> The Courthouse use was an allowed use at the time of its construction.

<sup>9</sup> The case of *Cumberland Farms, Inc. v. Zoning Bd. of Appeals of Walpole*, 61 Mass. App. Ct. 124, *supra*, is inapposite, because whereas the gasoline storage tanks at issue in that case were constructed *unlawfully* in violation of local zoning regulations, the Courthouse was lawfully built, and even when the governmental immunity comes to an end, the structure will continue to be a lawful preexisting nonconforming structure. *Durkin, supra* at 452.

<sup>10</sup> The Court in *Durkin* interprets the first limitation period in Section 7 as "[p]rotecting the use of the locus pursuant to the 1959 building permit (and perhaps any use reasonably similar in character to the post office



Accordingly, either of the statute of limitation periods provided in Section 7 would protect the Courthouse structure from any enforcement action, because the nonconforming FAR has existed since at least 1974, well beyond either of the two limitation periods set forth in Section 7. Therefore, no enforcement action may be taken that would require the dimensional violations at the Courthouse to conform to current zoning, and the Courthouse structure can thus house any lawful use.

### III. Conclusion

In my opinion, for the reasons stated above, Section 6 of the Zoning Act and Massachusetts decisional case law decided thereunder support the conclusion that the Courthouse is a lawful pre-existing nonconforming structure and as such, the Courthouse is protected by and may be used pursuant to the provisions of Section 6 of the Zoning Act and Section 8.22 of the Ordinance.

Very truly yours,



Nancy E. Glowa  
City Solicitor

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use and not more detrimental to the community) from enforcement of the zoning by-law, unless proceedings are initiated within six years after the beginning of an alleged violation...." *Durkin* at 453, *supra*.

Nancy E. Glowa  
City Solicitor

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**CITY OF CAMBRIDGE**

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

September 30, 2014

Richard C. Rossi  
City Manager  
City Hall  
Cambridge, MA 02139

**Re: 40 Thorndike Street Special Permit Application, PB # 288**

Dear Mr. Rossi:

At the July 29, 2014 Planning Board hearing regarding the above captioned matter, members of the Planning Board ("Board") requested through Assistant City Manager for Community Development Brian P. Murphy that I provide responses to the following questions: (1) whether there is a deed restriction that could affect the future use of the Sullivan Courthouse site located at 40 Thorndike Street; and (2) whether the case of Mendes v. Board of Appeals of Barnstable, 28 Mass. App. Ct. 527 (1990) is relevant to my analysis of the nonconforming status of the property discussed in my opinion to the City Council dated May 5, 2014 (see attached).

**I. Background**

The Commonwealth of Massachusetts holds title to the property located at 40 Thorndike Street in Cambridge on which the former Edward J. Sullivan Courthouse sits. The courthouse property is comprised of the square block between Thorndike and Spring Streets from north to south and between Second and Third Streets from east to west totaling 59,880 square feet (the "Property"), as a result of five separate conveyances and one confirmatory deed to Middlesex County in the early 1800s.<sup>1</sup>

<sup>1</sup> In 1813 the Lechmere Point Corporation conveyed several parcels of land to the County, including a portion of the Property, which stretches seventy-five feet across the westernmost part of the Property along Third Street between Thorndike and Spring Streets (the "Lechmere Point Deed" and/or the "Lechmere Point Parcel"), recorded at Book 200, Page 519. In 1836, the County acquired an additional parcel of land from Edmund Munroe (the "Munroe Parcel"). The Munroe Parcel abutted a private way that ran through the Property between Spring and Thorndike Streets, known as Munroe Street. Munroe Street is now part of the Property. In 1836, the County acquired another parcel of land from Thomas F. Norris. This parcel of land is wedged between the Lechmere Point Parcel and the Munroe Parcel (the "Norris Parcel"). On February 3, 1851 the County acquired an additional parcel of land from Edmund Munroe (the "Second Munroe Parcel"), and on February 13, 1851 the County acquired three parcels of land from Rhoda Morse (the "Morse Parcels"). On March 25, 1851, Edmund Monroe signed a confirmatory deed transferring all on his land located between Third and Second Streets and between Spring and Thorndike Streets to the County (the "Confirmatory Deed").



The Commonwealth assumed ownership of the Property in the 1990s when Middlesex County was abolished. In 2012, the Commonwealth's Division of Capital Asset Management and Maintenance ("DCAMM") issued a Request for Proposals ("RFP") for the sale and development of the 22 story courthouse Property. LMP GP Holdings LLC ("the Developer") was the successful bidder, and entered into a purchase and sale agreement with the Commonwealth to purchase the Property.

The Developer has applied to the Planning Board for a special permit. In connection with its special permit application, the Developer submitted the "Ownership Certificate" that is required to be signed by the property owner or authorized agent, which was signed by DCAMM Commissioner Carole Cornelison, who certified that the Commonwealth owns the Property.

## **II. Does the Planning Board Have Authority to Consider An Apparent Deed Restriction in Determining Whether to Grant a Special Permit?**

### **A. The Planning Board is Required to Adhere to the Criteria Set Forth in the Zoning Act and the Cambridge Zoning Ordinance in its Review of Special Permit Applications**

In Massachusetts, the issuance of special permits by a special permit granting authority is governed by Section 9 of the Zoning Act, G.L. c. 40A §9 ("Section 9"). The Zoning Act authorizes municipalities to create zoning bylaws or ordinances to address their specific zoning needs and to condition projects consistently with local zoning bylaws or ordinances through use of a special permit. *Id.* For the reasons set forth below, I do not believe a court would conclude that the Planning Board has the authority to consider the validity of an apparent deed restriction in determining whether to grant a special permit.

Special permits provide relief from otherwise applicable zoning laws, but are unlike variances, in that the criteria for the issuance of special permits have already been specified within the zoning bylaws or ordinances. The issuance of a special permit is left to the reasoned discretion of the Special Permit Granting Authority ("SPGA"), which in Cambridge is either the Planning Board or the Board of Zoning Appeal. While the SPGA has reasonable discretion to grant or deny special permits, the exercise of its reasonable discretion must be consistent with the Zoning Act and the Cambridge Zoning Ordinance ("Ordinance" or "CZO") and the permitted use must be "in harmony with the general purpose and intent" of the Ordinance. G.L. c.40A, §9. The SPGA's decision cannot be based upon a "legally untenable ground" nor can it be "unreasonable, whimsical, capricious or arbitrary." See MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 639 (1970).

Municipalities must create sufficient standards upon which the grant of a special permit is made. Section 10 of the Ordinance sets forth the criteria for granting special permits in Cambridge. The Board may not base its decision on criteria not found in the



Zoning Act<sup>2</sup> or the Ordinance.<sup>3</sup> See Dowd v. Bd. of Appeals of Dover, 5 Mass.App.Ct. 148, 156-157 (1977) (Board of Appeals could not deny a special permit based upon a concern that the property owner would not comply with the special permit conditions); Texstar Construction Corporation v. Board of Appeals of Dedham, 26 Mass.App.Ct. 977, 978 (1988) (There is no question that if the Board of Appeals had grounded its denial solely upon Texstar's prior zoning violations it would have exceeded its legitimate authority.)

Because the Property is nonconforming, the Board must make a "finding ... that [a] change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood" in order to issue a special permit. G.L. c.40A, §6. The building was formerly a jail and courthouse, and the Board must therefore analyze the question of whether the proposed use is substantially more detrimental than those uses.

### **B. The Planning Board Is Not Properly the Arbiter of Private Property Disputes**

Our courts have held that "...zoning authorities are not the arbiters of private property disputes between landowners." See, e.g. Brady v. City Council of Gloucester, 59 Mass.App.Ct. 691, 696-697 (2003), citing Hahn v. Planning Bd. of Stoughton, 24 Mass.App.Ct. 553, 555 (1987). Private property disputes fall under the original jurisdiction of either the Land Court or the Superior Court. Brady at 59 Mass.App.Ct. 697. In Hahn, the planning board's regulations required that existing rights of way and easements be shown on any submission related to a proposed subdivision; however, the existence of an easement was disputed by the owner and the board was aware of the dispute. The court found that the existence or nonexistence of the easement was irrelevant to the planning board's authority to grant approval of a subdivision plan and that "[i]f and when the easement is shown to exist, persons having standing to prevent obstruction of the easement will have ample opportunity to protect their rights." Hahn at 556.

<sup>2</sup> There are no explicit criteria set forth in the Zoning Act authorizing an SPGA to request title information in considering an application for a special permit such as this.

<sup>3</sup> Article 10, Section 10.40 of the Ordinance provides as follows:

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 districts 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. (§10.43).



Planning board regulations must be "comprehensive, reasonably definite, and carefully drafted, so that owners may know in advance what is or may be required of them and what standards and procedures will be applied to them," Parker v. Black Brook Realty Corporation, 61 Mass.App.Ct. 308, 309 (2004), quoting Castle Estates, Inc. v. Park and Planning Board of Medfield, 344 Mass. 329, 334 (1962.) A planning board "exceeds its authority if requirements are imposed beyond those established by the rules and regulations." Parker, supra, quoting Beale v. Planning Board of Rockland, 423 Mass. 690, 694-697 (1996). The only cases that we are aware of in which courts have found that SPGAs may properly consider private property disputes are subdivision cases, in which certain requirements such as rights in adjacent ways are necessary components of the proposed subdivision. See, e.g. Beale, supra at 696 (planning boards must exercise their powers under subdivision control law "[w]ith due regard for the provision of adequate access to all of the lots in a subdivision...."); Parker v. Black Brook Realty Corporation, 61 Mass. App. Ct. 308, 310 (2004) (abutters' challenge to applicant's rights in a parkway goes to the very heart of the proposed development where the locus was left without one of two means of access upon which the board predicated their approvals of the subdivision.). We know of no case that authorizes planning boards to consider property disputes in the context of granting special permits pursuant to Section 6 of G.L. c. 40A. Therefore, absent any law explicitly allowing title to be considered by the Planning Board, any such use restriction would not prevent relief being granted to the applicant in this context.

Although Section 10.47.1 of the Ordinance requires applications for special permits to be accompanied by certain information, the required information does not include certification that title to the property is free from any defect which might prohibit or encumber the applicant's use of the land as planned, nor is there a requirement that applicants provide the Board with a copy of their property deed or make a showing of good title. Requiring an applicant to establish that there are not easements or restrictions on the use of the land could be construed as inserting criteria not required either by the Zoning Act or by the Ordinance, see Dowd, supra, and could subject a decision based in part upon such a requirement to a court finding that the decision is based either on a legally untenable ground, or is unreasonable, whimsical, capricious, or arbitrary. Id.; MacGibbon, supra at 635.

Further, to the extent that a deed restriction is otherwise enforceable, a decision to grant a special permit by a planning board has been held not to override the terms of that restriction; See 5 Rathkopf, The Law of Zoning and Planning §82:2, and courts have held that zoning restrictions operate independently from title issues. Id. A commonly held view of many states' courts is that zoning ordinances do not in any way affect a valid private restriction on the use of land and that "if a property owner is otherwise entitled to a variance or special exception, it should be granted notwithstanding private covenants which would prohibit the proposed use." 5 Rathkopf, The Law of Zoning and Planning §82:3 (citing cases from Indiana, Maine, Maryland, Michigan, North Carolina, Pennsylvania, Washington, and Wisconsin.) Thus, a planning board does not generally have jurisdiction under either statutory, municipal, or case law to determine if a deed restriction is an enforceable bar to a project.



### III. A Court Would be Unlikely to Find that the Apparent Deed Restriction Would Prohibit the Redevelopment of the Property

#### A. Deed Restrictions Are Extinguished After Fifty Years Unless They are Re-recorded or a Public Trust is Created

The Massachusetts Legislature has enacted several statutes to help keep title to real estate clear. See e.g., G.L. c. 184 §§23, 26, 28, 30; G.L. c. 260 §31A. For example, G.L. c. 260 §31A prevents any right of entry for a condition broken created before January 2, 1955, from being enforced after January 1, 1964 (except upon certain conditions not applicable here); and G.L. c. 184 §28 establishes a fifty year statute of limitation on any restriction imposed before January 1, 1962 (except upon certain conditions also not applicable here.)

Chapter 184, Section 28 states in relevant part: "No restriction imposed before January 1, 1962 shall be enforceable after the expiration of fifty years from its imposition unless a notice of restriction is recorded before the expiration of such 50 years or January 1, 1964, whichever is later, and in case of such recording, 20 years have not expired after the recording of any notice of restriction without the recording of a further notice of restriction."

Chapter 184, Section 30 provides that a restriction can only be enforced if it is determined at the time of the proceeding that the restriction is of actual and substantial benefit to the person claiming rights of enforcement.

However, if a deed creates a "public trust", the above statutes will not apply, and the restriction remains in perpetuity. See e.g., Opinion of the Justices to the Senate, 369 Mass. 979 (1975); Dunphy v. Commonwealth, 368 Mass. 376 (1975); Salem v. Attorney General, 344 Mass. 626 (1962). A public trust is created where the words "forever" or "in perpetuity" without any conditions or other limitation are used. Opinion of the Justices to the Senate, 369 Mass. at 981.

In the Opinion to the Justices, the court was asked to provide the Senate with an opinion on the City of Revere's plan to take parkland and build a school thereon. The land was conveyed to Revere by three separate deeds from three individuals. Each of the deeds made specific reference to the use of the land as parkland. The court noted that if there were provisions for reversion, or right of entry in the grantor, or other disposition of the land if used for other than the intended purpose, the land would not be determined to be held in trust. Id. at 984.<sup>4</sup> Only one of the three deeds was found to have created a public trust.

<sup>4</sup>The first deed ("Deed One") specified that "[t]he above described premises are, however conveyed on the Express Condition that the same shall be appropriated, improved and forever used by the grantee as and for a public park and play ground for the use of the inhabitants of the town of Revere and for no other purpose and that if said grantee shall fail to keep and perform said Condition then and in such event this deed shall become and be absolutely null and void" Id. at 981, FN 4. This provision was determined by the court not to have created a public trust. The possibility of a "reverter" was deemed to be inconsistent with the intent to create a public trust in perpetuity. Id. at 985. This court found that Deed One created a contract and imposed obligations on the city, which if valid, could not be impaired by the Legislature by statute, and that while the Legislature cannot impair parties' contractual obligations, it can limit private rights in land



## **B. A Public Trust Does Not Appear to Have Been Created by the Apparent Deed Restriction in the Lechmere Point Deed**

The Lechmere Point Deed by its terms appears to contain a restriction on the use of the Property. The 1813 conveyance from the Lechmere Point Corporation<sup>5</sup> to Middlesex County stated, in part that the property was being conveyed:

...forever, for the use and purposes of erecting & keeping thereon a Gaol and other buildings for County uses & for no other use or purpose whatever upon the express condition that no dwelling house, or building, intended for or used as a dwelling house, nor any other building shall be erected on the premises, unless the walls thereof are entirely of brick & stone, except buildings intended for wood houses, or necessary offices to dwelling houses, and that it shall be lawful for the Corporation, or their agents to enter upon & pull down & remove any building erected contrary to this condition. Middlesex South Registry of Deeds, book 200, page 519.

The Lechmere Point Parcel is approximately 15,000 square feet of land, out of the 59,880 square feet which comprise the total lot size of the Property. None of the other deeds to the Property contains any restrictions on use. Thus, only approximately 15,000 square feet of the subject lot could be potentially subject to this apparent deed restriction.

The apparent restriction in the Lechmere Point Deed does not appear to unequivocally indicate that the deed created a public trust. The deed allowed for other uses of the land, which would likely be determined by a court to convert the language from a public trust to a contract. In a case where it was "far from clear that 'the grantor[ ] ... intended to create [a trust] in perpetuity for the public benefit', did not use conditional language such as "forever" or "in perpetuity", but rather contained the possibility of a "reverter" if an armory was not constructed within a certain time period, the court stated "the creation of a possibility in reverter is inconsistent with an intent to create a public trust in perpetuity." Memorial Association of Whitman v. Town of Whitman, 65 Mass.App.Ct. 1120, quoting Opinion of the Justices at 984 (citations omitted) (unpublished opinion.)

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provided that there is a reasonable length of time for enforcing those rights after the statute is enacted. Id. at 986. That contract is no longer enforceable as G.L. c.184 §28 and G.L. c.260§31A act as a statute of limitations on enforcement of those contractual rights.

The second deed ("Deed Two"), the only deed which was found to have created a public trust, provided: "The premises hereby conveyed are to be forever used by the Town of Revere as part of a public park[sic] and playground now in process of development" Id. at 981. The court found that the use of the word "forever" expressed the intent to create a trust in perpetuity and that a public trust was created. Id. at 985.

The third deed ("Deed Three") stated: "The premises hereby conveyed are to be used by the Town of Revere as a part of a Public Park and Playground now in process of development." Id. at 981. The court found that the wording used was consistent with merely describing the use contemplated by the Town of Revere at the time of the making of the deed. Id. at 985. Nothing in the wording indicated that that use was "an essential factor in the scheme of benefaction." Id. Citing Loomis v. Boston, 331 Mass. 129, 131-132, citing MacDonald v. Street Commr's of Boston, 268 Mass. 288, 294-297 (1929). Therefore a public trust was not created.

<sup>5</sup> The Lechmere Point Corporation was created for the purposes of developing Lechmere-Point Farm. The Corporation constructed houses, several of which still remain at 45-51 Gore Street, Cambridge.



While no clear right of reversion was included, Lechmere Point did retain the right to enter and remove certain structures if they were built on the land. In addition, the Lechmere Point Deed allowed the County to build certain dwelling houses on the Property, despite the restrictive language that the Property be used for building and maintaining a courthouse and jail and other buildings for County uses. When the language as a whole is read together, it appears likely that a court would find that a contract, and not a public trust, was created by the Lechmere Point Deed. See Opinion of the Justices, 369 at 984.

To the extent that there is ambiguity in the restriction, a court would likely find further support by virtue of the ambiguity for a determination that no public trust was created by the Lechmere Point Deed and that the restriction merely created a contract. "Although the [t]he existence of a trust does not depend upon the terminology used," ... absent ambiguity, courts must examine the language employed in the deed to determine whether a conveyance establishes a public trust." Memorial Association of Whitman, supra. If a court were to find that the ambiguous language, the right to construct certain structures on the Property and/or the right to enter the Property to remove certain structures resulted in a conclusion that the restriction created merely a contract and not a public trust, then G.L. c. 184 §28 and G.L. c.260 §31A would each act as a statute of limitation on the enforcement of the contractual rights set forth in the restriction, See Opinion of the Justices, at 987. Thus, even if there were an enforceable deed restriction, it would no longer be enforceable pursuant to G.L. c.184, §28. Finally, it is important to note that zoning principles encourage the reuse of pre-existing buildings. See e.g. McKenzie v. Zoning Board of Appeals of the Town of Wayland, 1990 WL 10092043 (Land Court No. 131524 (1990)), where the Land Court recognized that it does not serve the public to allow buildings to continue to deteriorate, and that it is the legislative policy as to nonconforming structures to allow them to be altered, reconstructed, extended or structurally changed so long as the nonconforming nature is not increased.

As noted above, there is no explicit provision for consideration of title issues provided in the Zoning Act or in the Ordinance relative to G.L. c. 40 §6 special permits. Given the above analysis regarding the validity and enforceability of the apparent deed restriction in this case, I believe the Planning Board would likely be found to have exceeded its authority if it were to make a determination regarding the validity of the apparent deed restriction, and whether such a restriction would prohibit the redevelopment of the Property.

#### IV. Mendes v. Board of Appeals of Barnstable Is Not Relevant to the Non-Conforming Status of the Sullivan Courthouse

The case of Mendes v. Board of Appeals of Barnstable, 28 Mass. App. Ct. 527 (1990) does not address the issue of governmental immunity. In Mendes, a business owner operated a construction business on a lot of land that was wholly within a residential zone. Unlike the use of the Property, the use in Mendes was never a permissible use, but was allowed under a series of variances. The town enacted a bylaw which precluded the issuance of further variances on the land due to its proximity to a highway. The property owner subsequently sought a special permit to increase the size of the existing non-conforming building or structure.



The Appeals Court found that the special permit process could not be used to expand the nonconforming use since the use had been allowed through variances. The Court stated: "[I]n view of the different approaches to the grant of a variance and a special permit, the former grudging and restricted, the latter anticipated and flexible, we do not think the Legislature intended in G.L. c. 40A, §6 to authorize the expansion of uses having their genesis in a variance pursuant to the more generous standard applicable to a special permit." Mendes at 531 (citations omitted.)

There was no discussion in the Mendes case of the issues discussed in Durkin v. Board of Appeals of Falmouth, 21 Mass. App. Ct. 450 (1986) relating to governmental immunity. In Durkin, the Appeals Court held that uses or structures of government owned property that never complied with local zoning, but *were lawfully built or established based on governmental immunity* are lawfully nonconforming once they lose their governmental immunity. Durkin at 452 (emphasis added.) Whereas in Mendes, the Court opined that "[f]or purposes of deciding whether a use is nonconforming within the meaning of G.L. c. 40A, § 6, the question is not merely whether the use is lawful but how and when it became lawful. It would be anomalous if a variance, by its nature sparingly granted, functioned as a launching pad for expansion as a nonconforming use. Variance procedures presuppose the prohibition of the use sought and operate as a safety valve to relieve an owner of real estate from the hardship of compliance with a zoning regulation resulting from particular physical characteristics that burden the real estate." Mendes at 531.

Given that the use in Mendes was authorized by a series of variances, it is distinguishable from Durkin because the governmental use at issue in Durkin was determined by the court to be "nonconforming in fact" due to its governmental immunity, which would not be true of a use authorized by variance. Therefore, I believe that the Mendes case is inapposite and does not change my prior opinion.

#### V. Conclusion

For the reasons stated above, it is my opinion that the Planning Board would likely be determined by a court to have exceeded its authority if it were to attempt to determine the validity of the apparent deed restriction, to consider the apparent deed restriction, or to base its special permit decision upon the apparent deed restriction. In addition, even if the Planning Board were to consider the apparent deed restriction, it is unlikely that the apparent deed restriction would be found by a court to be either a public trust or, if it were determined to be a restriction based in contract, that it was still enforceable.

Finally, having reviewed the Mendes case and the submissions of neighbors and the applicant, it is my opinion that the Mendes case is inapposite and has no bearing upon and does not change my May 5, 2014 opinion.

Very truly yours,



Nancy E. Glowa



CITY OF CAMBRIDGE, MASSACHUSETTS  
**PLANNING BOARD**  
CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Notice of Extension of Time

Case No: 288  
Address: 40 Thorndike Street  
Applicant: LMP GP Holdings c/o Leggat McCall Properties  
Owner: Commonwealth of Massachusetts, Division of Capital Asset Management and Maintenance  
Application Date: December 12, 2013

Public Hearing Dates: January 7, 2014, April 29, 2014, July 29, 2014 and September 30, 2014

Application: Special Permit application to convert existing non conforming structure (former Sullivan Courthouse) to a mixed use office building containing ground floor retail uses, twenty four dwelling units, and below grade parking, seeking a Project Review Special Permit (Section 19.20), Special Permit for Alteration of Nonconforming Structure (Section 8:22.2.a), Special Permit for Conversion of Nonresidential Structure to Residential Use (Section 5.28.2).

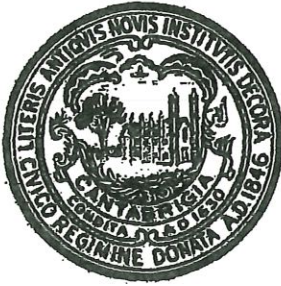
At the General Business meeting of September 30, 2014, the Planning Board voted an extension of time for the issuance of a decision by the Planning Board to October 30, 2014 as outlined in the attached letter of October 1, 2014 from Robert M. Dickey, Leggat McCall Properties, representing the applicant.

Authorized Representative to the Planning Board

For further information, please contact Liza Paden at 617 354 5640 or [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov).

2014 OCT 8 AM 11 49  
OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS





CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

## Planning Board Waiver Form

Date: 10/1/14

Cambridge Planning Board  
Community Development Department  
344 Broadway  
Cambridge, MA 02139

RE: Case # 288.

Address: 40 Thorndike Street

LMP GP Holdings, LLP c/o Leggat McCall Properties, Petitioner, hereby waives the Petitioner's right to a Decision by the Planning Board on the above reference Case #288, within the statutory time period as required by Section 15 of the Zoning Act of the Commonwealth of Massachusetts, Massachusetts General Laws, Chapter 40A and hereby agrees to extend such time period to file the Final Decision with the City Clerk to October 30, 2014.

 Signature  
ROBERT M. DICKEY



CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

2014 JUN 19 PM 2 54  
OFFICE OF THE CITY CLERK  
CAMBRIDGE, MASSACHUSETTS

## Notice of Extension of Time

Case No: #288

Address: 40 Thorndike Street

Applicant/Owner: LMP GP Holdings LLC c/o Leggat McCall Properties LLC

Application Date: December 12, 2013

Public Hearing Date: January 7, 2014

**Application:** Special Permit application to convert existing non conforming structure (former Sullivan Courthouse) to a mixed use office building containing ground floor retail uses, twenty four dwelling units, and below grade parking, seeking Project Review Special Permit (Section 19.20), Special Permit for Alteration of Nonconforming Structure (Section 8.22.2-a), Special Permit for Conversion of Nonresidential Structure to Residential Use (Section 5.28.2).

At the General Business meeting of June 17, 2014, the Planning Board voted an extension of time for the issuance of a decision by the Planning Board to August 15, 2014 as outlined in the attached letter of June 16, 2014 from James J Rafferty, representing the applicant.

The time for decision had been previously extended to May 1, 2014 (granted March 4, 2014), and subsequently extended to June 20, 2014 (granted April 29, 2014).

Authorized Representative of the Planning Board: Jeffrey C. Roberts

For further information, please contact Liza Paden at (617) 349-4647 or [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov).



**ADAMS & RAFFERTY**  
ATTORNEYS AT LAW  
A Professional Association \*  
675 Massachusetts Avenue  
Cambridge, MA 02139

**James J. Rafferty, P.C.**  
*jrfferty@adamsrafferty.com*

Telephone (617) 492-4100  
Fax (617) 492-3131

June 16, 2014

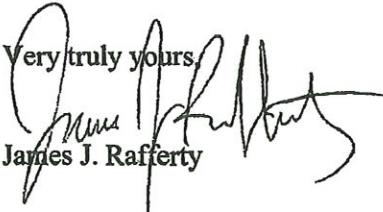
Liza Paden  
Cambridge Community Development  
344 Broadway  
Cambridge MA 02139

**Re: Leggat McCall Properties  
Planning Board Case # 288**

Dear Ms. Paden:

Please be advised that the applicant in the above-captioned matter assents to an extension of time for the issuance of a decision by the Planning Board to August 15, 2014.

Thank you for your cooperation and assistance.

Very truly yours,  
  
James J. Rafferty

JJR/pwc

cc: Robert Dickey, Leggat McCall

*\*not a partnership*



CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

## Notice of Extension of Time

Case No: 288

Address: 40 Thorndike Street

Applicant: LMP GP Holdings c/o Leggat McCall Properties

Owner: Commonwealth of Massachusetts, Division of Capital Asset Management and Maintenance

Application Date: December 12, 2013

Public Hearing Date: January 7, 2014, April 29, 2014

Application: Special Permit application to convert existing non conforming Courthouse Structure to a mixed use office building containing ground floor retail uses, twenty four dwelling units, and below grade parking.

At the General Business meeting of April 29, 2014, the Planning Board voted an extension of time for the issuance of a decision by the Planning Board to June 20, 2014 as outlined in the attached letter of April 23, 2014 from James J Rafferty, representing the applicant.

Authorized Representative to the Planning Board

For further information, please contact Liza Paden at 617 354 5640 or [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov).

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CAMBRIDGE, MASSACHUSETTS



**ADAMS & RAFFERTY**  
**ATTORNEYS AT LAW**  
A Professional Association \*  
675 Massachusetts Avenue  
Cambridge, MA 02139

James J. Rafferty, P.C.  
jrafferty@adamsrafferty.com

Telephone (617) 492-4100  
Fax (617) 492-3131

April 23, 2014

Liza Paden  
Cambridge Community Development  
344 Broadway  
Cambridge MA 02139

mtm: SC  
TS  
all yfmr

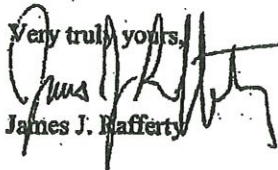
Re: Leggat McCall Properties  
Planning Board Case # 288

Dear Ms. Paden:

Please be advised that the applicant in the above-captioned matter assents to an extension of time for the issuance of a decision by the Planning Board to June 20, 2014.

Thank you for your cooperation and assistance.

Very truly yours,

  
James J. Rafferty

JJR/pwc

cc: Robert Dickey, Leggat McCall

\*not a partnership



CITY OF CAMBRIDGE, MASSACHUSETTS  
**PLANNING BOARD**  
CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Notice of Extension of Time

Case No: 288  
Address: 40 Thorndike Street  
Applicant: LMP GP Holdings c/o Leggat McCall Properties  
Owner: Commonwealth of Massachusetts, Division of Capital Asset Management and Maintenance

Application Date: December 12, 2013

Public Hearing Date: January 7, 2014

Application: Special Permit application to convert existing non conforming Courthouse Structure to a mixed use office building containing ground floor retail uses, twenty four dwelling units, and below grade parking.

At the General Business meeting of March 4, 2014, the Planning Board voted an extension of time for the issuance of a decision by the Planning Board to May 1, 2014 as outlined in the attached letter of March 3, 2014 from James J Rafferty, representing the applicant.

Authorized Representative to the Planning Board

*Elizabeth M. Paden*

For further information, please contact Liza Paden at 617 354 5640 or [lpaden@cambridgema.gov](mailto:lpaden@cambridgema.gov).

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CAMBRIDGE, MASSACHUSETTS



**ADAMS & RAFFERTY**  
ATTORNEYS AT LAW  
A Professional Association \*  
675 Massachusetts Avenue  
Cambridge, MA 02139

James J. Rafferty, P.C.  
jrafferty@adamsrafferty.com

Telephone (617) 492-4100  
Fax (617) 492-3131

March 3, 2014

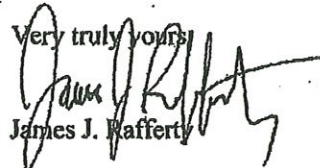
Liza Paden  
Cambridge Community Development  
344 Broadway  
Cambridge MA 02139

**Re: Leggat McCall Properties  
Planning Board Case # 288**

Dear Ms. Paden:

Please be advised that the applicant in the above-captioned matter assents to an extension of time for the issuance of a decision by the Planning Board to May 1, 2014.

Thank you for your cooperation and assistance.

Very truly yours,  
  
James J. Rafferty

JJR/pwc

cc: Robert Dickey, Leggat McCall

*\*not a partnership*





**3D. Parking and Transportation Demand Management Plan F-56, approved  
February 2014**

## City of Cambridge

*Richard C. Rossi • City Manager*



## Executive Department

*Lisa C. Peterson • Deputy City Manager*

### **PTDM Ordinance—FINAL DECISION**

**Project:** 40 Thorndike Street

**Project Number:** F-56

**Applicant:** LMP GP Holdings LLC/ Leggat McCall Properties LLC

**Contact:** Robert M. Dickey

**Address:** 10 Post Office Square, Boston, MA 02109

**Date of Application:** December 12, 2013

**Decision Deadline:** February 18, 2014 (extended)

**Date of Issue:** February 18, 2014

This form indicates the FINAL decision of the Parking and Transportation Demand Management Planning Officer with respect to the PTDM plan submitted for the project listed above. Please review the enclosed attachments, which include information about ongoing monitoring and reporting relative to this project.

#### **Decision:**

- ☒ Approve (attachment: approval letter and copy of plan)
- ☐ Approve with Conditions (attachment: letter of conditions and copy of plan)
- ☐ Deny (attachment: reason for denial and copy of plan)

A handwritten signature in cursive script, reading "Stephanie Groll", written over a horizontal line.

Stephanie Groll  
Parking and Transportation Demand Management Planning Officer



## City of Cambridge

*Richard C. Rossi • City Manager*



## Executive Department

*Lisa C. Peterson • Deputy City Manager*

February 18, 2014

Robert M. Dickey  
LMP GP Holdings LLC  
Leggat McCall Properties LLC  
10 Post Office Square, Boston, MA 02109

Dear Mr. Dickey,

The attached form indicates the final decision on the Parking and Transportation Demand Management Plan for 40 Thorndike, the Courthouse Redevelopment Project. The final decision is an **approval**. This letter describes recommendations for additional TDM programs that might improve your non-single-occupancy-vehicle mode split. The last section lays out more details about implementation of the monitoring and reporting program that is required as part of your plan.

Encouraging people to change their commute modes from driving alone to walking, bicycling, taking transit and carpooling takes a comprehensive approach. Extensive research has been conducted on changing commuter behavior and indicates that both disincentives and incentives are necessary to achieve mode-shift success. The City also believes that incentives for sustainable commute modes are important to its effort to attract highly qualified workers, create an equitable transportation system and make real strides towards reversing current climate change trends.

### **Additional Recommendations**

In addition to the measures described in the PTDM Plan, I am recommending the implementation of the following additional TDM measures. If the current Plan fails to achieve the stated mode-split goal, implementing these programs will help to achieve that goal:

- Offer a monthly financial incentive to commuters who bike, walk, or use car/vanpools.
- Increase the Hubway Corporate Membership level required of all tenants to Gold or higher.
- Allow parking on-site to be paid by the day instead of by the month, at an equal proportion to the monthly fee, to reward employees who choose to reduce the number of days they drive to work.
- Offer a monthly raffle prize event for non-SOV employees.

## Monitoring and Reporting Plan

The Owner has committed in the Plan to conducting a mode-split survey and monitoring and reporting mode-split information annually. Driveway counts and parking utilization (for vehicles and bicycles) shall be reported every two years. If the certificate of occupancy for the project is issued between September 1 and February 29, the monitoring shall take place during the months of September or October and be reported to the PTDM Planning Officer no later than November 30. If the certificate of occupancy for the project is issued between March 1 and August 31, monitoring shall take place during the months of April or May and be reported to the PTDM Planning Officer no later than June 30. This will ensure that the monitoring captures a realistic assessment of the performance of the project, while giving time to compile the results and report them to the City.

It is important to note that while approvals under the PTDM ordinance are transferable by and among private parties, this is contingent upon the new owner agreeing to continue to operate under the existing PTDM plan. Should the Owner elect to transfer all or some portion of the project, Section 10.18.050 (g) of the PTDM ordinance would apply.

I look forward to working with you in the future as you implement this plan. If you have any questions, please feel free to contact me at (617) 349-4673 or [sgroll@cambridgema.gov](mailto:sgroll@cambridgema.gov).

Sincerely,



Stephanie Groll  
PTDM Planning Officer

cc: Susanne Rasmussen, Director of Environmental and Transportation Planning  
Brian Murphy, Assistant City Manager for Community Development  
Susan Clippinger, Director of Traffic, Parking, and Transportation



**Parking & Transportation Demand Management Plan**

***40 THORNDIKE STREET  
COURTHOUSE REDEVELOPMENT PROJECT***

Cambridge, Massachusetts

Submitted to: City of Cambridge Community Development Department

Submitted by: LMP GP Holdings LLC / Leggat McCall Properties LLC

Prepared by: TransAction Associates, Inc.  
5 Wheeling Avenue  
Woburn, MA 01801  
781-895-1100

**December 12, 2013  
Revised February 12, 2014**

## PROJECT INFORMATION

**PTDM Project #:** F-56

**Project Name:** Courthouse Redevelopment  
**Project Address:** 40 Thorndike Street  
**Owner/Developer Name:** LMP GP Holdings LLC/Leggat McCall Properties LLC

**Contact Person:** Robert M. Dickey  
10 Post Office Square  
Boston, MA 02109  
617-422-7027 (o)  
617-556-9727 (f)  
[robert.dickey@lmp.com](mailto:robert.dickey@lmp.com)

## Project Description

The Cambridge Courthouse Redevelopment project is located at 40 Thorndike Street in East Cambridge and would consist of the redevelopment of the existing Sullivan Courthouse into approximately 460,000 square feet (sf) of office/R&D space, 15,000 sf of retail space on the first floor and 24 residential units. Parking for the new development is proposed to be a mix of 92 below-grade spaces on-site and 420 non-reserved spaces in the city-owned First Street Garage to support the commercial activities of the building. Also, the project will provide 216 bicycle parking spaces to encourage alternative modes of transportation.

Summary Table	
Previously registered parking spaces	40
Proposed parking spaces	Resident = 24 Employee = 68 Total = 92
Proposed building floor area	500,000 SF
Expected vehicular traffic generated by project	In = 1,113 Out = 1,113 Total = 2,226
Estimated number of employees	1,500
Census tract number	3251



## Project Overview

This PTDM plan was developed to satisfy the requirements of the City's Parking and Transportation Demand Management (PTDM) Ordinance. The goal of the proposed PTDM plan is to reduce the total number of vehicles coming into and traveling through the area of 40 Thorndike Street both in peak commuting and off-peak hours. The proposed plan was prepared by TransAction Associates of Woburn and identifies a variety of approaches that will be undertaken by the proponent to meet the needs of the diverse group of potential users and encourages people to use available alternatives rather than driving alone.

The project site is located at 40 Thorndike Street in East Cambridge (see attached graphics) and would consist of the redevelopment of the existing Sullivan Courthouse into approximately 460,000 square feet (sf) of office/R&D space, 15,000 sf of retail space on the first floor and 24 residential units (see Table 1). The building is currently vacant with the exception of the four-story jailhouse on the top floors. In recent years, the courthouse building accommodated up to 500 employees with approximately 500 visitors a day as part of the daily building operations

<b>Table 1 Project Information</b>	
<b>Land Use Type</b>	<b>Square Feet</b>
Office/R&D	460,000
Retail	15,000
Residential	25,000 (24 units)
<b>Total</b>	<b>500,000</b>

On-site parking for the prior use consisted of 40 registered spaces and additional parking for employees and visitors was provided at the City of Cambridge's public parking garage on First Street. Parking for the new development is proposed to be a mix of 92 below-grade spaces on-site and 420 non-reserved spaces to support the commercial activities of the building, which the developer proposes to lease from the City of Cambridge at the existing First Street parking garage (see Table 2). Of the 92 on-site spaces, 24 are reserved for the residential units and 68 are for the office and R&D tenants. The First Street garage currently has two ZipCar spaces.

<b>Table 2 Parking Information</b>		
<b>Type</b>	<b>On-Site</b>	<b>Garage (leased)<sup>1</sup></b>
Commercial/office	51	420
HOV	7	N/A
Residential	24	N/A
HP	5	N/A
EV/Hybrid	5	N/A
<b>Total</b>	<b>92</b>	<b>420</b>

A Transportation Impact Study (TIS) was completed by Vanasse & Associates, Inc. (VAI). Trips for the project are based on Institute of Transportation Engineers (ITE) trip generation statistics for R&D/office, residential and retail space—ITE Land Use Codes (LUC), LUC 760, Research and Development (R&D) Building LUC 220, Apartment, and LUC 820, Shopping Center (see Table 3).

<sup>1</sup> Leasing terms still need to be negotiated. Are currently in the public disposition process. Final numbers and terms to be negotiated.

Table 3 Project-Generated Traffic			
Trip Type	Total	AM Peak	PM Peak
Vehicle			
In	1,113	205	56
Out	1,113	48	214
Total	2,226	253	270
Transit			
In	928	179	43
Out	928	41	183
Total	1,856	220	226
Pedestrian			
In	237	29	17
Out	237	10	36
Total	474	39	53
Bicycle			
In	128	23	6
Out	128	5	24
Total	256	28	30

#### MODE SPLIT

In the first year of occupancy, the project will be required to complete a PTDM Update Report; a tenant employee survey will be conducted to determine an actual mode split for the Site. The TIS estimated that the Single Occupant Vehicle (SOV) rate for office employees would be 42 percent, retail 38 percent and residence would be 34 percent. Using the City's formula for estimating the SOV mode split commitment goal, the Site is required to have an employee SOV rate of 42 percent. The proponent is committed to make reasonable efforts to achieve this goal.

#### TRANSIT CONNECTIONS

The Site is within walking distance to one MBTA bus route, the Green Line at Lechmere Station, Red Line at Kendall/MIT Station and the Orange Line at Community College Station as listed below:

- MBTA Bus #69 – located at Cambridge St./Sciarappa St. for inbound service to Lechmere and Cambridge St./Third St. for outbound service to Harvard Square.
- Green Line – approximately ¼ mile to the Lechmere Station. From the Green Line, connections can be made to other lines at North Station, Government Center, Park Street, etc. In addition to the Green Line, commuters can access #80, #87 and #88 MBTA buses.
- Red Line – approximately ¾ mile to the Kendall/MIT Station. The Red Line provides access to Alewife Station and the commuter rail at Porter Square and South Station. In addition, four MBTA buses are accessible in Kendall Square (#CT2, #64, #68 and #85).
- Orange Line – approximately ¾ mile to the Community College Station

The Site is also approximately one block (First Street) from an EZ Ride stop. EZ Ride provides connections to the Lechmere Station, North Station and Kendall/MIT Station.



## BICYCLE CONNECTIONS

The City of Cambridge is a very bike-friendly city with a number of bike paths and bike lanes throughout. The Site is near a number of existing and/or planned bikeways including:

- Paul Dudley White Charles River Bike Paths – These paths run along Charles River and extend to Watertown Square. Access to the path is approximately ¼ of a mile from the Site.
- Northpoint Park/North Bank Bridge – The path is east of the Site and could be used to connect to the Somerville Community Path and connects East Cambridge with Charlestown.
- Somerville Community Path – The path connects to the Alewife Linear Park stretching from Davis Square to the MBTA's Alewife Station. Eventually the path will connect to the Northpoint Park path.

The City of Cambridge also has a cycle track on Vassar Street between Main Street and Audrey Street, and another is planned as part of a project on Binney Street. In the future there will be other connections to the East Coast Greenway connecting Boston and Cambridge to the coastal communities.

## TRANSPORTATION DEMAND MANAGEMENT PROGRAM

The goal for the Site, based on the SOV Mode Split Commitment, is an SOV rate of 38 percent for retail, 34 percent for residential and 42 percent for R&D/office—or an **overall rate of 42 percent SOVs**. The proponent will offer and promote a comprehensive Commuter Services Program, which will help increase the use of the most cost-effective and efficient commute modes. The TDM plan will include the following measures:

1. **On-site Transportation Coordinator.** A staff person will be on-site to manage all aspects of the program and monitoring plan. Upon leasing the property, a company's senior-level official will receive a program outline and must agree to participate in the overall program and designate a liaison to work with the TC as a condition of the lease. The liaison will help the TC promote the services and alternative commute modes. As for residents, the TC will work directly with them to assist, if necessary, in selecting or using a commute mode. Basic responsibilities of the TC will be to:
  - Develop site-specific forms and marketing materials including a quarterly newsletter
  - Organize and participate in promotional events including those sponsored by the City of Cambridge or the Charles River Transportation Management Association such as the City's GoGreen Month, Commute a Better Way Day, bike to work events, etc.
  - Hold an annual meeting with all the tenant contacts to talk specifically about the Commuter Services Program
  - Market the programs and services to employees and residents
  - Maintain commuter services bulletin boards or information kiosks/centers
  - Maintain records or participants lists as needed for annual monitoring reports
  - Serve as a resource for transportation-related matters for employees and residents
  - Encourage commuters to register in a web-based ridematching system to help form carpools and vanpools
  - Promote and manage an Emergency Ride Home program
  - Prepare and distribute carpool passes and hangtags for preferential parking spaces
  - Work with the Charles River TMA to have a closer EZRide stop

2. **Preferential Parking.** Seven parking spaces will be set aside in the on-site garage to serve as an incentive to rideshare. The spaces will be marked for carpools and vanpools that arrive before 10:00 AM. After 10:00 AM other vehicles may park in these spaces. The spaces will be monitored to ensure the policy is enforced. Employees who rideshare will be required to register their carpool with the TC and display a "carpool hangtag." Employees will also be notified that they can only use these spaces on the days that they are carpooling. Additional spaces will be allocated as demand warrants. Illegally parked vehicles will be towed. In addition to the HOV spaces, the proponent will provide a minimum of one Level 2 Charging station which includes two charging points for employees, visitors and residents at 40 Thorndike Street. The charging station will be installed prior to the issuance of the first Certificate of Occupancy. Proximate signs will be displayed in the garage promoting the charging station and information about the charging station will be communicated to employees through the program's outreach efforts.
3. **Transit Pass Program.** As stated, the site has excellent access to public transportation. To help promote this resource, lease language will require all tenants to provide a 100 percent transit subsidy for monthly passes, up to the Federal pre-tax benefit limit to all employees who receive health care benefits. The federal program allows employees (both part-time and full-time) to use tax-free dollars to pay for the following costs associated with the commute to work:
  - Public transit and vanpool expenses
  - Parking expenses related to transit
  - A combination of parking and transit costs

Employers can take advantage of the savings on payroll taxes for all dollars committed to transportation benefit programs up to the limits set each year by the IRS. Employees who pay for parking in conjunction with the use of public transportation will be able to set aside tax-free dollars to pay for these costs as well—saving up to 30 percent on income taxes depending upon their tax bracket.

4. **Bicycling/Walking Incentives.** Since the geographic area of the site is conducive to safe and convenient bicycling/walking, these travel modes will be encouraged. There will be 216 bicycle spaces provided at the site. This includes 166 long-term bicycle parking spaces in the on-site parking area and 50 short-term spaces located outside the building (see Table 4) The proponent will also provide air pumps and other bicycle tools, such as a "fix-it" station in the 40 Thorndike Street building's bicycle storage area. This improvement will be installed prior to the first Occupancy Permit.

Table 4 On-site Bicycle Parking		
Program	No. of Long Term Spaces	No. of Short Term Spaces
Residential	25	3
Office	137	28
Retail	4	19
<b>Total</b>	<b>166</b>	<b>50</b>

In addition to the bike paths mentioned earlier, there is a Hubway station at the Lechmere Station and two Hubway stations in Kendall Square. The proponent will fund the installation of a Hubway station on-site, prior to the issuance of the first Certificate of Occupancy permit. The station will create an easy connection to Kendall Square and the Red Line. The proponent will also require all tenants, including retail tenants, to become Silver Level Corporate Members of Hubway (at a minimum) for use by all employees. A 12-month membership includes unlimited trips (under 30 minutes each) any



day of the week from March through November.<sup>2</sup> With 22 stations in Cambridge so far, and more than 100 stations hosting over 1,000 bicycles in the Greater Boston area, the Hubway program offers a convenient, low-cost, environmentally-friendly way of commuting to work or getting to mid-day meetings across town without getting behind the wheel.

To further encourage and promote bicycling to work, at least one "Bike to Work" event will be held each year at the site. This event will include a bicyclist's breakfast, bicycle safety check-ups (all maintenance and repairs that do not require replacement parts), bike safety information, giveaways such as a T-shirt, a pant leg strap, or reflectors, and a brownbag lunch presentation on bicycle commuting in Massachusetts presented by MassBike. In addition, participants would be registered in a raffle for a prize drawing (e.g., a full bike tune-up), and general interest prizes would be used to promote to people who are not normally interested in bicycling. The proponent would also promote and participate in the City's Green Streets Initiative: Walk/Ride Day Corporate Challenge and the many events that are part of the City's month-long program of promoting sustainable commuting (e.g., the annual "GoGreen Month" held each May).

5. **Charles River TMA Participation.** The proponent will join the Charles River TMA upon final issuance of a Certificate of Occupancy in order for tenant employees and residents to take advantage of the TMA's services and incentives. In addition, the proponent plans to take an active role in the management of the TMA by serving on the Board of Directors. The TMA will provide the following services to the Site:
  - ✓ **Ridematching.** The TMA uses the services of MassRIDES' NuRide system to help employees form carpools and vanpools. Through the NuRide system, employees can register to match with other commuters interested in ridesharing. NuRide attracts commuters to their service by offering coupons to area businesses and discounts to those who regularly track their sustainable mode trips in the system. Commuters are able to earn points for using a more sustainable commute method (carpool, vanpool, transit, bicycle or walk) and/or for not commuting at all (telecommute or compressed work week) and can trade in their points for discounts at area businesses. NuRide will also track the environmental benefit of a commuter's mode choice by calculating reductions in pollutants. MassRIDES is currently working with NuRide to extend their contract and enhance the system.
  - ✓ **EZRide Shuttle Service.** The EZRide's peak-period shuttles travel near the site (the closest stop is one block away on First Street) and provide access to the MBTA Red Line, Green Line and North Station, which will make public transit more accessible to residents and employees. The shuttles run every ten minutes Monday through Friday between the hours of 6:20 AM to 10:35 AM, and from 3:00 PM to 7:30 PM. As a member, the TMA will distribute stickers to tenant employees and residents. This will enable all commuters to take advantage of the shuttle service. In addition, commuters can access the EZRide's real-time travel information via the TMA's NextBus system, which combines Global Positioning System (GPS) data with predictive software to give every commuter, either via the internet or smartphone, or at the bus stop, the arrival times for the next few vehicles.
  - ✓ **Emergency Ride Home (ERH) Program.** To alleviate the fear of being stranded in an emergency, the proponent will provide an emergency ride home program through the TMA. Using both rental vehicles for trips over 10 miles and taxis for shorter distances (or for those employees who do not drive), the ERH program guarantees employees who use an alternative to driving alone, transportation usually within 30 minutes of notification. The service will be seamless, enabling employees to call for transportation after receiving approval from a supervisor. Employees must register in advance to use the service and will be provided with a program identification card, forms, and instructions upon registration. All transit users, carpools, bicyclists and walkers will be eligible to use the service.

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<sup>2</sup> Commitment is to Hubway, or a similar bike-share program in the event that Hubway is no longer in operation.



- ✓ **Vanpool Formation Assistance.** Through MassRIDES, the TMA assists employees who may be interested in vanpooling. In order to be affordable, those with long-distance commutes (30+ miles) are traditionally the market for vanpools and a large pool of people from a specific area with the same schedule is typically needed to form one vanpool.
  - ✓ **Car-sharing Program.** The CRTMA and Zipcar have teamed up to offer special rates for member employees. Zipcar, a car-sharing service, has dozens of vehicles in the Cambridge area, which allows employees to leave their vehicles at home and rent a Zipcar on a short (or longer) term basis for errands, doctor visits, etc.
6. **Access to ZipCars.** There are currently two ZipCar vehicles (Ewan and Ariana) in the First Street garage. Subject to interest by a car-sharing company, the proponent will provide a minimum of two 40 Thorndike garage parking spaces to be reserved for carsharing vehicles at a rate negotiated by the carsharing company. As demand grows for additional carsharing spaces, the proponent will work with the carsharing company to increase the number of reserved garage spaces for carsharing. The carsharing program will be available for use by employees, residents, shoppers and visitors to the area. The goal is to remove as many barriers to commuters as possible to encourage the use of alternative commuting modes. The proponent will promote car-sharing services such as ZipCar, Mint Cars on Demand, Relayrides and Hertz on Demand.
7. **Alternative Work Hours and Telecommuting.** The proponent will encourage employers to allow employees to use staggered and flexible work hours based on business needs and job function. Allowing some flexibility in work times often promotes the use of a carpool or vanpool. It may also enable employees to use public transportation. Flexible work hour programs can have a significant impact even when public transportation service is limited because it allows people to commute on either side of a peak traffic period, reducing the number of vehicles on area roadways during the most congested times of the day. These programs can also offer employees a better way to balance work and family life by providing flexible start and end times or by bringing the work to the worker at a remote location.
- The TC will also promote telecommuting to tenants. Often the biggest hurdle to employers participating in formal telecommuting programs is the lack of knowledge or information on how to start or structure a program. The TC can play a role in providing employers with resource materials on various aspects of successful programs. For example, determining what kind of jobs can be done through telecommuting, identifying the right candidates (i.e., self-motivated, focused, disciplined, etc.), what systems need to be in place at the home office to support the employee, etc. At most companies today, some amount of telecommuting exists, worked out informally between employees and senior management. While employers with formal programs experience numerous documented benefits, often companies prefer to leave telecommuting as informal to avoid the initial costs, insurance or liability concerns, non-participating employee issues, etc.
8. **Marketing and Promotion.** The Commuter Services Program will be marketed by the TC on an ongoing basis. Tenant company officials shall receive a program outline upon leasing the property and must agree to participate as a condition of the lease. To explain and promote participation to employees:
- An interactive website will be designed that not only promotes the services at the site, but has electronic bulletin boards for impromptu sharing of rides. The website will have links to the various transit providers, car-sharing services and the City's user-friendly website called *CitySmart* which offers a wealth of public information on "*getting around Cambridge without getting behind the wheel.*" *CitySmart* provides practical information on walking, biking and transit options, as well as information and links for various ridesharing programs.
  - A site-specific brochure will be developed and distributed that describes all the services, as well as the City's "*Getting Around in Cambridge.*" The City's packet contains text and tips to encourage walking, bicycling, use of transit, driving, and sharing the road, as well as a map of the



city with a street index, subway and commuter rail maps, MBTA bus routes, bicycle facilities, and walking routes.

- Posters and flyers will regularly promote various aspects of the program and services available to employees and residents.
- Transit schedules and ridesharing information will be available on traditional bulletin boards and kiosks throughout the facility.
- The TC will work with residential agents and Human Resource representatives to distribute a New Employee Orientation packet that includes a program brochure, MBTA and transit pass information, EZRide information, and other pertinent transportation materials. New employees will also be encouraged to consider alternatives to driving alone.
- Transportation events are the most prominent and effective outreach efforts. The TC will conduct several lunchtime events throughout the year at various employer sites or in the lobby of the building to heighten employee interest and awareness. Possible participants could include the City of Cambridge, the MBTA, MassPike (to distribute transponders), MassBike and ZipCar.
- The TC will conduct "on-line" events throughout the year with e-mails, website postings, and prizes for participation. Events will include Emergency Ride Home registration, prize drawings, and dissemination of transit, ridesharing, and other trip-reduction initiatives.

#### **PARKING MANAGEMENT**

As stated earlier, there are 92 parking spaces onsite that will include 24 residential unit spaces, seven preferential HOV spaces, five handicap accessible and five hybrid/electric vehicle spaces. The proponent plans to enter into a long-term lease arrangement with the City of Cambridge to obtain additional (420) parking spaces at the First Street garage to also accommodate the commercial activities at the site. The proponent will require tenants to operate an unsubsidized parking program for employees, intended to reduce SOV commuting. Carpools and vanpools will be charge a discounted rate to park in the 40 Thorndike on-site garage. Employees who carpool must register in the program to receive a carpool tag and can only use the preferential parking spaces on the days that they are carpooling. Garage attendants will monitor the spaces each day.

#### **MONITORING PLAN**

The proponent will prepare an annual update for submission to the City of Cambridge. The monitoring program (described below) will include an update on all PTDM initiatives, annual mode split surveys, biennial driveway counts and parking utilization surveys within a pre-determined one-week period to assess the proponent's progress toward reductions in single-occupancy vehicles:

1. **Employee Mode Split Survey.** As part of the overall monitoring plan, the proponent will collect commuting data from all tenant employees to determine mode split. The survey will achieve a response rate of at least 60 percent of all employees. To enable the City to make more informed transportation planning decisions, information on employees' **commuting mode by trip origin**, as well as a table showing the **mode split for the top 10 employee origins** will be provided in this report. An Excel file of the commuting mode by trip origin will be emailed to the City each year. The survey would also: (1) help improve commuter services program elements, (2) determine the effectiveness of implemented incentives, (3) assess any unmet needs on public transportation, and (4) rate the existing transit services in the region.
2. **Parking Utilization Counts.** On a biennial basis, Automatic Traffic Recorders (ATRs) will be used to record 24-hour entry and exits counts at the garage driveway during two days of the survey week. In addition, manual or card access data will be used for conducting parking accumulation during the same two days between 6:00 AM and 7:00 PM. These data will be analyzed to determine the level of

parking utilization at each site, thus determining the greatest number of vehicles on site at one time during a one-week period. Bicycle utilization counts will be conducted with car parking counts.

The proponent will also collect data and report on the number of employees who are registered in the ridematching database, participated in carpools and/or vanpools, enrolled in the preferential parking or emergency ride home programs, purchased transit passes, and/or attended events.

If the certificate of occupancy for the project is issued between September 1 and February 29, the monitoring will take place during the months of September or October and be reported to the PTDM Planning Officer no later than November 30. If the certificate of occupancy for the project is issued between March 1 and August 31, monitoring will take place during the months of April or May and be reported to the PTDM Planning Officer no later than June 30.

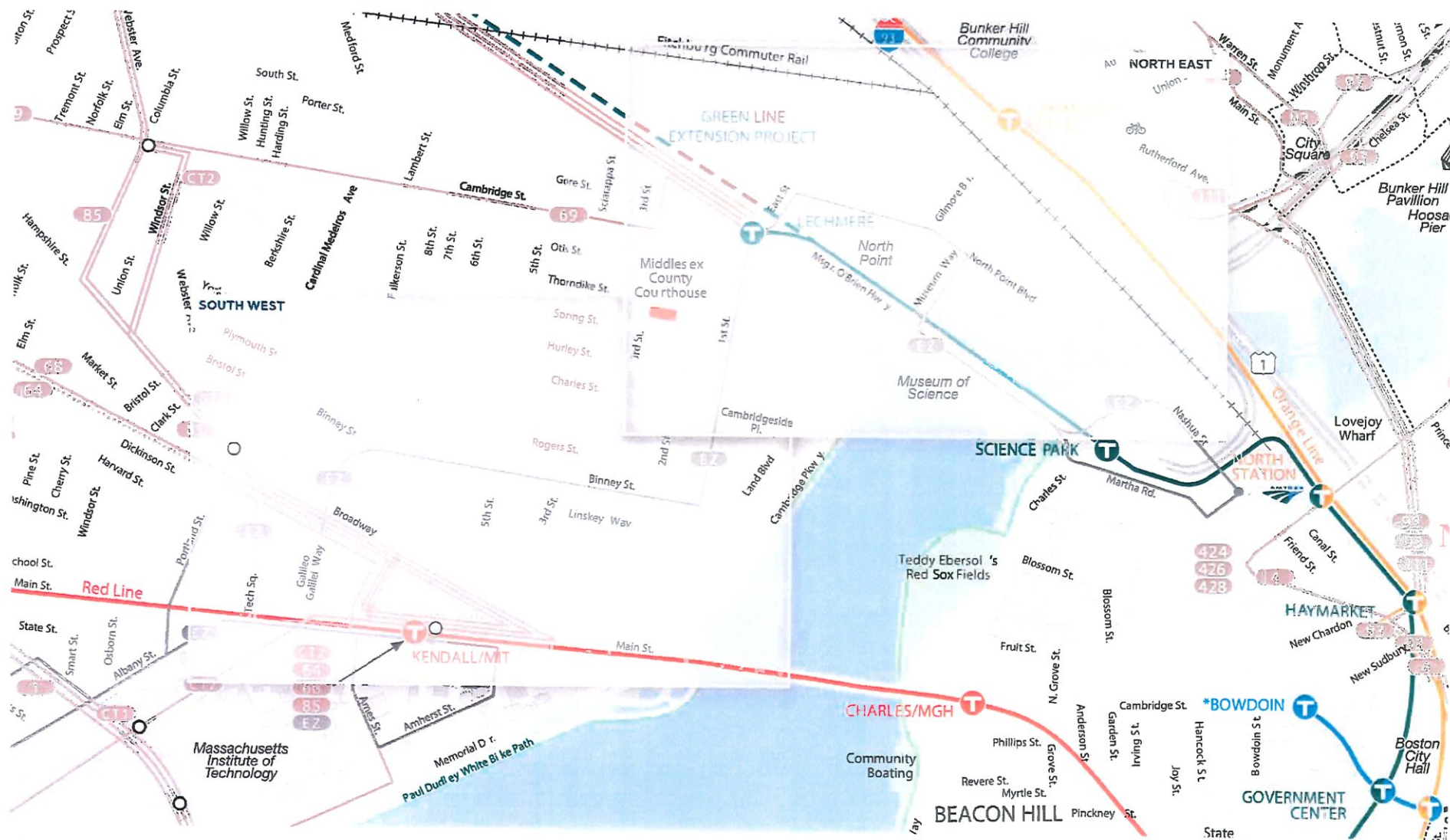
#### **OFFICE OF WORKFORCE DEVELOPMENT**

The proponent and subsequent tenants agree to work with the City to encourage tenants to submit job listings to the City of Cambridge's Office of Workforce Development in an effort to hire Cambridge residents.

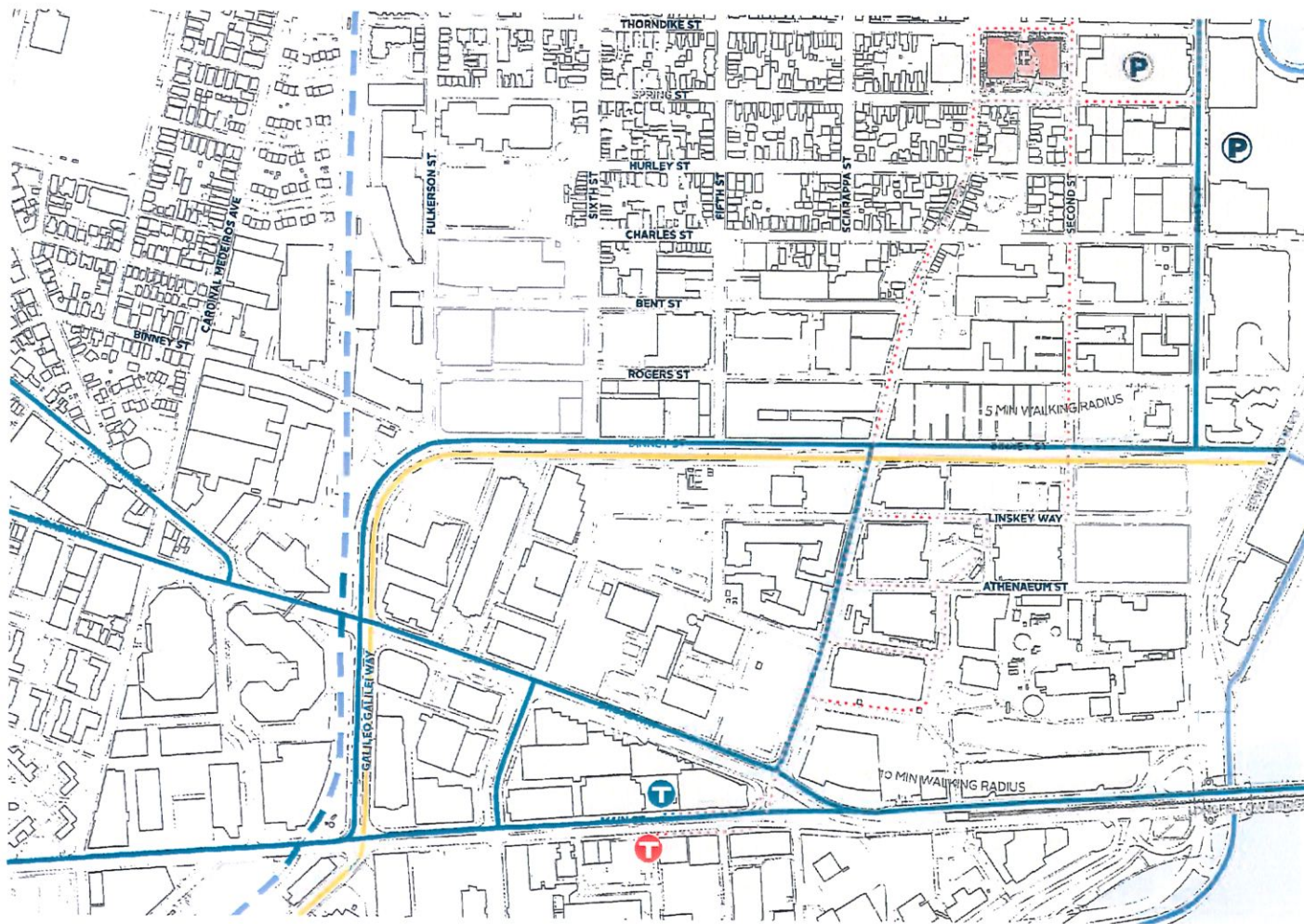
#### **SUMMARY**

Leggatt McCall Properties, the proponent, believes that the above plan is comprehensive and will help to meet or exceed the minimum SOV goal of 42 percent at the 40 Thorndike Street site. All future tenants will be required to provide a transit pass subsidy and the proponent or building owner will be an active member of the Charles River TMA. As an added investment, a Transportation Coordinator will be hired to manage the program and promote the various services such as the ridematching, Emergency Ride Home transit pass program and preferential parking programs. In addition to those services, there will be substantial bicycle parking and access to car-sharing. The proponent is committed to achieving a low SOV rate and would take every reasonable step in the future to reduce vehicle trips on the Cambridge roadway system in the vicinity of the project.





## CAMBRIDGE TRANSPORTATION SYSTEM MAP



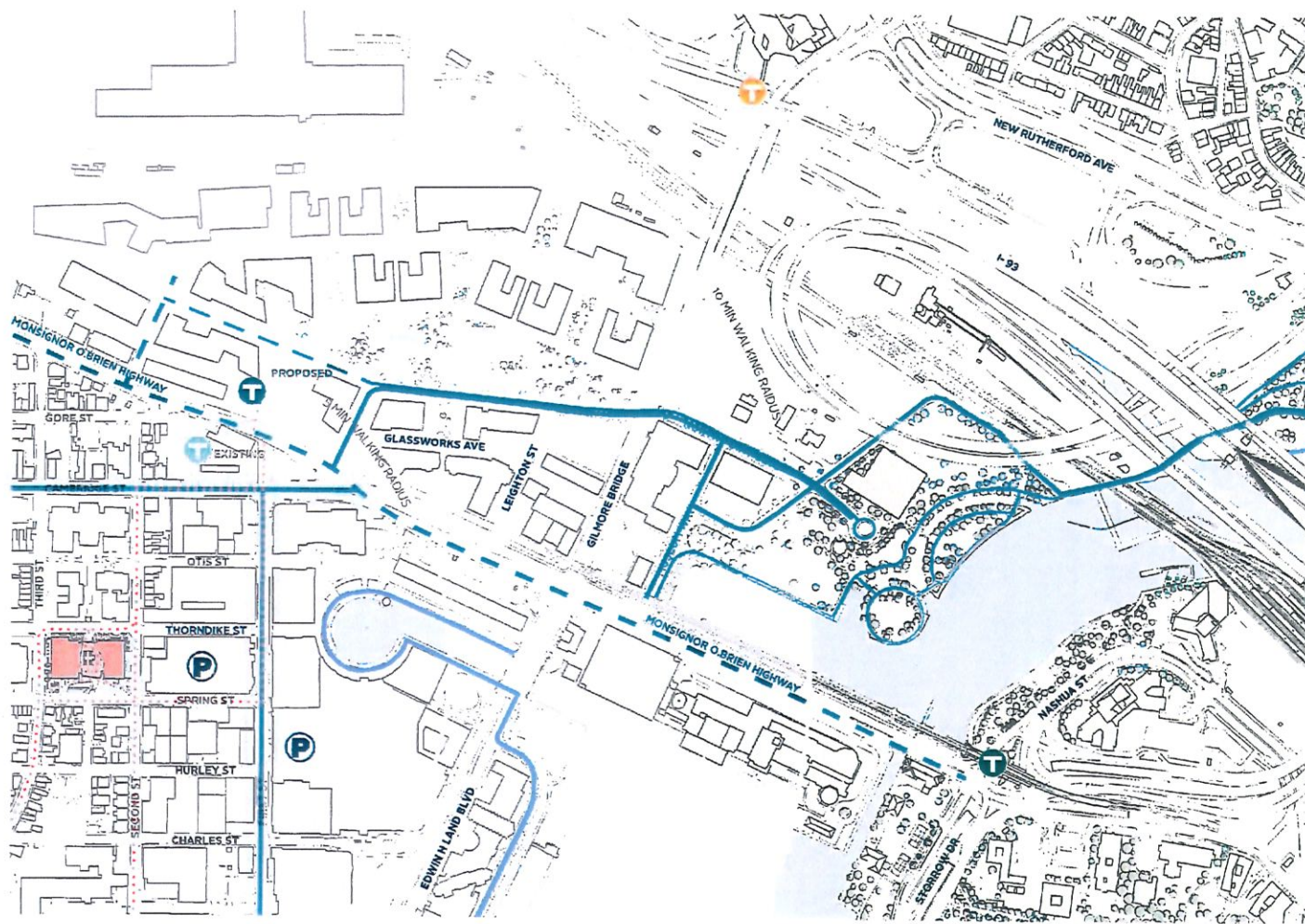
#### SYMBOLS KEY

- MBTA STOPS
- PARKING
- BIKE LANE
- BIKE / MULTI- USE PATH
- PROPOSED BIKE / MULTI- USE PATH
- CYCLE TRACK
- PEDESTRIAN ROUTES








### DETAILED TRANSPORTATION MAP- SOUTH WEST







# SYMBOLS KEY

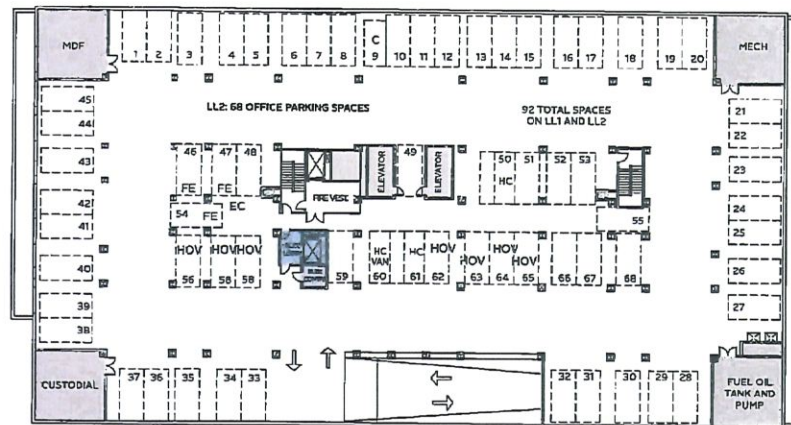
-  MBTA STOPS
-  PARKING
-  BIKE LANE
-  BIKE / MULTI- USE PATH
-  PROPOSED BIKE / MULTI- USE PATH
-  CYCLE TRACK
-  PEDESTRIAN ROUTES

## DETAILED TRANSPORTATION MAP- NORTH EAST

0 100' 200' 400' 800' N

# SYMBOL KEY

- RETAIL COMMON AREAS
- OFFICE COMMON AREAS
- RESIDENTIAL COMMON AREAS
- MECHANICAL
- C COMPACT SPACE
- HC HANDICAP SPACE
- HOV CARPOOL PRIORITY
- FE FUEL EFFICIENT VEHICLE PRIORITY SPACE
- EC ELECTRIC VEHICLE CHARGE STATION



## PROPOSED FLOOR PLAN – FLOOR LL2





**50 SHORT TERM BIKE SPACES TOTAL IN LANDSCAPE**

### RETAIL COMMON AREAS

RETAIL TENANT

### OFFICE COMMON AREAS

OFFICE TENANT

## RESIDENTIAL COMMON AREAS

RESIDENTIAL APARTMENT

**PARKING / LOADING**

MECHANICAL

## COMPACT SPACE

## HANDICAP SPACE

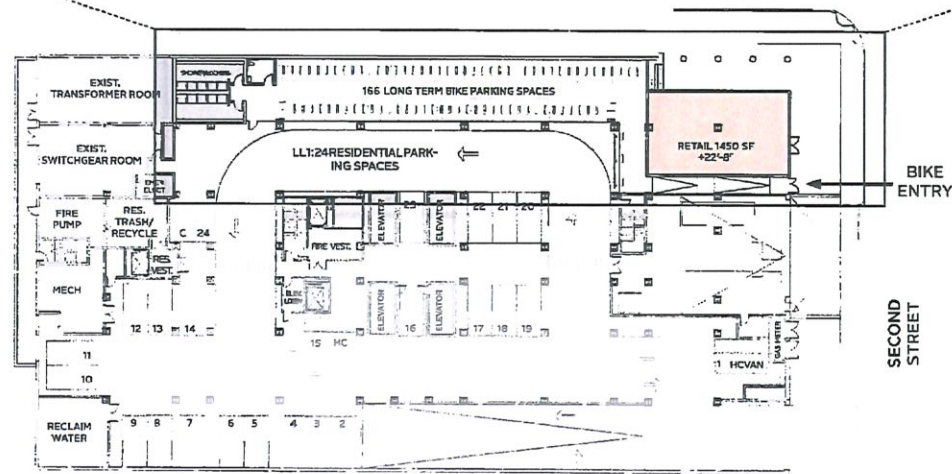
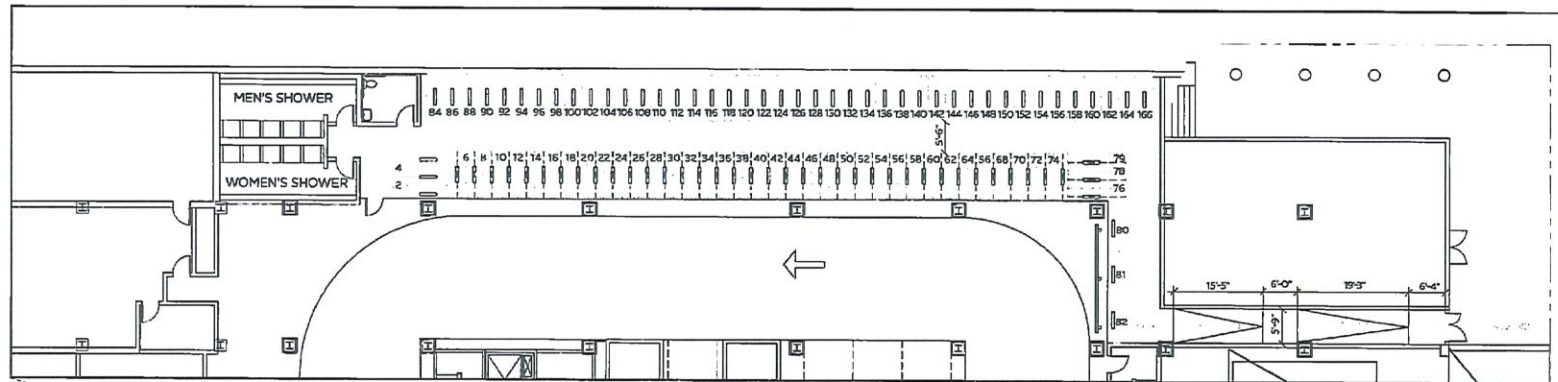
HOV CARPOOL PRIORITY

**FE FUEL EFFICIENT VEHICLE  
PRIORITY SPACE**

EC ELECTRIC VEHICLE  
CHARGE STATION



## 40 THORNDIKE | NOVEMBER 21, 2013



## BIKE PARKING- LL1

40 THORNDIKE

0 5' 10' 20' 40' N

LEGGAT MCCALL | ELKUS MANFREDI ARCHITECTS



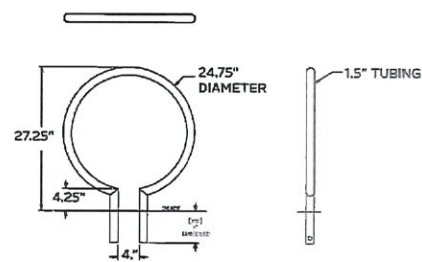
## REQUIRED BIKE PARKING

PROGRAM		LONG TERM MULTIPLIERS	LONG TERM SPACES REQUIRED	SHORT TERM MULTIPLIER	SHORT TERM SPACES REQUIRED
* RETAIL	18,982 GFA	GFA/1000 (.2)	4	GFA/1000	19
OFFICE	455,351 GFA	GFA/1000 (.3)	137	GFA/1000 (.06)	28
RESIDENTIAL	24 UNITS	1 PER UNIT FOR 1ST 20 UNITS, 1.0% PER UNIT IN EXCESS OF 20 UNITS	25	.1 PER UNIT	3
TOTAL:			166		50
NUMBER OF TOTAL SPACES TO ACCOMMODATE TANDEM/ TRAILERS			9		3

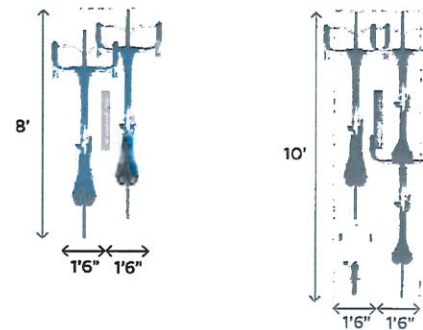
## BIKE PARKING PROVIDED

LOCATION	LONG TERM SPACES PROVIDED	SHORT TERM SPACES PROVIDED
LL1	166	0
LANDSCAPE	-	50
FLOOR 2	0	0
FLOOR 3	0	0
FLOOR 4	0	0
TOTAL:	166	50
NUMBER OF TOTAL SPACES THAT ACCOMMODATE TANDEM/ TRAILERS	9	3

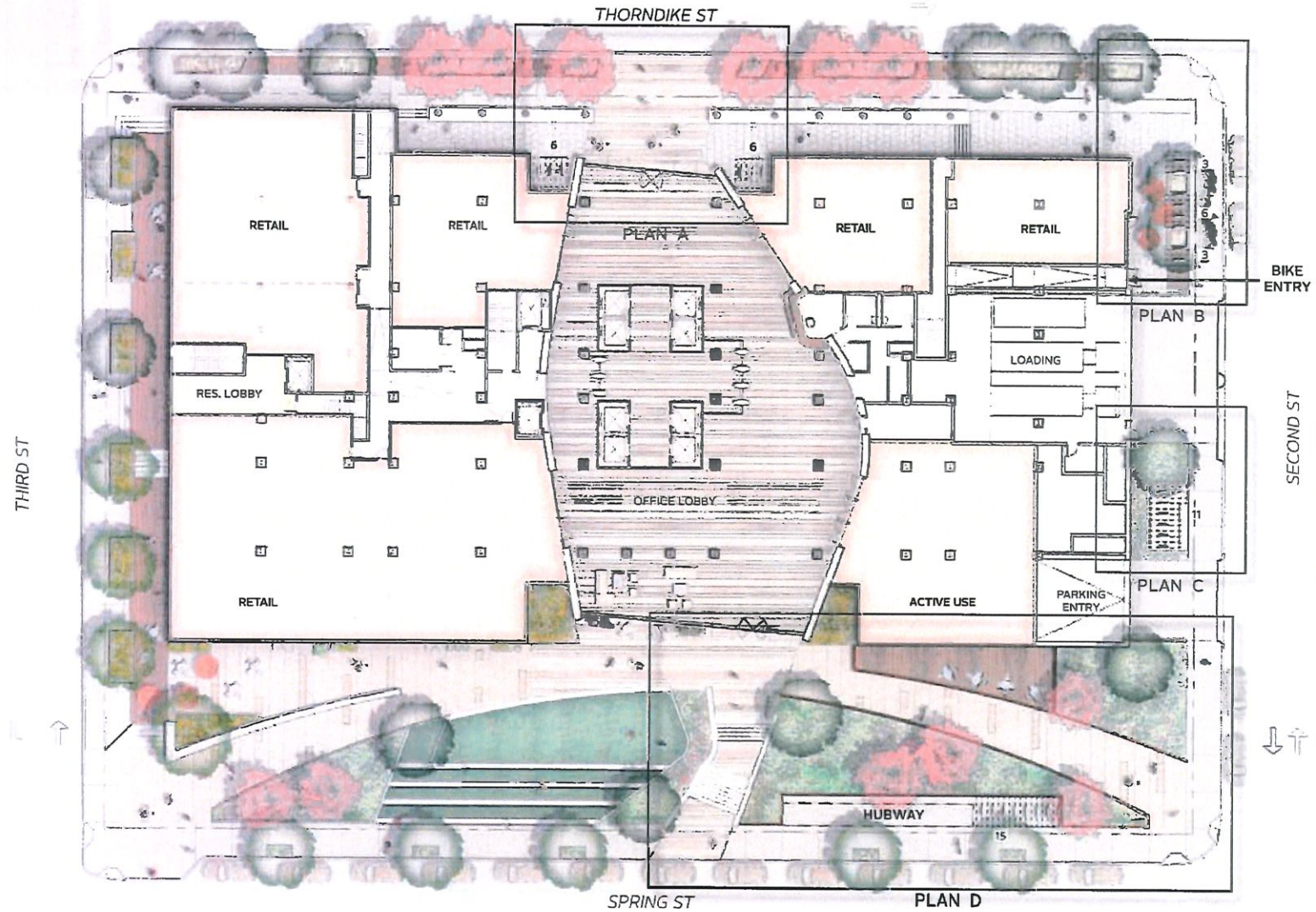
\* RETAIL WILL INCLUDE A MIXTURE OF RESTAURANT AND RETAIL TENANTS NOT YET KNOWN. FOR THE PURPOSES OF THESE CALCULATIONS, THE HIGHER MULTIPLIER FOR RESTAURANT IS USED FOR A CONSERVATIVE ESTIMATE OF BIKES REQUIRED.



BIKE RACK:  
RING BY LANDSCAPE FORMS

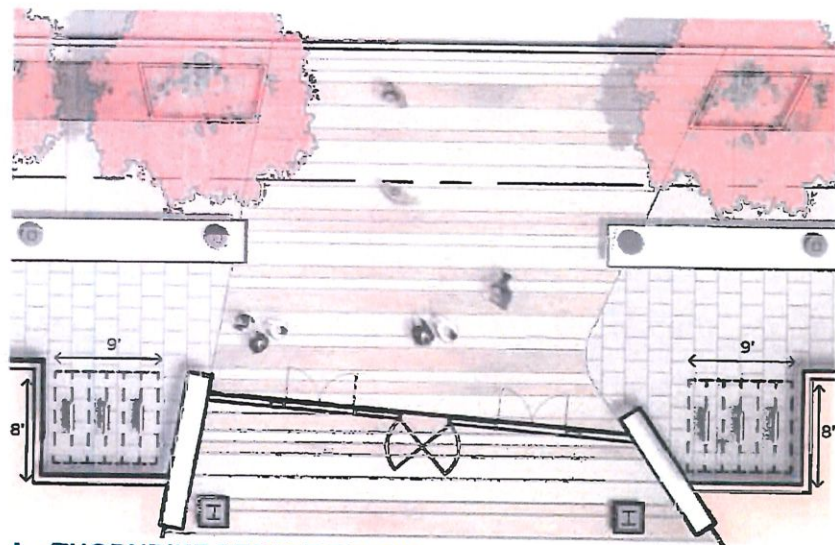


## BIKE PARKING

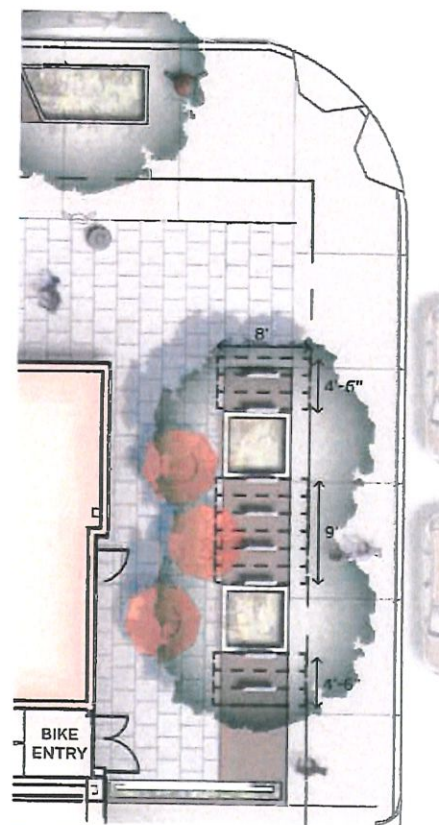


# LANDSCAPE PLAN WITH BIKE PARKING

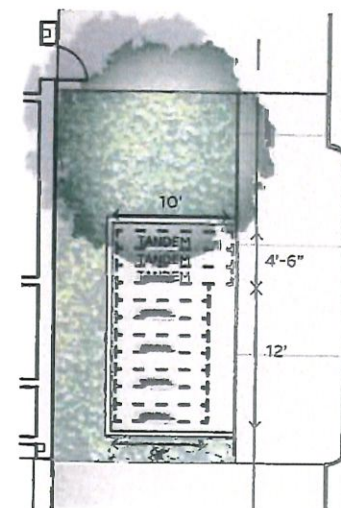




A - THORNDIKE STREET ENTRY



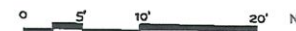
B - SECOND STREET NORTH



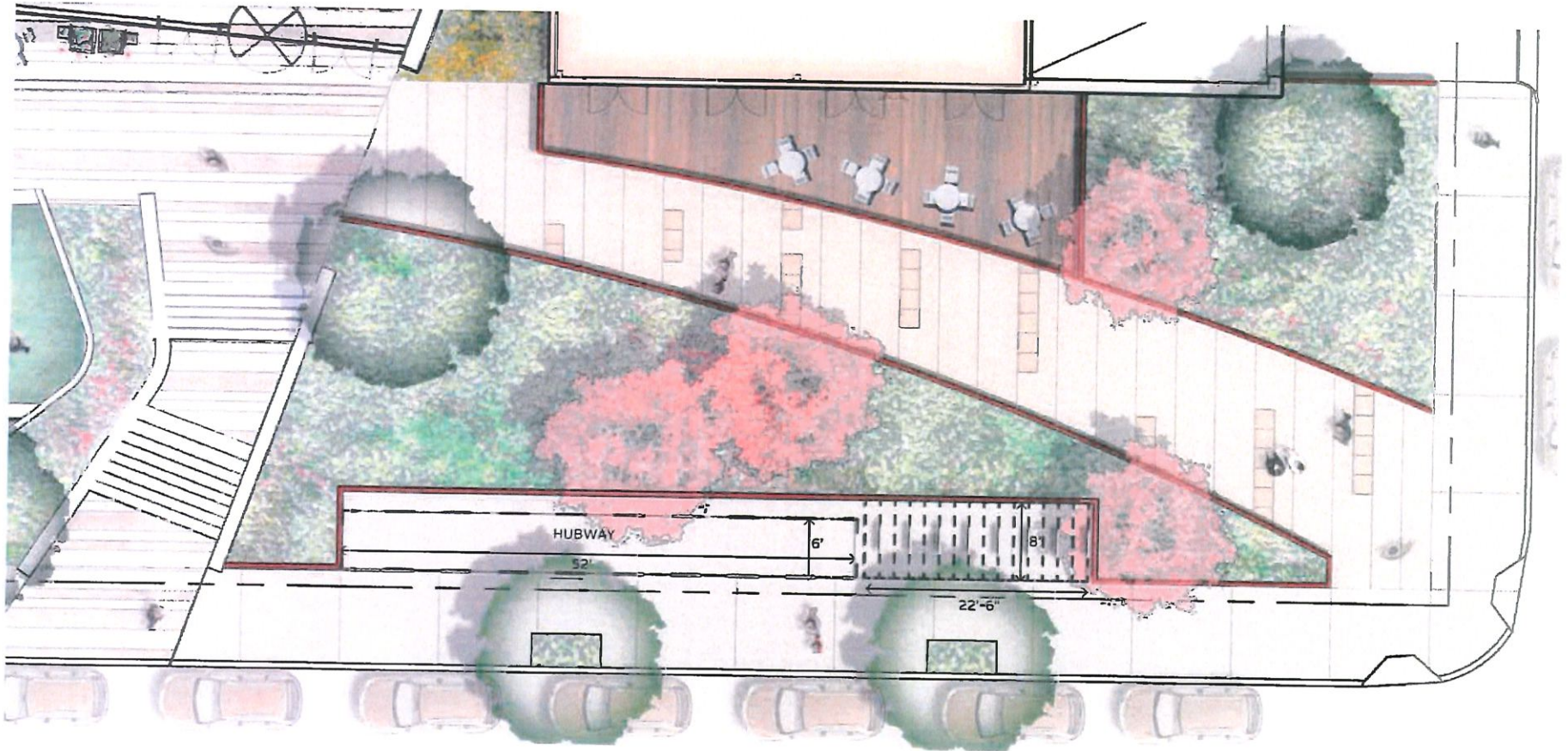
C - SECOND STREET SOUTH

# ENLARGED LANDSCAPE PLANS WITH BIKE PARKING

40 THORNDIKE



LEGGAT MCCALL | ELKUS MANFREDI ARCHITECTS



# D -ENLARGED LANDSCAPE PLAN WITH BIKE PARKING - SPRING STREET

40 THORNDIKE

LEGGAT MCCALL | ELKUS MANFREDI ARCHITECTS