

PLANNING BOARD FOR THE CITY OF CAMBRIDGE

GENERAL HEARING

Tuesday, July 29, 2014

7:00 p.m.

in

Kennedy Longfellow Auditorium,  
158 Spring Street  
Cambridge, Massachusetts

Hugh Russell, Chair

H. Theodore Cohen, Vice Chair

Steven Winter, Member

Tom Sieniewicz, Member

Steven Cohen, Member

Catherine Preston Connolly, Associate Member

Brian Murphy, Assistant City Manager for  
Community Development

Iram Farooq, Acting Deputy Director

**Community Development Staff:**

Jeff Roberts

Stuart Dash

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## I N D E X

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#### **GENERAL BUSINESS**

Update, Brian Murphy, Assistant City Manager  
for Community Development 3

#### **PUBLIC HEARING**

7:00 p.m. (continued) PB#288, 40 Thorndike Street, Special Permits to convert the existing non-conforming courthouse structure at 40 Thorndike Street to a mixed use office building containing ground floor retail uses, 24 dwelling units, and below grade parking. Special Permits are being sought pursuant to Section 19.20 Project Review, Section 8.22.2.a. Alteration of a Non-conforming Structure, Section 5.28.2 (et seq.), Conversion of a Non-Residential Structure to Residential Use, and Section 10.40 General Special Permit Requirements.  
by LMP GP Holdings, c/o Leggat McCall Properties, LLC 7

Keyword Index

**P R O C E E D I N G S**

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HUGH RUSSELL: Good evening. This is a meeting of the Cambridge Planning Board. We have a short agenda tonight. There's only one item. The only problem is there are hundreds of people who want to speak tonight, and so we're going to have to figure out how we can accomplish this. I've heard that there are people with small children that don't want to wait three or four hours to speak. I can assure you the Board does not want to hear three or four hours of repetitive testimony. So, we're going to start, and the only exception -- first, we're going to start with a presentation, which is promised to be less than 30 minutes, of the changes in the project. My colleague Mr. Cohen is going to be the timekeeper, and

then we will go to the public testimony. We have made a deal I guess you could say with the Michael halle, who will speak representing the organization and I can't remember what all those numbers are, but it's East Cambridge Neighbors' Association? Neighborhood Association? Anyway, I'm going to ask him to speak first. We're going to ask others in his organization if they agree with what he says to perhaps just at the end of his speaking if they would raise their hands. And if there are other organizations here who would like to do the same thing, then you might think about that during the 30-minute presentation and come to me and we can raise that.

I think to the extent that there are organized groups who can make an organized presentation so that every member does not

have to speak, that will get the information to us that we need and maybe give enough time for all the different ideas to be heard.

So, with that said, I suppose I should find my agenda. Brian, do you want to start with an update?

BRIAN MURPHY: Sure, thanks.

Just to let you know about upcoming hearings: Tomorrow afternoon at four o'clock the Ordinance Committee has a hearing on the Carlone Petition.

On August 5th back at 344 Broadway, there will be a public hearing on the Carlone Zoning Petition, as well as Planning Board No. 189, 303 Third Street, Major Amendment for parking, and the preparation by the Board for the Town Gown report.

August 12th will be the CambridgePark Drive walking tour.

August 19th, there are public hearings for 180R CambridgePark Drive, a continuation of that hearing, as well as a Major Amendment in the first hearing for North Point parking. And under General Business, 603 Concord Avenue penthouse design review.

September 2nd we've got two public hearings: 1-5 East Street, the Major Amendment to reduce the sides of the building as well as Planning Board 198 Discovery Park, Parkway Overlay District relief from front yard and Major Amendment for hotel use.

September 16th we've got the continuation of 75 New Street as well as the second hearing for the Major Amendment for 1-5 East Street. So that's what's scheduled as of now.

HUGH RUSSELL: Thank you.

So, Planning Board case 288, 40

Thorndike Street. Who is going to start?  
And people will be speaking over at that  
microphone.

ROB DICKEY: Good evening, Mr. Chair  
and Members of the Board. Thank you for  
having us here this evening. I am Rob  
Dickey. I am an Executive Vice President and  
partner with Leggat McCall Properties. I'm  
joined this evening by several of my  
partners: Eric Sheffels, Don Birch, Eric  
Bacon, and I think Bill Gauze (phonetic) is  
also in the audience. And a team of  
professionals, Jim Rafferty, local counsel;  
Martin Healy, Goodwin, Procter, also of  
counsel; David Manfredi of Elkus Manfredi;  
mark Sandonya (phonetic) who has been an  
important member of this team as well, and  
Chris Jones from the landscape architecture  
firm Carol Johnson and Associates.

So, our presentation tonight will start with a quick overview on my part.

Mr. Rafferty will follow with a short speech, and then David Manfredi will focus on the changes to the building that we're going to present tonight, and Chris Jones will focus on the landscape changes as well.

So, to remind folks, we are here -- I sent a letter and it included a package of new information and materials. The focus of this evening are the bulk and mass reduction changes that we've made to the building where we've reduced the height of the building by two stories and by approximately 40,000 square feet. And design changes that are to the exterior on the facade, and also in the entry along Spring Street and the landscape garden space along Spring Street as well.

In addition to the materials that we

submitted and the letter that we submitted, we also provided updated traffic and parking information to the city, and Sue Clippinger produced a letter in response to that certifying that information. We're not going to present that, but that is part of the package. And Charles Ham from Vanasse and Associates is here tonight should there be questions.

So I start with the building that exists today. When we were first designated by DCAMM on this project, it was back in December of almost a year ago or almost two years ago now, we entered into a purchase and sale with the state in January of 2013, and when we were originally involved in this project, the only remaining element of this that was active were the top four floors that were continuing and active as a detention

facility and a jail facility. Those have been in the last month closed down and the building is now unoccupied.

We made a proposal to the Planning Board on November 2013 that in our January meeting of this year was our first presentation of that proposal, and our last meeting which was the end of April, we were also presenting the same plan with -- in responding to specific questions to that that came from the January meeting. However, we were involved in a working group process that had been organized by Tim Toomey which was a very open and productive process where we looked at changes, we got feedback, and tonight is really about presenting the results of that community interaction, that process, that feedback, and coming to the Board with a modified plan.

So we revised the proposal which we submitted this month is here before you tonight. I'm going to simply do a little context background for the Board because I think it's helpful to remind folks of not only the commitments that we talked to you about before, but some of the evolution of those commitments with the community and in our plan for this redevelopment of the project.

So, I'm gonna start with the context plan which is our site here. We have Thorndike Street to the north, Second Street to the east, Third Street to the west, and Spring Street to the south.

This is the First Street city-owned garage. This is First Street.

This is the Cambridgeside Galleria.

This is the Davenport Building, and

this is Two and One Canal and Ten Canal over here.

The reason I showed this plan is to point out to folks that our project as proposed not only includes this site, also includes some landscape improvements that we've committed to as mitigation with the city on the edge of the First Street Garage on this side as well as a commitment in conjunction with the parking that we would like to long-term lease from the city, 420 spaces in this garage. We've made a commitment to renovate probably at a cost, capital cost of improving this space of two to three million dollars, renovate this space, and bring in an operator to operate a local grocery store and then to use some short-term parking that would be available under the garage which is about 26 spaces.

I'm gonna now turn to the site plan itself and the ground floor of the building, again, as a reminder of program. This is our central lobby. It's two stories. This is the sort of the commercial in and out of the building for the office space above. The ground floor is all activated on the street. There are a series of different type of spaces that I'll talk about in a second. All of the parking, although right now there is a curb cut off of Third into a garage that's at grade in this area, that curb cut gets closed. There's an existing curb cut here into the existing service yard. That also gets closed. We open up a new curb cut in this location accessing two levels of below grade, basically the space that exists in the building today, and create 92 parking spaces. 24 of those would be for residential and

match up with the 24 residential units. And the balance of that parking would be for the office tenants of the building. And then the balance of the commercial building would be over here at 420 spaces.

Loading is in an interior bay that's reconstructed on the edge of the building here so that large 18-wheeler trucks, should they come to the building, would back in here and be able to pull all the way in and get off not only off of the public street but off of the sidewalk as well so that they would be concealed in this area. So we have two loading docks there and that's also where our dumpster location is.

Main entrances, there's a main entrance today at this location. We would add another entrance at this location, and we would bring the slab down to grade. This is now three

and a half feet above Thorndike at this location. So we are reconstructing the slab in the first floor of the building to bring it to grade.

Just to describe some of the uses that have evolved over time, we are in discussions with the East End House over a day care space at this corner. We are committed to a vibrant and active community space in this area that would be -- could be used by the tenants in the daytime, and we use this as an example of the inert center and Microsoft that folks have been there. It's a little misleading because this is a two-story space and the space we're showing here is only one. But the idea would be to have finishes of this kind of quality, create, putting AV equipment and putting nerd technology and making this a room here that could be used

for multiple purposes.

Flipping to the next slide, we in the evening see this room as a place where ECPT can meet, where other neighborhood groups could meet, where seniors could have a meeting, have a movie night. We see this as a place that could be used for yoga or in connection with health and wellness. And I add to that that we've also looked at the potential that this retail space up here might also be related to fitness and health and wellness.

On this corner, the southwest corner, which has the best outdoor connection to the landscape area on the south, we see this as a primary to put a restaurant, food, and other related uses and keep that a vibrant space. And I'd also point out that that space, and many of these spaces connect into the lobby

as well as to the street.

And then the second floor, the podium level is five stories -- four stories in total.

On the Third Street elevation there are eight units on each floor, 24 units in total, that are accessed off of Third Street through a separate entrance. And then interior to those units is office space.

On this particular floor, the second floor, and I apologize that you can't see the pointer, but we've added a stair in the lobby to give you a direct connection from the lobby up into this space, and this bridge coming across this two-story lobby space. And our commitment here is to create entrepreneurial small suite and possibly shared suite space. It would be for small entrepreneurs that would, you know, I think

would be a vibrant element of the base of the building, also create a lot of activity into that stair and connecting to the ground floor retail spaces.

So with that I'll turn it over to Jim Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman and Members of the Board. For the record, James Rafferty. Yeah, I just blanked on what my address is, 675 Mass. Ave., Cambridge. The nervousness is coming from my clients.

So, I'm going to be very brief and hold my promise, and that is to just remind the Board what the legal issues are. I had a much longer presentation that I've been working on all week and then Mr. Roberts' memo came out late last week and I must say that it's a very complete analysis of the

Special Permits that we are speaking here. But I thought it might be helpful for the Board to just identify exactly of the -- there are four Special Permits we're seeking.

The first as there's been much talk about is of course the alteration for non-conforming structure. And the question about non-conforming structures, as I know you're aware, has been addressed through a variety of legal memos and ultimately the City Solicitor, your counsel, has opined that in fact this building does qualify for a Special Permit under 8.22.

The Zoning Ordinance draws two distinctions between alterations with non-conforming structures. If those alterations are occurring within the building, they could occur as of right. So in this case were Leggat McCall not going to

change that structure and merely do interior alterations, they would not need to seek what is before you tonight in terms of the 8.22 Special Permit.

We have identified, characterized what we believe are the six alterations that are occurring as part of this application or as part of the reworking of the building. And they're here on the screen for you and they're pretty straightforward. The removal of the top two floors is obviously an exterior alteration. So for exterior alterations, if you can read the text slightly above it, that's lifted from the Zoning Ordinance and it's listed in Mr. Roberts' memo. But it says that the Board has to make a determination about changes or alterations to non-conforming structures as to whether or not they will be

substantially more detrimental to the neighborhood than the existing non-conforming use. It's a little confusing here because the Ordinance in Section 6 both use the word non-conforming use in places where they probably should use non-conforming use and/or structure. Because it's worth noting here, and it's a legal significance, that these are both conforming uses; the governmental use that has been occurring at the building is conforming, and the office use, the retail use, and the residential use proposed in the application are all conforming uses. A lot of the case law and a lot of the back and forth in land use circles around non-conforming structures has much focus on changes in non-conforming uses. And you'll see lots of case law talks about how one use impacts a neighborhood differently than

another use. That issue, frankly, isn't before the Board in our application since our use is an allowed use. What Section 8.22 directs you to do is to look at each of these alterations and make a determination as to whether those alterations have a detrimental effect on the neighborhood. And they are, in addition to the top floors, the ground floor, the creating of ground floor entrances around the base of the building.

The third alteration is the new garden and entrance at Spring Street.

The fourth alteration is the replacement of the existing facade.

The fifth alteration is occurring on Thorndike Street where it's stepping the building back and creating a new entrance.

And the second alteration is the new garage entry to accommodate automobiles and

bicycles. None of those could be obtained with a Building Permit because they're all occurring to the exterior portions of the building. So this 8.22 Special Permit requires the Applicant to seek a determination by the Board as to whether any or all of those alterations has a substantially more detrimental effect upon the neighborhood than the existing conditions. We would obviously suggest the answer is pretty straightforward and simple, that every one of those alterations actually represents an improvement. One can't help but gaze upon the existing conditions and think about what's being proposed here by way of alterations and reach a contrary conclusion.

But what is also relevant here is the second application, second element of Special

Permit, and that's the Article 19 Special Permit. And that project review Special Permit is the Special Permit that does go to use. Because a building or a structure greater than 50,000 square feet, when it proposes a change in use, whether it's an allowed use or not, does required a determination by the Board under Article 19. And we have submitted material information on that. Mr. Manfredi's going to walk you through that criteria in the design approach to the building, but that's a separate analysis from the non-conforming use though.

The first question, the threshold issue, for this Board is whether those alterations are substantially more detrimental?

The third application we've applied before, the Board is familiar with, the

conversion Special Permit, if you will, provided for Article 5.28 that was passed years ago that allows structures originally not built for residential purposes to be converted to residential purposes. It allows for some modifications to the housing requirements or the dimensional requirements associated with housing. And that, that has not changed. That has been in our application since its original filing. And, likewise, we think that the 24 units we're proposing, the building, meet the test under 8.2 -- excuse me, under 5.28. And we would encourage you to follow the direction of Mr. Roberts on that.

The last issue that we've introduced, and it's referred to by Mr. Dickey in his letter, and I mentioned it when we were here last in April, is that we have always sought

an off-site parking location for the building. As you know, there's limited parking in the building today. We're proposing to put 92 spaces into the building. But we've always known that we needed an off-site location to accommodate parking, frankly, as the courthouse did as well. And we filed a request with the city to begin a process, an RFP process, for long-term lease parking spaces on First Street. Because that First Street garage is within 300 feet of this use, a Special Permit isn't necessary. There is a mechanism under Article 6, it's 6.22.2, says that if it's beyond 300 feet but within a thousand feet, one can apply for a Special Permit for the location of the off-site facility. So we have filed supporting documentation in support of that. And Mr. Dickey makes it clear in his letter

it is not the first preference of the project. We think the project works better with the more proximate parking in the First Street garage. There is support for that by the Traffic Department. There's a memo that's been submitted again in this round of hearings associated with the capacity in that garage. It also brings with it the opportunity to create that grocery store that Mr. Dickey referred to.

So that's the fourth element of the Special Permit. It's only appearing for the first time in this revised application, and I wanted to bring that to the Board's attention.

So now Mr. Manfredi will take you through the changes in the building.

Thank you.

DAVID MANFREDI: Good evening,

Members of the Board. My name is David Manfredi with Elkus Manfredi Architects.

I do want to give you a little bit of prologue because this is a different design approach than we last -- what we presented the last time we saw you. And I think you are all very accustomed to seeing buildings over the course of the design process and designing is an evolutionary process.

We have clearly heard a lot of concern about the environmental impacts; impacts with regard to wind, glare, light, light transmission, the idea of building as a lantern, and that has very much affected what we are presenting to you tonight.

What we are presenting is, as I say, a different design approach. And it is very much driven by the desire to find a building design that can affect some of those issues,

still be a modern building, find a material pallet of proportioning system, and a building design that addresses each of those; remains modern, reduces the height by two stories, and embraces the basic order of this building. And what I'm gonna suggest is that there is an order to this building, a kind of urban street wall order of having a podium and a tower that comes out of that podium.

There are a series of elements. We've talked a lot in the past about wind mitigation. What we've really done here is we've looked again at the base of the building, and I'll show you some changes there, but the building still addresses the street the way it always did. Meaning that we brought the slab down. We'll have multiple edges, entrances around the perimeter of the building for retail and for

day care and for the community spaces. We'll have that through-block connection from the south to the north. But clearly we've recast tower. And we've recast tower with a terra-cotta envelope, with large openings for -- that group two floors at a time. And then, and reinforce a notion that I'm going to suggest is inherent in that base building, and that is that this building has a base, a middle, and a top. That in fact we've created some texture to the building that didn't exist in our previous proposal. What I mean by that is the plain of glass to the plain of terra-cotta. The addition of these elements at the top of the building that address, that address wind but really are more about architecture. About giving the building a kind of modern cornus and cap, that add elements at the top of the podium.

Again, that address wind but are really more about scale and proportion and bringing the base and the tower more into alignment. And clearly the material pallet itself, the color, the richness, the diversity, terra-cotta organic material comes out of the ground, every piece is a little bit different than every other piece.

When you look at our previous proposal and the current proposal, previous proposal on the left and current proposal on the right. Obviously we've taken two stories off of the building.

One of the things we want to pointed out. One of the things we heard was about the entrance on -- the southern entrance on Spring Street, that the scale was disproportionate to the street. Not to the building but to the street. And we've

addressed that. We've pulled that scale down basically in half. We've reduced it to a two-story opening that runs all the way through from south to north to Thorndike Street, maintaining that accessible base of the building. Chris will talk more about all of the landscape in front of the building. But you also see our system of base -- the transition between base and tower, the top of the building, and those elements that I think give the building more personal scale, not to say it's still not a big building. It still is a big building, 24 feet smaller than it was. But a building that has a whole system of scaling devices that are now a basic part of that design approach.

I'm going to give you a few views and these are the former and current proposals. I really just want to point out those things

that remain constant. Again, that continuous base that will give us the opportunity for entrances, really all the way around the building, defined by this dark metal base, terra-cotta above. This is the west side of the building. And so you can see this is the residential side of the building, and there's a scale of openings here that's clearly different than the scale of openings in the commercial office portion of the building.

And then you can see the what I'm calling the texture, the three-dimensionality of those pieces that we have added.

We've shown you these views before. Again, the previous proposal on the top, the current proposal at the base. And we think we've maintained those elements that were most successful and clearly recast the tower of the building.

And then that, this long view that's from Cambridge and Third. And obviously this is a view that puts the building in its most immediate context. Its red brick context. But we're not, we're not seeking to connect ourselves to a very rigid historic precedent. We clearly want to be a modern building. We want to create those size openings that you can only create with modern technology. We want to create the glass cornus that clearly communicate that this is a building envelope and not load bearing brick or load bearing terra-cotta or material of that kind.

You've asked us in the past for some long views, and this is our long view from the Longfellow Bridge. Obviously the former proposal at the top. The current proposal. And, again, this is a view that we showed you before. Sometimes you find things as you go

through this kind of a review process and that clearly the building when it becomes more of a part of the surrounded texture, even though we're removing 24 feet, I think you have a sense of a kind of a scaling down of the building.

And now a long view, Third Street from Kendall Square, you can see the building as it was proposed previously. The building as it's proposed now. Interesting, this is -- the building in that foreground previously occupied by Vertex is terra-cotta, a different kind, a different color mix of terra-cotta, but again that kind of diversity that you will get in the building proposal.

With that, I will introduce Chris Jones.

H. THEODORE COHEN: You just have five minutes more of your half hour.

CHRIS JONES: I can do that.

H. THEODORE COHEN: Okay.

CHRIS JONES: Mr. Chairman, Members of the Board, my name for the record, is Chris Jones. I'm with Carol Jones and Associates the landscape architects of the project.

I want to start sort of where I left off at the last Planning Board meeting with one of the things that I brought up was that the experience and the process of working with the community and working with the city and some of the iterations of the previous design had generated a better design from where we were. At the last meeting to where we are now and working with the working group, some of the feedback that came back was really positive to trigger some alterations to the Spring Street park that

have really transformed that into quite an exciting space over where it was prior to that. And I'll walk you through that.

Really the predominant changes to the landscape are in this Spring Street pocket park. And if you recall where we were at the last presentation, the pocket park or the street -- Spring Street park was really, in a way was really driven by the grand stair that was responding to the lobby. And it was, I would honestly say it was one of the pieces that was driving and kind of hanging up that space because it was creating a place that was really a gesture or a stepping down from the office and it wasn't as much of a place for the neighborhood. And one of the big comments coming back was how can we make this park feel more like it's owned by the neighborhood and a little bit less owned by

the office. And so we said you know what, let's take this staircase out and put it in a different location and begin to scale back this stepping so that the majority of the park is sitting at grade on Spring Street and not at the upper shelf if you will.

And so what you're seeing is a transition where now the stepping occurs at a singular wall closer to the building, and the two end pieces that were turned outward and were just green planted retaining hedges have now been scooped out in the opposite direction creating seating pockets. These seating pockets have actually increased the overall usable space within the park and create it for a nice, interesting mix of use. There's -- and when we started to develop the materiality of the space, we wanted to think of it as a neighborhood backyard. The things

that are familiar to the community; wood, open lawn, wood fencing, walls, water for tranquility. And we begin to incorporate those elements into the space. So what you're seeing here is a little bit of that notion, sprinkled in. A wood deck, at grade wood deck with vegetation growing through the wood similar to this image you see on the right here.

An open lawn for play, for the kids. A little bit of a quiet, tranquil water element that provides some white noise into the space.

Pergola structures that provide some shelter at each end of the space, possibly with vines hanging over them. Maybe there's an options for the vines that speak to the community and the history of the community as well and the material that we choose.

And then you can see that there is

still circulation up to the lobby and office entry. It's a bit more of a discovered access and not such a dramatic access was created from Lopez.

So some sections through that so you can understand, on your right is Spring Street, the open park space, the vertical transition in grade up to the office level, and some views. This is a view from Third looking back towards Second. You can see the park space. These pockets at each end. The wall that -- I should point out we're still working on some of the materiality of these walls. We want them to be soft and inviting and reflective of a neighborhood residential scale. So not only the walls you see on the ends and the wall here, we see that as a green vegetated type of wall, but we're still working through those to get that scale

right.

And then lastly an overhead view, a little bit above Second Street, you can see the Pergola with the vines here, the upper level which is the office space, and the at grade green space with the two anchoring sheltered pockets preceding.

And that concludes my presentation.

Thank you.

HUGH RUSSELL: Thank you, very much.

So we will now go to public comment.

As I said before, Michael Hawley is going to --

MICHAEL HAWLEY: I need assistance plugging this in.

HUGH RUSSELL: While they're doing the technical thing, are there any other groups that want to speak? I see Barbara there.

So my question was are there any other groups that want to combine their time to do a unified presentation?

IRAM FAROOQ: They haven't discussed it.

MICHAEL HAWLEY: Thank you. Michael Hawley.

THE STENOGRAPHER: Can you spell your last name?

MICHAEL HAWLEY: H-a-w-l-e-y.

From 101 Third Street speaking in opposition to the proposal.

JOHN HAWKINSON: A little louder, please.

MICHAEL HAWLEY: I'm speaking in opposition to the proposal. I reside at 101 Third Street in the shadow of the dark tower of mortar. I'm representing a number of other neighbors here tonight. Bethany

Stevens could not be with us. Seth Teller tragically passed away on the first of July. Seth was ferociously opposed to this proposal and instrumental in creating a new neighborhood group. In a way, I'm also speaking on behalf of Andrew Craigie and James Green in that I represent the James Green Condominium Association and Andrew Craigie in a sense is represented by hundreds of members of the Neighborhood Association of East Cambridge.

What I want to do is three simple things: Kind of like the icing on the cake, the cake, and then a little ice cream. Some telltales, which way is the wind blowing, a few legal points that I think are germane, since our lawyer couldn't be here tonight, and then a quick "what if" scenario. The way these add up, I think it will make sense to

want to deny the permit.

First of all, the community is up in arms as you know. East Cambridge Planning Team has shot down this proposal not once but twice and not by a squeaker, but by a wide majority.

The Neighborhood Association of East Cambridge is staunchly opposed. You've seen dozens of letters. They all demand something better. And hundreds and hundreds of petitions have signed petitions. Not only signatures but micro letters in themselves. I've read every one of them. They're very moving.

Our condominium association since we have standing as abutters, have raised some unusual legal concerns, and I'll get to those quickly. I'm not intending to argue a case but I do feel a case brewing.

Another telltale, DCAMM has failed us and has failed the city. It's like talking to a brick wall. A number of people, four or five at least, have written requesting further information on the transactions. All those requests fallen on deaf ears. They've been refused. DCAMM has utterly refused to cooperate.

City Council has filed a policy order -- unanimous policy order, '013. Remember this one? They called this -- the original building inappropriate and overwhelming. They pointed out the votes to reject the Special Permit by neighborhood groups. And they urged DCAMM and developers to work together in an expeditious and creative fashion to substantially reduce the impacts of this building. That didn't happen. As I mentioned earlier, DCAMM has been hopeless to

deal with and the impact reduction, while we appreciate the aesthetic changes, no doubt, they're much improved, but it doesn't move the needle in terms of fundamental impact as I think we all know. So the bottom line is the policy order seems to have failed.

The working group I would call a qualified failure. We failed to reach consensus. It was wonderful to have the opportunity to discuss these issues with neighbors. It's great to know that many of our concerns were picked up by the developer, but there was by no means a consensus.

A brighter spot perhaps is a new master plan process embarked upon by the city that's followed subsequent by Dennis Carlone's petition. The point of those processes is to recognize that when you have a huge project like this, one that's disruptive and

contentious to say the least, it makes sense to consider those more realistically in light of master plan, which we currently do not have. The Carlone petition is under debate right now, but it seeks to provide extra qualification by the City Council for big projects.

And finally I just want to remind people here that this is a mind boggling fiasco that brought us here and the challenge of repurposing it meaningfully is a tall order. I think Leggat McCall did a lot of the job with what they have and what they have just may not be doable. I'm not going to regurgitate the whole history here. I played it for the Planning Board last time. But it began with a gift from Andrew Craigie that created a civic center, buildings that were destroyed and forgotten but quite

charming at the time and would have been wonderful to renovate. Some of them are still there; the Bullfinch Courtyard. All of it would have been wiped away had this plan gone to fruition. And as you know, it was only partially built. Only the tower went up because the rest of it was a complete disaster. The building was investigated six ways from Sunday, the press had a complete field day with it. Obviously just whizzing through all this stuff. You can amuse yourselves by going back through the Boston Globe and reading it for yourself.

But here's a picture I think I find meaningful, and I suspect nobody on the Planning Board has seen. This is the front door to the Sullivan Courthouse building. It's never been opened. Those doors are bolted shut, may be welded shut. And the

reason is that they're 25 feet off the ground because the rest of the surface was never built. It's a front door to nowhere. And in other words, the turkeys who put this thing up didn't have the decency to at least remove the mistake, the unusable door. And when you try to tally up the costs of this mistake, it's hard to come up with a number. How do you put a price on the detriment that this neighborhood has suffered with for 40 years? What about the interest tax on 100 million for 30 years, all of which was paid by tax payers. I won't go through the details, but it's got to be hundreds of millions of dollars. I (inaudible) that Robert Healy, whom I never met, had it right. This building really would be best imploded. What are we waiting for? (Inaudible).

So those are the telltales and you just

have to ask yourself does the proposed application pass the sniff test? And which way is the wind blowing here? I recognize that's fully outside of your purview in terms of the technicalities, but I would add that that's part of the dilemma of this project. It challenges us. And we're confronted with the situation where it would be very dysfunctional to issue the permits for this building while the City Council has unanimously said you've got to reduce the impact.

Very quickly on legal. Five points. The 1813 gift is a deed in trust. We found no subsequent documents that rinse it away. We found no eminent domain legislation. No mention of it. Essentially Andrew Craigie made a public gift to the inhabitants of this county forever. The green works come from

that original conveyance. It was for a public purpose and for no other purpose whatsoever. It specified the buildings must be in conformity. To say the least the Sullivan building was never in conformity. And that inferior buildings would be pulled down. The intent of this gift is unambiguous. It was a founding gift to establish a civic center.

Consider for a moment quickly immunity and non-conformity. And I'm going to breeze right through this. Immunity is like a Kepler vest, it does not change the law. It's a temporary shield. When you take off the Kepler, you can be hit by a bullet. It does not magically alter the legal status of the courthouse. And in particular Sullivan Courthouse was and is unlawful with respect to the Zoning Regulations and immunity

doesn't change that. It doesn't turn an illegal non-compliant structure into a legally conforming one, nor does it turn a legally -- turn it into a legally non-conforming structure. It's just immunity. After the immunity goes away, what you have is unlawful structure. It's grossly non-compliant for Zoning. That's not the same as legally non-conforming. And a Special Permit doesn't fix that, you need a Variance.

Let me say briefly something interesting about non-conformity. As we worked through the case law, we've been struck by Mendes versus Barnstable, which at a high level says you can't follow a Variance with a Special Permit.

Now, under Section 6 in order to become legally non-conforming, lawfully

non-conforming and eligible for a Special Permit application, the structure use first must be lawful but it matters how and when a thing becomes lawful.

The how. The thing doesn't qualify as lawful if it needs a special exemption in order to be lawful, like a Variance does.

And when. Causality matters. The structure of use has to proceed the Zoning regulation that prohibits it. First it goes up legally and then Zoning tighten things up. That creates. Damn it, excuse me.

(Technical malfunction.)

Back to Mendes, and I promise I'll be quick with these. Thank you for your indulgence.

So, as I said, it matters how and when a thing became lawful. And the clear ruling of Mendes is that for the purpose of Section

6, a Variance does not qualify for lawful inclusion. It's very interesting.

So in particular with the Courthouse, did it precede the Zoning that made it non-compliant? No. There was existing Zoning, 1960. Floor area ratio 4.0. Courthouse was roughly 10.0. 2.5 times Zoning. It was unlawful under existing Zoning when built.

How did it become lawful? Could it have been built if it was not immune? Well, I suppose a private entity could have got a heck of a Variance to put that thing up. But if they did, they would never get a Special Permit to modify it under Mendes. So the answer here is no. Immunity served as a kind of de facto Variance. Mendes applies. And that's actually not my line. That line comes from Rudy Cass. In doing our homework we got

in touch with Judge Rudy Cass who wrote the ruling. We presented him with this problem. And he said, you know, a Variance is micro-immunity for a particular Zoning Regulations. That's not much different from immunity from lots of different Zoning Regulations, therefore, Mendes would apply. I'm not going to go into Durkin, but we're convinced it's not relevant. And under this logic, the courthouse is simply not a non-conforming structure for the statutory purposes for Section 6, modification is part of the Variance not a Special Permit.

MEPA objections. We filed many. I suspect one or two other neighbors are going to gloss into this later, probably dig into detail. We all appreciate the need for waivers to reduce bureaucracy both on the MEPA side and the burden for developers, but

not when the city's health is at stake and not when people are complaining. In this case, MEPA violated many of its own violations in proposing to issue a waiver. As you know, Third Street's already a daily hazard and the courthouse is right -- damn it. The traffic....

(Technical malfunction.)

Just today I learned that Richard Rossi filed another letter to the city putting more friction into the MEPA process. Our legal letters have gone in. It's not a lot of fun to fight these things, but when you look at the daily plot two hour traffic jam and think about of all the exhaust fumes coming up, the idea of filing another 4,000 or so daily trips per day and adding to that in a residential neighborhood where, you know, young parents are strolling with babies and

puppies, it just doesn't make sense. We should all insist on a full environmental impact review.

Finally the overall detriments here are, I think, unquestionably unaccessible -- unacceptable. We all know the purpose of the Zoning Act, and I'm not going to remind you of those. We know the purpose of Special Permits overall. You have to be consistent with design objectives, not impact traffic, preserve community values, and so on. I want to touch on some of the detriments very, very quickly.

The urban plan. Supposed to use finely graduated heights to create transitions in scale. A 300-foot roughly tower, less a couple of floors, abutting 35-foot residence, it doesn't seem to achieve that. I'm not gonna replay this. You saw it last time.

Suffice it to say, though, that everyday there's two thirds of a mile traffic jam on Third Street from the McGrath Highway from Third, down to Binney and beyond. It's a parking lot. And this building, again, is right at the choke points. So as you drive passed these cars belching exhausts none of them are (inaudible). You know, it's a problem.

This is the parking data. I'm not a parking scientist. I'm not gonna really gonna question our Traffic and Parking office. All I know is when you plot the daily data for the last three years, you get a line that looks like that. It shows the demands increasing about 100 spaces a day. If it were my parking garage, I would be arguing to the city to put another floor or two on, because independent of an extra few

thousand visitors, this thing is going to be out of space.

So lighting is a whole new category of detriment.

Winds has always been a problem. This building shreds flags. And so the bottom line here is, and again, you're the experts on Zoning Law, not me, you've got a whole Chinese menu of options to choose from in terms of how you deny the permit. What I think this does boil down to, though, is kind of five minutes versus five years. If the permit is denied resoundingly, and if we as a city do not want this development, if we send it back, then it goes back to DCAMM, a failed attempt to dispose of a real fiasco and maybe we've got a chance to put it right.

If you approve the permit, there's a good chance it will land in Land Court for

five years. And I wouldn't want to condemn the developer or the community to that process particularly in a case in which the community would be pitted against City Solicitor and we'd be arguing against the person whose salary we pay.

Finally just to finish up, the ice cream I promised. Marsha McKeon used to say that human beings have a nervous system that predisposes us to accept increments and not continuities, that's why these classic urban planning encroachments are so perplexing.

This is a panel of cartoons from Robert Crumb called The Short History of America. It shows the same block over time slowly evolving into kind of a place not worth caring about.

And there are other approaches to this problem. The -- currently the only solution

we're being presented is the one proposed by Leggat McCall and that's driven fundamentally by DCAMM. It requires repurposing much of the building as possible. It requires -- it's in a sense the most impactful possible reuse of that volume in that space, and you do have to question fundamentally why that would ever be appropriate.

This is an aerial view of another three block civic center. This happens to be in Portland, Oregon. It's surrounded by giant buildings. Each one of them by the way is taller than the Sullivan Tower. When that sort of urban development occurs, civic spaces, public spaces, green spaces, are highly prized. It's interesting to me that Mr. Lowndale was sort of the Andrew Craigie of Portland. In about the same year, around the early 1800s, he donated those blocks.

And they're kind of small but significant lungs in that city. The para-line I would give you is here: Andrew Craigie gave these three blocks forever to the people of this vicinity. This was the civic center around which a sub-city, East Cambridge grew.

Here is an alternative. This is just a what if. You can throw it away. It's just meant to get a few people thinking differently. When you look at the area from a helicopter, you see massive urbanization. Five million square feet at North Point. A million square Galleria mall, and a couple million feet of condos and commercial spaces. Giant industrial buildings in the back allies. New development along Third Street, quite significant. You all know this. Much of this stuff is approved under your watch. Kendall Square, a huge concentrated urban

center. One Kendall going through a much needed renovation of its master plan.

There's a great big belt of intense urban development around this neighborhood. The blue stuff is pure residential zoned for 35 feet, quiet families, quiet side streets, and right in the middle, you have the civic center that Andrew Craigie donated. So here's a possible way to deal with it.

Step 1, remove the damn building.

Step 2 -- step 2, pay for it. I think it's ironic that last year we spent \$48 million to fix Andrew Craigie's bridge, and nobody flinched. It would cost less than that to remove the building. You could do it for putting up a toll for about a year on that stretch of road. End of story. Why can't we repair Andrew Craigie's gift if we can repair his bridge?

Now, when you look at the civic center, you immediately start doodling, as architects do, the pink buildings are historic and this suggests kind of attractive sight lines. So let's take a look at those quickly.

From Lopez Street you see the stately Registry of Deeds building. From Third and Spring, the Bullfinch Plaza. From kind of Second and Spring, roughly you see quality row the brownstones, the church that I live in.

H. THEODORE COHEN: Mr. Hawley, could you wrap up?

MICHAEL HAWLEY: Almost finished. Thank you very much.

So there's your instant park. We've fenced off a little stretch of Thorndike Street to make it more pedestrian friendly and added a small marketplace that's

relatively the size of the core Pike Place Market in Seattle. This could be amenity for the surrounding intense urban cluster. A little facility like that could be a breadbasket for fresh farm produce from across New England. Now, I could just have easily have shown half of the Sullivan Tower with different views, a music conservatory, something that would provide a unique experience and help revive the almost lost civic center. But this is a simple idea. It's one of many that can not be considered under the current framework. We call it the Green Place and Craigie Market. Simply food for thought.

So in conclusion, I think we all agree here, this building is (inaudible), the community marched against it 50 years ago. The government failure is truly pathetic and

something we should all be ashamed of and want to fix. Many of us come to feel that this is our chance to do that. And we need to find a viable solution and that starts with denying the permit and recognizing that we can do better.

Thank you very much.

HUGH RUSSELL: Okay, it was a show but it's actually more helpful for us to see a show of hands of the people in the audience who basically agree with this. So if you'd raise your hands.

(Raising hands.)

FROM THE AUDIENCE: Agree with what?

HUGH RUSSELL: Mr. Hawley.

FROM THE AUDIENCE: And how many live in the neighborhood?

HUGH RUSSELL: Okay, thank you. Now we will go on to the list.

JAMES WILLIAMSON: Well, how many disagree?

HUGH RUSSELL: I'm going to ask that same question after the speakers. I'm going to try to find out what people are saying and then if people have raised their hands 25 times, they may feel they don't have to come up and say I agree, I agree, I agree. That's my plan here, to try to use that process to see where, to see what everybody's thinking, what they're agreeing with.

So, I'm wondering -- there's only one microphone. It's a long way from a lot of people. We're going to get two gentlemen in the first row -- Mike, move back a couple rows. If we can use that first row there as kind of a staging area for people who are about to speak. And so -- the first six chairs there. So I'm going to read off six

names: Susan Johansen, Mary Ellen Doran, Greg Zaff, Jane Myers, and Barbara Broussard. The first is Susan Johansen and when she comes forward and then the others can, if they would come down and get close.

SUSAN JOHANSEN: Thank you. I'm Susan Johansen and I live at 150 Cambridge Street, one first. And I do agree with Mr. Hawley that that building is a monstrosity and it's not very nice to look at because I can see it from my windows. However, I honestly don't think that imploding the building is going to happen because it was discussed at many meetings, that it was -- there was no one there to may for it, etcetera. And as much as I would like to see it to happen, I think we have to use our judgment that in these times we need money and I don't know where the money would

come from. With that said, Leggat McCall worked on our building and did preserve -- they have an award from the Cambridge Historical Society. They were very good to work with. When we had concerns and questions, they met with us and worked with us. I do think that this plan may not be perfect, but everyone involved that came up with this plan and worked with it, compromised, discussed it, and so forth, and I think it is a plan that could work if everyone involved made an effort and realized that this is this economy, this is now, and we're not gonna make that building go away just because we want it to. I wish we could.

Thank you.

HUGH RUSSELL: Thank you.

Those that agree please raise their hand?

Please hold your applause, but raise your hands if you agree.

(Raising hands.)

HUGH RUSSELL: Indicated.

And next is Mary Ellen Doran.

MARY ELLEN DORAN: Hi. My name is Mary Ellen Doran, D-o-r-a-n. I live at 48 Spring Street. 48 Spring Street is mid block. Basically my front yard is the Sullivan Courthouse. We moved in in July of 2011. I started attending meetings in September of 2011. I've attended all of the meetings that I've been in town for, and NAC meetings, all the meetings. I was part of the working group. I think that I'm an informed abutter in this case, and I want you to give the Special Permit to Leggat McCall for this building.

Very quickly, this whole project comes

down to asbestos and money. Removing the known cancer causing agents is a really expensive job. And I'm certain that the state's not gonna do it. We have a developer who can get it done in less than two years and give us something meaningful for the community. We have a really slow working Cambridge Street and First Street. If you get a working office building on the conner of Third and Spring, you're gonna bring a lot of people into the community that will bring a lot of new jobs and new restaurants and new shops and new vibrant -- vibrancy for our economy. East Cambridge is not a sleepy town. It is an urban, vibrant community. Single-family homes have been converted to multi-family homes, bringing lots of cars, and our parking issue has a lot more to do with that than it has to do with this

building. Commuters are going to be coming in and out, but they're not going to be parking. The only people that can park are residents of Cambridge. And there aren't going to be 1500 residents of Cambridge bringing their cars to this building every day. There are 8,000 residents of East Cambridge. NAC, which has worked really hard has gotten about 65 people to attend their meetings and another five or six hundred to send in letters. That's not a majority. I just want to see this move forward. I'm a direct abutter. If you bring the building down, my 100-year-old foundation won't survive.

Thank you.

HUGH RUSSELL: Thank you.

How many people agree?

(Raising hands.)

HUGH RUSSELL: Thank you.

Greg Zaff.

GREG ZAFF: My name is Greg Zaff. I live at 115 Second Street with my wife and daughter. I've lived there for 12 years. I will say that I found Mr. Hawley's presentation very interesting and compelling. He's awfully smart. The problem is the building is there. If we were designing from scratch, and I don't think anybody in this auditorium would build that high a building, but it's there, and I look at this issue much more practically. I do not think that any developer nor the state is gonna come along, knock the building down for 30 or 40 million dollars and do something much more modest. I also think that what Leggat McCall is proposing is an enormous improvement over what we have now. And I'm actually very

excited to see that move ahead. What I don't want to do is see a chain link fence around the building for five or ten years. And my fear is that if this doesn't move forward with Leggat McCall, no other developer's coming forward to try to do it again and we're gonna be looking at what we're looking at right now. And that is a real eyesore. So I am -- I also think that Leggat McCall has been responsive and adaptable and is trying to do its best to listen to the community and make adjustments. So I am a big supporter moving forward.

HUGH RUSSELL: Thank you.

Agreements?

(Raising hands.)

HUGH RUSSELL: Jane Myers.

JANE MYERS: My name is Jane Myers.

I've lived in East Cambridge since 1976. I

bought here luckily in 1980 when no one wanted it and I look at the courthouse out of my bedroom window. And I, I hated it architecturally and always have. But it was here when I bought. I could have bought somewhere else. If it was too much for me. Now my main concern is if Leggat McCall does not start on it and get the asbestos out of there and people decide to tie it up in Land Court for five years, and knowing how well the state knew when that was built, you know the fine construction that was done, that we're going to have asbestos leaking in this neighborhood which is much scarier to me than traffic or anything else. I do not want that building to stay there or get tied up. And I'd like you to give them their -- until five weeks ago I was against this because I thought what Leggat McCall was doing was

ugly, and I do honestly hate ugly brutal architectural. And I feel like they really responded and came back with something that I don't mind looking at out of my bedroom window. So please give them what they want.

HUGH RUSSELL: Thank you.

Agreement?

(Raising hands.)

HUGH RUSSELL: Okay.

Barbara Broussard.

BARBARA BROUSSARD: I have --

Barbara Broussard, 148 Third. I'm a direct abutter. I haven't lived here as long as Jane. But I've lived here for 21 years and I bought the house and the building was there. I've seen the neighborhood change from a middle class neighborhood to one with million dollars homes. It's no longer quiet. But one thing that has happened with the

development of Kendall Square is that I feel safe to walk down the street, down Third Street, and get on the Red Line which I never felt that I could do maybe eight or nine years ago. So the traffic that you see on Third Street comes from Kendall Square. It will not come from this building. The traffic on Third Street is gonna stay the same because many people will leave the cars, they're coming from New Hampshire, and that's what I see in the early morning and the early afternoon, but after that there is no traffic. It's quite good. Office buildings usually close in the evening, so the entrance and exit for these cars, and I've used the municipal garage, funnels everything on to First Street. We're in the process of correcting First Street to move it a safer way over McGrath Highway and into North

Point. We have enough residential units being constructed so that we can convince people to live and work in the same area. With development comes amenities; restaurants, shops, and services. I really like what I have today walking down Third Street and hope that First Street and the rest of the area becomes more developed. Please approve the permit. As an abutter and I represent my neighbors on the other side at 146 Third Street wish for this to happen. We are very unhappy with the fence.

Thank you.

HUGH RUSSELL: Show of hands?

(Raising hands.)

HUGH RUSSELL: Thank you.

Chris Kosinski.

UNIDENTIFIED SPEAKER: Hi, I'm not Chris Kosinski. I'm Thierry Curis. I would

like to apply the rule of the two kids waiting that I would like to bring back home if I could speak now if you don't mind.

CHRIS KOSINSKI: You can. Go ahead.

THIERRY CURIS: Thank you. So I'm Thierry Curis, T-h-i-e-r-r-y C-u-r-i-s. I live -- I've been living in Cambridge for eleven years. East Cambridge now for nine. And what I like about -- I work -- I'm a small business owner. I own and run a high tech company in Kendall Square and I live in East Cambridge. What I like about Cambridge as opposed maybe to Boston or maybe New York City is that it's a city that has a human side. And I think that's a lot of people in Cambridge like that part of the city. What I'm afraid of was that project is that we're going to extend. We're gonna replace a place that is nice to live in with another

building, with another big city with big building. The view that was presented from Kendall Square what the long view that would show from Kendall Square really shows clearly that it would be an extension. That's the start of an extension of Kendall Square into East Cambridge. It was very clear. It looked like it belonged to Kendall Square. And that's why I'm opposed to it. And I'm not the only one being opposed to it. Because we, a few people in the neighborhood have right around the local businesses and asked them what they thought about the building and whether they were ready to sign the petition against the building or in favor of the building. So against the building. So this is what about 20 people, local businesses that if you like the city, East Cambridge you know very well and I'll give

you the list after this, but what they all said or those people is that we believe that we were best served by the redevelopment of Sullivan Courthouse, that is approximately half as big as currently is, which is today 500 square feet but would be more something more around 240 square feet or the current zoning, 180. We are in general in support of the redevelopment of the Sullivan Courthouse but believe that a significant smaller building will achieve the optimal balance of benefits, including additional customers, jobs, tax revenue, and the estimated makeover of the building. And with that (inaudible) overwhelming the infrastructure. We believe that bigger is not necessarily better. And that a moderate-size building more in scale with the neighborhood and (inaudible) the local structure would be something more

sensible and beneficial. So I ask you to listen to the neighborhood, business neighborhood and residents to deny the proposal.

Thank you.

HUGH RUSSELL: Thank you.

Show of hands?

(Raising hands.)

HUGH RUSSELL: Okay, is that you Chris?

CHRIS KOSINSKI: I'm Chris. Hi, my name is Chris Kosinski. I'm an abutter as well to the 77 Spring Street.

JOHN HAWKINSON: Could you use the mic?

CHRIS KOSINSKI: First time anyone's ever asked me to use a mic.

My name is Chris Kosinski. I live at 77 Spring Street. I'm an abutter. Not many

live as close or as long as I've been a resident for 43 years. I'm third generation in the same address. The courthouse to me growing up was a place where I would play street hockey, stickball in the evenings, and it was a great little stadium. As years went on and I got older, I realized what type of eyesore it was and what type of issues it brought to the neighborhood. I am fully behind the development of this building. I would love to see the building change. I would love something viable in the neighborhood. I'm lucky enough to have -- want to make my home down the street, but I also own a small business, a restaurant that's up on Cambridge Street. And I feel as though the building, the way that the developers are willing to bend and make it be something that is not so hard to look at. I

mean, in a perfect world we would knock it down and make it a park, and I don't think anyone in the room would deny that. I don't think that will happen. I don't trust the state to do that. I think the building would make the perfect bridge from Kendall Square into the North Point into the Galleria Mall to bring some more vibrant activity there as opposed to everyone just kind of disappearing into a wall behind the Galleria and being empty at night. I don't believe the traffic impact will be minimal at least. It's in and out. I can't see any more traffic in the courthouse with workers, prisoners, visitors, vendor, trucks. People talk about bedroom windows being viewed. I'm lucky enough that my house is built the long way. I'm fortunate enough to have a backyard. That's where the entire building is. I lived my

entire life with prisoners yelling out the windows at me. If anyone would have issue with it, it would be me. But I really don't. I'm behind it 100 percent and I hope you issue the permit and move forward. It's not something we're talking hundreds of years for. And hopefully Lechmere moved some day because they talked about that before I was born, too.

Thank you very much.

HUGH RUSSELL: Okay, the next --  
show of hands?

(Raising hands.)

HUGH RUSSELL: The next group of six: George Sommer, Mark Rogers, Olga Slavin, Stephen Cole, and Marty Kingsbury. That's five. And Joe Aiello.

GEORGE SOMMER: Can you hear me  
okay?

HUGH RUSSELL: Sure. Are you George?

GEORGE SOMMER: I'm George Sommer. I live at 29 Otis Street. Still on one block from this terrible building. I think that Mr. Hawley's presentation was very compelling about how bad it looks. I think all of us agree to that. Unfortunately, this building is going to become, already is, not only a health hazard, an eyesore, and is going to become a safety hazard with a chain link fence. I support 100 percent the Leggat McCall proposal because we have to act now. Get this building down. The financing that the that Mr. Hawley proposed will never happen. The state is not a welfare group. It's not gonna put out 48 million to take this thing down. It's got to be done with the developer who makes some money out of it

and have a vibrant, multi-purpose, attractive building that will bring the vibrancy to the neighborhood. So I'm 100 percent behind it.

Thanks.

HUGH RUSSELL: Thank you.

Show of hands?

(Raising hands.)

HUGH RUSSELL: Okay. Next is Mark Rogers.

MARK ROGERS: Good evening. My name is Mark Rogers. I reside at 390 Cambridge Street. My family has resided and conducted business in the neighborhood for four generations (inaudible). I stand here tonight to speak in favor of the development at 40 Thorndike Street. There are several reasons why I encourage the Board to approve this project. I appreciate this opportunity to highlight just a few of them.

I've attended and listened -- I've attended, listened, and shared my thoughts throughout the course of the working group meetings from the viewpoint of a resident, local businessman, and board member of the East Cambridge Business Association. I have heard both the pros and the cons, and frankly I believe that the pros far outweigh any inconveniences imposed by this project. I've been impressed by Leggat McCall's transparency, integrity, and generosity with regards to the amenities offered to the neighborhood. I look forward to community meeting space offered on-site, the new and improved landscape, and retail located at the ground level which will serve to invite the neighborhood in. Additionally Leggat has generously to construct a 10 to 12,000 square foot neighborhood grocer located on the First

Street garage. The developer will not only absorb the cost of the build out, but furthermore it will subsidize the lease as needed to insure success and longevity of the operation.

There will also be a reduction in the height of the building. But I must admit I would much rather prefer additional amenities to the neighborhood. In the developer's defense this reduction was at the demands of those present in the working group meetings. I believe that this project will contribute towards the rejuvenation of the neighborhood. The new companies which will occupy 40 Thorndike Street will attract new and diverse workforce. There's a strong likelihood that these employees will indeed seek residency in East Cambridge. These folks will in turn drive demand for a high caliber retail and

restaurant uses which current residents may also enjoy. I believe that they will also contribute to a higher standard of residential accommodations which will in turn improve our neighborhood from an aesthetic point of view. These improvements will also improve all our quality of lives. From a financial viewpoint this project will generate approximately three million in new tax revenue to the city, as well as another potential one million from the First Street garage. Let's not forget is the commercial base in this city which contributes significantly towards our lower -- or relatively lower residential rates. Additionally I would be remiss if I do not mention the Commonwealth's obligation to encourage the asbestos abatement and financial gain through the sale of the

property which includes the density of the existing structure. We are far more than a suburb of MIT. We are members of the community at large which includes citizens of the entire city and the Commonwealth that will benefit from this project moving forward. I've heard from those against the development that state the potential traffic and inconveniences and invasion of privacy from those looking down from the building into their backyards and windows, I'd argue that the financial benefits are -- financial and social benefits derived from this project administered by the state and to the less fortunate outweigh these burdens. Ultimately I believe change is good. I believe diversity is good. I enjoy living in a neighborhood that honors its past and is also open minded and willing to embrace both

change and diversity. I'd like to believe I reside among neighbors that put the betterment of the neighborhood, city, and Commonwealth first and their own conveniences second. I believe a fenced-in sick debilitated building left to rot would be a tremendous tragedy and an opportunity lost.

Lastly I believe that we're all in agreement in a way that the -- that the existing building today as it stands as a calamity. But it was Winston Churchill who once stated, and I quote: An optimist sees an opportunity in every calamity. A pessimist, a calamity in every opportunity.

I appreciate this opportunity to present my opinion. I thank the Board and my fellow neighbors for hearing me out.

(Show of hands.)

HUGH RUSSELL: Okay, thank you.

Olga Slavin?

OLGA SLAVIN: Hello, Olga Slavin, 17 Otis Street. I will be very short. I live on one first since 2006 and this building was built by Leggat McCall. 99 residents in our building signed the petition in supporting this project moving forward. I would like to attest to Leggat McCall professionalism. I found them to be committed and conscientious professionals. I also don't believe that we can do better is a plan. I still believe it's a slogan, and when the math doesn't work it doesn't work. I don't believe that anyone will come up with \$48 million just to make implode the building.

I would like to ask the committee to -- the petition to move Special Permit forward whatever.

HUGH RUSSELL: Thank you.

Show of hands?

(Raising hands.)

HUGH RUSSELL: Stephen Cole?

STEPHEN COLE: I'm Stephen Cole from Hurley Street, 265. I actually don't like speaking in front of crowds. And so many people have expressed I think some of my basic reasons for being positive about this construction with Leggat. I am in favor of the proposal. But I sat there and I thought to myself why did I come to Cambridge 16 years ago? It was for the soul of Cambridge. And we were looking at the building and thinking about the years that we've watched that building. I bought my home with that building, you know, a few blocks away. But it was the reason of the people, the school systems, the tone, the acceptance in this town. The ability to disagree strongly in

this town. And I think that the renewing of that building and bringing in new energy, bringing in what they have done to change both the greenery areas that they're doing, the type of open entrepreneurial access that they're giving in the building -- I work in the computer industry, and that's a space that some small entrepreneurs could really enjoy without having to spend a lot of capital. So I believe that this is a good choice for our neighborhood, and I do believe that I, and hope, that our choice to do this will take care of the city's viewing and tracking of the construction that comes around in particular, the mitigation of the asbestos and looking at our neighborhood going forward with the addition of people coming in. And just also addressing the existing traffic issues that we do have,

which I actually am okay with because we have brought in so many new businesses that I can walk from my home to find restaurants. I can walk from my home to retails that have come into the neighborhood, and I am very excited about what this rejuvenation of this building would bring in as far as extras occurring in our neighborhood and for the City of Cambridge.

Thank you.

HUGH RUSSELL: Thank you.

(Show of hands.)

HUGH RUSSELL: Marty Kingsbury.

MARTY KINGSBURY: I don't have much that's new to say so I'm not really gonna say very much at all except that the asbestos in the building is something that I do find very scary, so I'm thankful to Leggat McCall for coming in to get rid of the asbestos out of

that building and to do it in a way that's safe. And that kind of what's happening to our neighborhood, I think I'm very sad by and I'm very -- and I'm a little -- I'm very scared of the division that has happened in our neighborhood and how it is that I do hope the rejuvenation of this building can bring us back together and just bring the foot traffic back.

Thank you.

HUGH RUSSELL: Thank you.

(Show of hands.)

HUGH RUSSELL: Joe Aiello?

JOE AIELLO: Joe Aiello,

A-i-e-l-l-o. I don't need this as well.

I live at 207 Charles Street. I'm in a lot of pain so I'll be quick because a lot of people in front of me have already kind of said the main points.

I unlike a lot of people in this room -- I've only been here a short time. My wife and I moved here in the fall of '09, but I'm from Chicago. I'm no stranger to big buildings and diversity and urban renewal and things like that, and things like traffic. But I also represent the next generation of East Cambridge people. My wife and I want to raise -- start a family, raise them here. Raise the kids here. Go through the school system here. Buy a house here. We want to stay here. And I think being part of that generation we understand that progress is -- living in a city progress is restaurants, retail, businesses, jobs, tax revenue. These are things that are living in a city that I see as major benefits. Things that are not progress, is just outright ugly nimbyism and acting like urban, city parking is a

privilege. I'm sorry, is acting as if urban parking is a right, not the privilege. We live in a city, parking's tough no matter where you go. It's the City of Cambridge not the Village of Cambridge. And so I understand that, you know, these things, you know, you're gonna hear them, you know, most people are gonna talk about to this building and parking and traffic and yadda, yadda, yadda. But in the interest of progress and for the generations to come like myself that want to come here and stay here and live here, support this building, pass this permit, let's get to work. Let's get working on progress and not going back into ugly history lessons, things like that. Let's move forward. We'll move through the future. This is progress.

Thank you.

(Show of hands.)

HUGH RUSSELL: And next group of six: Allen Poirier. Whoops. He didn't wanted to speak.

Charles Teague, Juan Goris, Leroy Ward, Susan Johansen, Jules Kobek, and Helen Kobek.

Mr. Teague.

CHARLES TEAGUE: Charles Teague, 23 Edmunds Street. I'll be brief as well. As you might expect I was just going to try to once again bore you with talk about lighting. I was happen to hear them describe the building as plangent. That concept, as you know, I'm on the City Manager's lighting task force and I can give you my opinion that right now there is no control on interior light intruding into peoples' homes and there won't be in the future. So it is up to the -- it's up to the Planning Board to

consider this and to consider the testimony of the proponent which, in which describes proposed tenants of engineering and software and some other that I can't remember, but I know that they will all work well into the night. So I basically ask for one simple thing, is that if you do grant the Special Permit, I would like you to set the precedent in asking for a condition of automated blackout shades be installed on the commercial spaces. Not on the residential, but on the commercial spaces.

Thank you.

HUGH RUSSELL: Thank you.

Juan Goris.

FROM THE AUDIENCE: Supporters?

HUGH RUSSELL: Oh, sorry.

Hands?

(Raising hands.)

LEROY WARD: Hello. Yeah, I have children, also. I have to get home. My name is Leroy Ward. And just for the sake of time, a lot of people before me were for the proposal and I also am for the proposal. So I'm not -- I'm a resident of Cambridge, lifelong resident of Cambridge, and this is progress. The building's vacant, the building is there, and something needs to be done with it. And I hope that this Board does pass the proposal and progress can go forward and everybody could be happy.

Thank you for your time.

HUGH RUSSELL: Thank you.

Hands?

(Raising hands.)

HUGH RUSSELL: We're only a short way through the list. So is this a different Susan Johansen?

SUSAN JOHANSEN: No. Unless there's another one. I may have repeated me, I don't know.

HUGH RUSSELL: Okay, then Jules Kobek? And are you together?

JULES KOBEEK: No, we have different things.

HUGH RUSSELL: Okay.

JULES KOBEEK: So my name is Jules Kobek. I live at 69R Gore Street. Gore, G-o-r-e. And I've lived in East Cambridge for 18 years. And I am opposed to this Special Permit because I think that the neighborhood needs a smaller development than what is proposed. I frequently walk down Third Street to get to the T, and while I do appreciate feeling safer going down there, I really hate the atmosphere. I find that development around Kendall Square to be

sterile and ugly and lacking in human spirit. And I -- because things were plopped down there without enough thought and it didn't organically be developed, and I want to avoid having that horrible atmosphere spreading up to near where I live. I think that if the proposal is -- the Special Permit is denied and DCAMM has to go back to the drawing boards and open up another RFP, I know that eventually there were maybe six or maybe eight developers who wanted to us to have -- who had proposals for this site, I'm sure that there would be other developers who would answer an RF -- respond to an RFP and that they and DCAMM would be more likely to respond to the needs of the neighborhood and have a better development than what is proposed.

HUGH RUSSELL: Thank you.

Hands?

(Raising hands.)

HUGH RUSSELL: Helen Kobek.

HELEN KOBEEK: Helen Kobek. I live at 69R Gore Street, Cambridge. I would also like to ask you to deny the Special Permit. .I echo what all the other people who have said they would like to -- same reasons, traffic. What Mr. Hawley put forward I respect and I appreciate and respect everything he said about the proposed development. I want to speak from a personal perspective. I've lived here for 18 years and I'm a legally blind person and I feel by adrenals, feel the difference between the years of the Sullivan Courthouse was operating at full capacity and the number of years when the Sullivan Courthouse was lying more fallow. And when I say "by adrenals," I

mean I had way fewer close calls with cars in the last number of years that the Sullivan Courthouse was more lying fallow. The more traffic you put running down Third Street, running down Second, I'm a functioning, active person and I use a cane sometimes. The number of times my cane was clipped by cars that saw me as being an object that was getting in the way of their future rather than a human being, has decreased substantially since the traffic has become less and since the courthouse has been quieter. So -- and I really believe that the more traffic you have and in addition the more traffic you add, the more there's a sense that people like me, elderly people also, people who are using strollers, and kids who are learning to ride their bikes, that we are all viewed as objects that are

getting in the way of the futures of people who are driving around. So my -- me and my adrenals and the fear that I have when I have very near misses ask you to deny the Special Permit, send it back to the drawing board to have it reevaluated, look at alternatives that bring the height down substantially to a much more human level.

Thank you.

HUGH RUSSELL: Thank you.

Hands?

(Raising hands.)

HUGH RUSSELL: Thank you.

Okay, next group: Dan Colonnese, Louis Bacci, Fabrizio Galili, Paul Tremblay, Paula Frances, Rhoda Fantasia.

So Dan?

DAN COLONNESE: Dan Colonnese.

JOHN HAWKINSON: Use the microphone,

please.

HUGH RUSSELL: Could you spell your name for the record?

DAN COLONNESE: Sure. It's a hard one. It's C-o-l-o-n-n-e-s-e.

Yeah, hi, I'm Dan Colonnese. I've been a resident of East Cambridge for nine years and I've never felt the need to come and attend a Planning Board meeting or learn about Zoning in the past, but I felt I had to speak today because I felt this project was so detrimental to our neighborhood. I mean, in short in these plans, there's no parking. If you've been to the First Street garage or the Galleria garage, they're mostly full most days. I've worked in several of the office buildings nearby, and I know the people who commute in from New Hampshire or from 495, and I mean parking's always an issue as

you've heard several times this will bring 2,000 cars to the neighborhood everyday.

Now, I'm sure if you were to approve a 20-story building in, you know, this neighborhood, you would understand infrastructure that's required and to bring that many cars down First Street, Second Street, and Third Street will really make traffic just that much more of a nightmare. I'm sure you realize, you know, there's ways to remediate this. If you remove some parallel parking and widen the lanes, you could bring more cars. If you added some levels of parking, you know, the neighborhood could accommodate these buildings, but there have been so many new commercial developments with the minimal amount of parking already put in recent years, that the garages have reached capacity already.

And then just finally I'd like to ask you from a common sense standpoint is it, I mean, I understand the legal ambiguities or the legal controversy here, but is it in any way fair that, you know, one private property owner can build 20 stories and the private property owner across the street can build three stories?

So thank you.

HUGH RUSSELL: Thank you.

(Raising hands.)

HUGH RUSSELL: Okay. Louis Bacci?

LOUIS BACCI: Good evening. Louie Bacci, 56-year resident of Cambridge. You got a chance to breathe a new life into this building. It's existing. They're not gonna take it down. We're all about reuse and green initiatives. Let's put this back on the market. I'd like to go forward with this

permit.

Thank you.

HUGH RUSSELL: Thank you.

(Show of hands.)

HUGH RUSSELL: Fabrizio Galili?

(No Response.)

HUGH RUSSELL: Okay. Paul Tremblay?

PAUL TREMBLAY: Hello, my name is Paul Tremblay. I'm in favor of this project. I reside at 65 Clay Street. I'm the owner and I'm a fifth generation Cambridgian. I'm also a member of the Carpenter's Local 40, Cambridge-based, and this would be a project that would give us shelter for our homes, foods, taxes. We need projects like this. And I'm sure the residents who will be the abutters will find it beneficial to them, too.

Thank you.

HUGH RUSSELL: Thank you.

Hands?

(Raising hands.)

HUGH RUSSELL: Paula Frances.

PAULA FRANCES: I'm Paula Frances Dugans (phonetic), I live at 46 Spring Street so I'm directly across like Mary Ellen. It's right there. I want to add my support to the people who are not in favor of this going forward. I do think for all the reasons that have already been stated. I wanted to add one more, and that is the lighting. Someone spoke about it, but I don't know whether, you know, there are now spotlights that are right in my front windows that light up my entire condominium. I've lived in Cambridge for 45 years. I've lived in East Cambridge for the last 18, and I'm not in favor of this going forward.

Thanks.

(Show of hands.)

HUGH RUSSELL: Rhoda Fantasia.

RHODA FANTASIA: Mr. Russell,  
Members of the Planning Board, Rhoda  
Fantasia, Four Canal Park. I would like your  
permission to concede my three minutes to  
Steven Kaiser who I believe is in the next  
group of six.

Thank you.

HUGH RUSSELL: Okay, the next group  
is: Steve Kaiser, Seth Diamond, Patrick  
Magee, William Strazzillo, Nancy Ryan, and  
Ian Levy.

Mr. Kaiser.

STEVE KAISER: Yes, my name is Steve  
Kaiser. I did leave a copy of the letter  
with the Board last week. I think each one  
of you has a copy of it on legal issues. I

have a letter tonight which is a summary of that. What I'm going to try to do in my comments is summarize the summary to keep things brief. My conclusions, by the way, will not be in agreement with what the developers want because I'm simply asking what legally can be built on this site. And I'm not saying it is less than what they're proposing. But it is also more than some of the citizens are asking for. So it's an intermediate result of just looking at legal issues.

Both the City Solicitor and Mr. Marty Healy have claimed that both the courthouse is a lawful pre-existing non-conforming structure. Neither of them has proven the lawfulness of this claim. Neither of them specified the elements of Cambridge Zoning that applied in the 1960s and '70's when the

courthouse was built; namely, Amendment 665 in 1960.

Neither of them identified the definition in the Cambridge Zoning Ordinance for non-conforming.

A Special Permit request fails when the applicant cannot define lawful pre-existing non-conforming.

When the permit request fails, the Board must reject the application.

As Board Members realized early in this review, a non-conforming structure is one that conforms to the Zoning at the time of construction, but no longer conforms when subsequent Zoning is passed. The courthouse did not conform to the Zoning Ordinance at the time of its construction. As such, the structure was unlawful and always was unlawful. At the time the courthouse was

built, the Zoning for the site required a maximum FAR of 4.0. As built, courthouse has almost twice as dense as Zoning allowed. As a government building and structure remains exempt from local Zoning, this exemption is provided by accepted rules of immunity associated with the larger concept of sovereign immunity. Such protections suspends and protects the property as long as it is used for public purpose. But this protection is temporary and disappears as soon as privatization occurs. The property now becomes obligated to conform to Zoning and to Section 6. The City Solicitor has placed major emphasis on case law, especially the Durkin case which Mr. Hawley mentioned very briefly. However, this case involves a post office in the Town of Falmouth which was seen by the Appeals Court and the final

decision of the Falmouth Board of Zoning Appeal as conforming with 1959 Zoning when the post office was built. Thus the post office was lawful and properly subject to Section 6 protections. By contrast the Cambridge courthouse is unlawful and does not qualify for Section 6 protection. The Durkin case can be disposed of because it's not relevant to Cambridge.

Finally, I would note that Chapter 455 of the Acts of 1961 specifies that the legal name of the Cambridge Traffic and Parking -- Department of Traffic and Parking and the director must be the traffic engineer.

HUGH RUSSELL: Mr. Kaiser, I'm going to rule you out of order in this testimony. You've given it several times before. It's really not relevant to this case.

STEVE KAISER: I think it's relevant

to this case, but I will honor your request, sir.

Let me just also note that the MEPA concern here is that MEPA requires as a procedure that all alternatives must comply with Cambridge Zoning. And so it is my concern is that none of the alternatives comply with the MEPA requirement and with the Zoning. So there is that overlap of conflict between the MEPA law and the Planning Board.

Finally my conclusion on this was a building of 4.0 FAR is illegal and does not comply without a height limit because that's what the Zoning was in 1960. So that is intermediate between what the developer wants to do and what some residents want to do, but that is the legal option I think that this Board has.

Thank you.

HUGH RUSSELL: Thank you.

Seth Diamond?

Oh, hands who agree with Mr. Kaiser?

(Raising hands.)

SETH DIAMOND: Mr. Chairman, Members of the Board, my name is Seth Diamond. I'm at 126 Gore Street. I'm here on behalf of myself and my wife. She's a federal employee, she works with the Veteran's Administration. She couldn't be here this evening. I've been in front of the board in medical school. I was kind of nervous. I'll see how it goes and try to keep it brief.

Key thing that I wanted to mention here is that I myself -- I've been, I've been here in East Cambridge at the same place for 13 years. Really proud to be here all this time. My wife eventually and I got married, she moved in like two years later. And we

don't own here. We'd love to but the prices have gone through the roof. You know, so I have nothing -- the one thing that no one's really talked about is how if this is passed, how is this going to, you know, affect property values? And for me I live here. I have no vested interest as a renter, but the quality of life will go down. My wife was almost killed getting out of her car on Gore Street because of traffic. Someone slammed right into her door. She was this close from getting killed. Our other car before that, someone slammed into it as well, and ricocheted and went down the street. These things really happen here in our neighborhood. I'm proud to say I walked here. I feel safe. The neighborhood has been great, to see improvements in the neighborhood. And I understand, look, you

know, you know, stuff referred to DCAMM. Sure who is going to pay for it? I think it was 90,000 pounds of asbestos in the building? You know, progress is about rectifying errors that we've made in the past. And, you know, I guess many people have heard or referred to the saying of putting lipstick on a pig. It's still a pig. You know? I can't help but feel that a lot of people that are here this evening, they may be living very close, closer to the site, and they want to see improvement because they'll see their property values go up. I want to walk in my neighborhood and not get killed. I walk in the Gold Star Mother's Park to go across to the now Star Market and I see this eyesore. And every day I go passed it and, you know, it's funny, because for the past 13 years maybe one day it will

just go away magically. And then I heard, wait a minute, there's a chance that they're closing it. I did a little dance. But to find out that it's, like, well, you know, I understand about chopping maybe two stories off. That's one thing. But it's going to severely impact the neighborhood. Maybe if they chop it down part of the way. Push it back to DCAMM. Deny the permits.

Thank you for your time.

HUGH RUSSELL: Thank you.

(Show of hands.)

HUGH RUSSELL: Patrick Magee?

PATRICK MAGEE: Good evening.

Patrick Magee. I live at 877 Cambridge Street. I own Atwood's Tavern. I'm also the President of the Cambridge Business Association. I served on the working group. I'm not going to take a lot of time and go

over a lot of information that's not pertinent to your decision making processes. I have comments that I'm going to hold off on. I'm going to use my two minutes to point out the petition that was handed off to you earlier this evening that includes 18 businesses on Cambridge Street, seven of those are members of the business association. There are approximately 80 members of that. You also received today three letters of support from seven of the members that had signed that petition. They felt the petition was fairly misleading. If you read the question that it asked, I would be in favor of the building half the size. That's not on the table. That's my two cents this evening. I am in favor of the petition. I think it will greatly benefit the neighborhood.

Thank you.

HUGH RUSSELL: Thank you.

FROM THE AUDIENCE: Home address is meant to be given.

HUGH RUSSELL: He gave an address of 877 Cambridge Street.

William Strazzillo.

FROM THE AUDIENCE: That's his business.

WILLIAM STRAZZILLO: My name is William Strazzillo --

ATTORNEY JAMES RAFFERTY: He lives there, too.

WILLIAM STRAZZILLO: May I speak?

HUGH RUSSELL: Go ahead.

WILLIAM STRAZZILLO: I live at 74 Albany Street. I'm a com -- I'm a medic from the Korean War, a disabled vet. I'll give you a little history about my family and my

family tree. On the opening of Centennial Park, there's a park over there that says Luigi Tortino (phonetic). Luigi Tortino came to the United States in 1888, lived in East Cambridge, grew up a family of nine people, lived and died in East Cambridge. He had a woman there who became my wife's grandmother who had a family of nine people that lived in East Cambridge. My father-in-law was born in East Cambridge in 1907, lived in the family of 16 people. These are the people that made the economic growth of East Cambridge, not these people with the big money because I understand big money. Getting back to the traffic, they said 2,226 daily trips. Multiply that by 300 days. You're talking about 600,000 trips. I haven't heard anything over here how the state acquired the property. How the deed was changed. I

haven't heard anything over here what the conditions of the purchasing sales agreement was. All I hear is the static from the people with the big money. I know what big money does, they try to bury you with it. I hope that this building gets pushed right back to the ground the way it was when in 1813 when Bullfinch building, it was a nice building, how the state made it a dungeon. They made a terrible building for the people. The building should be removed and the money can get from the American Reconstructed Act to create a building that the city should put there and I think maybe, maybe -- we haven't seen it in 25 years up there, housing for the elderly.

Thank you.

(Show of hands.)

HUGH RUSSELL: S-t-r-a-z-z-i-l-l-o.

FROM THE AUDIENCE: Strazzillo.

HUGH RUSSELL: Now the hands?

(Show of hands.)

HUGH RUSSELL: Nancy Ryan.

NANCY RYAN: I'm Nancy Ryan. I live at Four Ashburton Place which is in Central Square. I don't live in this neighborhood. I think that granting a Special Permit to a building of such questionable legal status and with such a scandalous history is a very dangerous precedent for the city so I urge you to deny the Special Permit. If we're basing this Special Permit, as Mr. Rafferty suggested, on a few new entrances and a garden to a building that is so out of scale with the neighborhood, that's a fairly dangerous precedent. A couple of people have mentioned a MEPA review. There should be a full environmental impact review of this

building. And I'm curious about 24 units of housing. That gives us what, maybe two and a half or three affordable units. I'm not quite sure why sticking a few residential units in this building is reasonable. And the question of why this building can't be brought down to half its size is really only a question of profit. Since we cannot seem to find out what the -- what Leggat McCall is supposedly paying for this building because the state's not willing to reveal it, we can't even imagine what the price point is for the profit between the 20 floors that they wish to build and the eight or ten that they might be able to. But primarily I think this is not a moment to grant a Special Permit to such a dangerous building in the state that we're in legally. So I hope you will deny the Special Permit.

(Show of hands.)

HUGH RUSSELL: Thank you.

IAN LEVY: Ian Levy, I-a-n L-e-v-y, 148 Spring Street. So tonight I'm going to try to be relevant and I'm going to talk about Article 10.43 where you guys are supposed to protect the public interest in the issuance of a Special Permit. And I think that you have a certain number of parameters that you have to consider in order to decide if you're going to grant a permit or if you're going to deny it and 10.43 allows to you deny a permit just because you think of certain of the impacts are highly detrimental to the environment in which they will cure. So I think that independently of everything, 10.43 says is this building going to have a negative impact on the neighborhood? I believe, and I think

according to the analysis that have been done and a perfect example can be stated with at the beginning, it was (inaudible) and then suddenly the neighborhood came about and said look, it seems that the study has some inefficiency and the light that should actually be confirmed by some independent people. Some independent people made the research and 73 weeks later we have this beautiful building of terra-cotta which impacts certain number of light but not all of it. A lot of impact that are present by the developer are actually impact that favor their development. And that without an independent study or a study that is contacted by the Board or by the city itself, that would presented with this time which could actually compare in the number of the developer by, then the decision becomes a

very difficult one and one that's obviously going to be biased towards the developer. In this case I think that all of the impacts that are going to be coming from the building are going to be significantly negative. I don't know how much and maybe I'm totally wrong, but I haven't seen any numbers that show me differently; neither on traffic and air pollution that it would bring about, on the lights and the light pollutions that it will bring about. Recently this week a study about lights that cause cancer, more breast cancer and more prostate cancer was issued by a professor at Harvard and in a medical journal, so it is relevant to talk about light and how it impacts the life of people. So there is again a number of impact issues that haven't been put forward by independent people that provided by the developer which

therefore obviously are biased towards the developer. Therefore, I urge you to figure out a way to have an actual independent study that would tell you these are the size and these are the different impacts and this is what's going to happen. On top of that there was a traffic issue on First, Second, and Third Streets with all of the developments that are going on all around the Kendall Square area, we know that First Street is going to be redone but we don't know how the courthouse or its redevelopment is going to impact that redevelopment. Same for Second Street where the proposed redevelopment will bring 18 wheelers into the streets, 18 a day according to the number that we were told. That means that all the houses that are on Second Street, their foundation would substantially be impacted by the movement of

these 18 wheelers, and they're already on shaky grounds, which might completely destroy their foundations. If there is mitigation for that? I don't believe there is.

All I know is that I believe without proper consideration of the impact of the building on the neighborhood and on the general infrastructure of the neighborhood this permit cannot be issued. And I think according to 10.43, it is your obligation to protect the public interest. And in this case the public interest is to deny and to also improve significantly the baseline of which you're going to be compared. The -- I would like also to --

H. THEODORE COHEN: Could you wrap up your comment?

IAN LEVY: Yes, I will wrap it up right now.

Just to state for the record, that I have also been to all the different meetings. That the two NAYA meeting that have occurred with a hand vote that you have done tonight and a majority of people have voted against the proposal not because it's stupid but because its impact, it's stupid. People talked about it's too high, we want half of it. They're talking about the impact. They want half the impact.

HUGH RUSSELL: Please wrap up your remarks.

IAN LEVY: Three meetings the majority voted against the proposal for two --

HUGH RUSSELL: Please, Mr. Levy. You're not stopping. You're way over your time.

IAN LEVY: Thank you very much for

your time and have a good evening.

HUGH RUSSELL: Those who agree?

(Raising hands.)

HUGH RUSSELL: Okay, next group of six: Mark Sutherland, Christopher Correia, Missy Allen, Betty Lee -- I can't make it out. 55 Otis Street. And Pam Strazzillo, Carol and Alan Greene.

MARK SUTHERLAND: My name is Mark Sutherland. I live at 132 Pearl Street. I feel like I'm from another planet because I'm in Central Square. However, there's development going on at everywhere in the city and we're all impacted by this. I'm also not an attorney, but it seems like an illegal courthouse is an oxymoron. I'm not an attorney. But that's not why I'm here to speak. I also represent the Carpenter's Union. And my first priority is jobs, good

jobs. Jobs so that our members and Cambridge residents can stay in Cambridge and enjoy this wonderful city. I also have spoken at many City Council and Planning Board meetings on development projects, and I've always been an advocate for community participation. I happen to think that this is a good project, and I'm definitely in favor of this project. It's highly unlikely they're gonna tear this building down in my opinion. So what you need to do is make the most of what you got there.

You go down Third Street, 303 Third Street, I worked at those buildings, these apartment buildings, that was a highly contaminated site, but the one thing they do when they develop this -- these properties, is they mitigate the past problems. This was -- this is the upside of this. And so

I'm squarely behind this project and thank you for your time.

HUGH RUSSELL: Thank you.

Hands?

(Raising hands.)

HUGH RUSSELL: Christopher Correia?

(No Response.)

HUGH RUSSELL: Missy Allen?

(No Response.)

HUGH RUSSELL: Betty Lee?

BETTY LEE SACCOCCIO: My name is Betty Lee Saccoccio. I live at 55 Otis Street in Cambridge which is the corner of Otis and Third Streets. I would like to give my time to my sister who will speak, and I am in opposition of the project. She's also signed up.

MARIE ELENA SACCOCCIO: Good evening. My name is Maria Elena Saccoccio,

and I'm a homeowner at 55 Otis Street. The home has been in the family for 70 years. My family has lived in Cambridge and owned property here for over a century. While I'm a legal abutter in every sense of the world, I was never invited to participate in whatever this working group was. I also have a letter here which I filed at a previous meeting from other abutters who are legal abutters whose family has also been owners in East Cambridge for over 100 years:

Bill Dines, Jack DeBenedetto, Kathleen Hegarty Ranelli, Allen Pacheco, Lucille Dupont, Tommy Reid, Marilyn LePage. So I think it's interesting that there was this working group, and I'm an attorney, I know that, I'm actually a legal abutter and these people are, too, and they're definitely vested with a sincere interest in the

neighborhood remaining as a residential community. I definitely in favor of Michael Hawley's presentation. I'm an appellate attorney. I will join in any lawsuit in the event that the Planning Board decides to approve this Special Permit. I think there are two very live and viable issues. I think there is definitely the Land Grant from Andrew Craigie. I don't see anything that undoes that Land Grant. There's a deed that's a restrictive deed. It's absolutely clear. I've never seen anything like it in my life. And also, it's just not a legal non-conforming building. It isn't. It was immune. Meaning whatever law existed at that time, at that moment in time, it was immune. It doesn't mean that it made it lawful. It just doesn't do that. It just means that the law doesn't apply to them. So when the

Cambridge fire inspectors wanted to do something with that building, I mean, there's this press coverage all over. They couldn't even get in there to do anything because the building was immune. So these two very, very viable legal basis to end up in court. I noticed that a lot of people have mentioned the 90,000 pounds of asbestos. That was found by our SJC, prior Clerk of Court Eddie Sullivan was the lead petitioner in the case, because a lot of people in that courthouse got cancer and died and most of them were the guys doing maintenance who had to remediate whatever was in the HVAC system. The asbestos is not friable. Meaning it's not airborne. It's not going anywhere. The only problem is when you want to do alterations or you want to, you know, fix something in there, then you're gonna have friable

asbestos. It's nice that Leggat McCall has offered to ameliorate the problem, but it's not generosity. They have to by law. So it's not about generosity. They're not doing us a favor. The United States Government makes them do that. So any developer who would come there, they come to the problem.

As far as their approach, I think it's interesting because DCAMM, when they first had their meeting at the east end, they came down and their representative said they're grandfathered in. As far as the height, they're grandfathered in. I said, Says who? He says, Well, that's what they say, they're grandfathered in. Well, they're not grandfathered in. They're just not. And I think it's interesting that DCAMM's position in the P&S agreement, which I've read, they say subject to local Zoning. Their

description is the actual height of the building because they're legally bound to describe it accurately. But that doesn't mean that they promise to deliver that kind of square footage. They don't. That's just the description of the building and they're very forthright. There's 90,000 pounds of asbestos in that building. They're very forthright about it. But they say subject to local Zoning. And when I confronted the DCAMM representative at the east end, he said, Take it to the city. If anyone can say no, it's the city. So, I'm asking you to say no.

Over 100 of years my family has been paying city taxes here. I don't ask for much in this city.

Thank you.

HUGH RUSSELL: Thank you.

(Show of hands.)

HUGH RUSSELL: Alan Greene.

ALAN GREENE: My name is Alan Greene, I live at 82 Fifth Street. I'm asking to -- asking you to deny the Special Permit as requested. Basically the reason I think that it shouldn't be done is because it's the state's responsibility to clean-up the mess that they've created. The state has not involved us in the public process in any way. I witnessed the way that other developers had presented projects to us at the East Cambridge Planning Team and how basically our voice was just dismissed and all the actions have been behind closed doors, with this latest announcement that they're not going to disclose how much it was and all that. So I think the onus is towards the state to clean this up. And it's all

their fault. I admire Leggat McCall's recent proposal. I think it's an improvement over the last, but it doesn't change my opposition to it, because I think traffic reasons is this going to be better than what it is now? Traffic is going to be ruined compared to what it is now. It's going to be an increased problem like pollution is still going to be a real problem, so I don't see how it's going to be a benefit to the neighborhood.

I also wanted to add one thing. In the presentation I noticed that in the Leggat McCall presentation there was a view from, I believe it was the Longfellow Bridge, that view showing the Sullivan Courthouse was taken with a wide angle lens, a very wide angle lens from what I could tell. So basically the effect was to push the Sullivan

Courthouse as far away as possible. I would say that another shot of that view should be taken. If you want, you could go to Prospect Hill and look at Sullivan Courthouse from there. You can see how much it dominates the neighborhood.

So, again, I'm against it. I also want to say that it's recently come to my understanding that when the building first went up, you know, I thought that the whole neighborhood would have been opposed to that building, but actually what I understand was there was some division there. And there were people who wanted the building to go because it would have created jobs. So that building did go up. And in some ways we were responsible for that for wanting to have jobs here and wanting to be concerned about things like that. So I, you know, I'm all for

development in a controlled way, but I do not see this being a controlled development.

So, thank you.

(Show of hands.)

HUGH RUSSELL: Okay, we're going to take another 15 or so people on the list and we need to take a functional break. So we will start again in ten minutes.

(A short recess was taken.)

HUGH RUSSELL: Could people resume their seats and I'd like to have quiet so we can hear some more testimony.

The next group of six is: Ken Strazzillo, Mark Jaquith, Glenna Wyman or Ryman, Charlie Marquardt, Carol Belleau. Is that six? Or approximately. Mr. Strazzillo.

MARK STRAZZILLO: Mark Strazzillo, 77 Otis Street. My concern is unnecessary noise pollution.

HUGH RUSSELL: Could you step a little closer to the microphone? It is on but people are talking so it's hard to hear.

MARK STRAZZILLO: My concern is the unnecessary noise pollution even after the construction trucks are gone. The reason I say this is they do nothing at all to propose any kind of change with the fact that at the fourth floor they have an outside deck. I assume they're gonna have some kind of employee related activity. We have 24 apartments that have multiple windows, and in the summertime those windows are open. So my belief is that it is possible that even though we finally got rid of the detainees on the fourth floor, we have all these windows that could be open in the summertime and that's a source of noise pollution right there. We have the outside deck with

whatever activity they're going to have there. And most of all you have the street level, you have this outdoor seating plan which could probably be sidewalk cafes, whatever they want to have. My concerns are we're gonna get basically stuck with this design for many years after the fact and it's not just the construction work, like I said, those design features on the building any one of which could be generally equal to having the detainees finally removed, you know, the way we did. So what I'm saying is that when they took out one source of noise pollution and in exchange for that you're putting in two or three basically, and I don't think that's an acceptable ratio. If you're taking out one you don't want to put in another one.

The other final issue that I want to talk about would be the fact that some of

these businesses could have an outdoor music system and can get a permit from the License Commission and have an outdoor music system and we don't want to turn the sidewalks into a concert stadium. And if they should apply for a liquor licenses, you then have people under the influence of alcohol not only in the outdoor seating area but possibly walking the streets in the daytime or the nighttime if they're serving alcohol nine, ten o'clock at night and that's the equivalent of the like living near a bar where, you know, people may want to fight with their girlfriends in the street. All these young people, you figure it's a high tech crime. They want to work up some steam after work, they're drinking, and next thing you know they're walking in the street. So I don't think the police would appreciate that. So

you're exposing the area to elements that never existed there before, it's an experiment. Nobody really knew what the long term impact was going to be. And I feel there's a lot of unnecessary risks because the design scheme is a little too ambitious. And like I said, we're stuck with the design or the president and his team get to go home at night and we're the residents all these years. The reason I say that is because we had to put up with the yelling and screaming off the building all those years and that was unacceptable. We're not looking for any new sources of any unnecessary noise pollution. I hope you take what I said seriously today.

Thank you very much for your time.

(Show of hands.)

FROM THE AUDIENCE: I have a question of the Board. Michael Hawley was

given an inordinate amount of time at the beginning of this meeting, and I believe you said the rest of his organization wasn't going to speak and we have listened to a line of them standing up there taking up time. And I don't think this has been run very well that you do give them all that time and then give all the time to the people of that particular organization. And people are dropping out of here because they're tired. But I want to register my objection to the way you've run this meeting.

HUGH RUSSELL: Yes, we note that.

Next, Mark Jaquith.

MARK JAQUITH: Good evening. For the record, my name is Mark Jaquith, J-a-q-u-i-t-h. I live at 213 Hurley Street. And I'm a newcomer to Cambridge. I've only been here for 30 years. I look out my

bedroom window and I point at an angle like is this to a courthouse. Two floors, that's, that's -- in terms of impact, visual otherwise, that is not a significant change that I could feel in any way. When this building was the Middlesex County Courthouse, it served a legitimate public purpose and as citizens, we all have responsibility to bear the brunt of that public purpose for the benefit of society. Take that use away, the excuse for the building being there evaporates immediately. We had no such responsibility for profit of Leggat McCall. Not that I have any objection to it, but in this case, we don't have -- we have no obligation to ensure that.

The impacts. 1500 additional car trips a day just in terms of gasoline usage, the increased power usage in the building. A lot

of extra energy that does have a detrimental effect.

Traffic in the neighborhood. Third Street from seven to nine, from three to seven at night, it's a parking lot. Second Street is rapidly becoming just as bad. You add these 1500 trips, people are gonna be cutting up Fifth Street, Sixth Street, right across from the playground and the school here. No question that the future proposed use will be certainly more detrimental to our neighborhood, and I would ask you folks to take that into consideration and deny the permit.

Thank you.

HUGH RUSSELL: Hands?

(Raising hands.)

MARK JAQUITH: And one further thing, can we dispense with the hands? We

know who is going to raise on each one. This is kind of silly.

HUGH RUSSELL: Hands on the motion?

(Raising hands.)

HUGH RUSSELL: That was an attempt, I don't think a successful one, to try to let people know that we were listening to them but everybody wants to speak. It's the longest list that I've seen on 25 years on the Board. And on the other hand, this is perhaps the most difficult case that's coming before the Board in my 25 years. So I'm not, you know, I'm not surprised that there are many people who want to be heard and so we will do our job but it may -- it's not --

FROM THE AUDIENCE: We can't hear you.

HUGH RUSSELL: We will do our job but it's not going to be a quick thing.

And so, onward. Rhonda Masse.

RHONDA MASSE: Since we're doing pedigree tonight, I turned 60 this year except for --

FROM THE AUDIENCE: Can't hear you.

RHONDA MASSE: Since we're doing pedigree tonight, I turned 60 this year except for 10 years I lived in Boston, I grew up and lived in Cambridge the rest of my life. And I'll indulge myself tonight. Some of you are sitting in what was my grandparents' kitchen, some in the living room, and, Jeff, I think you're in the tomato patch. The houses were taken by eminent domain to build this school.

I believe the state of Massachusetts and DCAMM has put us all in an untenable position. By writing -- this is my opinion, by writing the request for proposal during a

downturn in the economy, they showed their unrealistic expectations of what can be rung out of the developer for the duteous privilege of refashioning what has been a blight in the neighborhood for about 40 years. And I do sometimes wonder what would have happened if all of the developers who just sat back and thought about how they could do justice to the residents of the inspected purchase price with the added cost of asbestos abatement and redevelopment, I think that this should be denied and that you all ought to send this back to the legislature and say no, you have got to rewrite this request for proposals. This cannot be.

I agree with Michael. I agree with everyone else who has asked to you turn down the proposal. I agree with the objections to

traffic. I see the traffic building up day by day, week by week, year by year. My only other comment is when I read the -- Councillor Toomey's request for information, I was floored even with coming down (inaudible). And DCAMM actually had the tenacity to deny the request stating that it was, and I quote: To allow government offices to deliberate and form policy by engaging in free and frank exchange of opinion and ideas which would be inhibited by public scrutiny.

Seriously? I mean who are the biggest stakeholders in this if not the people who live in the community? Please deny this.

Thank you.

HUGH RUSSELL: Glenna Wyman.

GLENN WYMAN: Hi. I live on Eighth Street. I'm a pretty new East Cambridge

resident.

THE STENOGRAPHER: Could you spell your last name, please?

GLENNA WYMAN: W-y-m-a-n. And first name Glenna, G-l-e-n-n-a. I've been here less than two years. And I agree with Michael Hawley's presentation, all the other people, and for all the other reasons that have been stated. I kind of got the sense from some of the people, and maybe even the majority of people in favor of this thing, that they feel -- most of them didn't seem like they're all really that thrilled about the idea but that it's the best that we can expect. It's, it feels like the wrong reason to allow this, not to mention that the law, I would agree, prohibits it. But, you know, given the complete lack of transparency on the state process, given the master planning

that's about to be taking place in the city, given the City Councilor Carlone proposal that would involve the City Council approval of big projects like this, and given that the City of Cambridge is the densest city in the U.S., which is amazing, much more can be done to make that horrible courthouse a better space for the community without all of the continuing and enhanced worse problems that this development would result in. And that's all aside from the fact that it seems to me that there are many, many legal barriers that the Planning Board should take under consideration and in denying this project from going forward.

Thank you.

HUGH RUSSELL: Thank you.

Charlie Marquardt.

CHARLES MARQUARDT: Charlie

Marquardt, 10 Rogers Street. I'm here to speak in favor of the Special Permit. Before I do I want to take a quick second to thank all of you. This is, as I'm seeing, a very thankless, uncompensated difficult job under often difficult circumstances. So 25 years, Mr. Chair, thank you. And thank the rest of you. I would be driven to drink.

Now back to the Special Permit. I believe that this building and the proposal, and I see a vast improvement. I see something that I wouldn't be afraid to put in there. I like taller buildings. I've said that before, I'll say it again. I live in Cambridge. Tall buildings -- Ferrell is a short building. But I like them. They serve a purpose. They help you to live better on more valuable land. If you look at the land in Cambridge, what cost an awful lot is the

soft cost. Land acquisition. These guys are not (inaudible). Leggat McCall is making a lot of money for these guys to be here all night. Let's figure that out and do something to bring in the innovative economy people. Give people the chance to grow. We also have the chance of bring in retail. A couple generations ago we had great retail up and down Cambridge Street. It's where people grew their businesses and got the money to send their kids off to college. And now the same kids are running the businesses in Kendall Square and elsewhere. That's what we should look at. We're sitting here promoting in the past. If we had done that when NASA pulled out of Kendall Square we would look at an empty lot and say what do we do? We put it behind us and move forward. We should do that here.

And lastly, I'm going to come out and say I think something should be done in regards to traffic. I live in a building that's 169 units. We don't drive all that much except accept to go shopping. We drive two or three times a week to go to the grocery store, to go get milk, to go get something. Think about all those car trips that are going to go away when we have a grocery store but five blocks from a lot of us. We're in a food den. We have to drive to Star Market which is a mile away. And you're not going to drive and walk up and take back ten bags. You're gonna go and drive. Five blocks you're not gonna drive, it takes too long to get out of the garage. I think we need to look at that and say maybe it's a benefit.

And finally, I think it's time we move

forward. This is a good project in a good location. It's not going to be a park. If we tear it down for everybody who wants something worried about more housing or worried about having all these people look into it. I think if you look at the lot, you're looking at 240 units of housing. Highest and best use of this structure if you start from the beginning. Is that really something that we want there? Or do we want an office building that provides a lot of taxes, some great retail and some great opportunities for people in the city.

Thank you.

HUGH RUSSELL: Okay. Carol.

CAROL BELLEAU: I second Charlie's, thank you, for what you guys put in. I would be drinking, too, if I were them.

I just want to mention that and I know

that DCAMM has come up and I talked to somebody who works in the area and they told me that one of the issues that we're dealing with today is how Bob Healey responded to DCAMM. So I can't lay it all on Leggat McCall. I think Bob, Bob's conversation of bringing it all down probably discontinued DCAMM ever talking to us on this whole issue. I want to put in that the City Councilor's that put in a request for some staff changes in this Leggat McCall proposition and I have to say that we've been at the table with Leggat McCall for several years now. I may embarrass Jim Rafferty at this point, but Jim and I had a conversation at the last Planning Board meeting, and he told me that he told Leggat McCall to take five stories off. So even their attorney told them that maybe something substantial would make it -- make

sense. These four stories, I'm sure you all know, is from the response that HYM came in with their proposal to take down four stories. So that was a big thing for a lot of people to consider in bringing it down to that level. I guess I just feel bad that Leggat McCall, after all the work that we've done with them, could only come up with two stories down.

I just feel that the compromise, and I'm not a developer at that level. I mean, I can't imagine how you throw millions, tens of millions of dollars around, but even if the build out took another five years to take down those five stories, I felt that that way's reasonable thing to consider and I think it would have made it through the neighborhood much better if there was a more substantial compromise on Leggat McCall's

part.

Thank you.

HUGH RUSSELL: Thank you.

So next group: Heather Hoffman, Thierx  
Cons, Jane Chiang, Greg Zaff.

FROM THE AUDIENCE: Can't hear you.

HUGH RUSSELL: I'm trying to figure  
out -- some people have signed the list a  
couple of times and so I'm trying to --

Lee Farris. So if you heard your name,  
please come forward. If you didn't, you want  
me to read them again?

Heather's here. Jane Chiang, Lee  
Farris.

HEATHER HOFFMAN: Hi. My name is  
Heather Hoffman. I live at 213 Hurley Street  
and I'm definitely in the shadow of this  
particular tower. Not only is it out my  
bedroom window but it's out my daughter's

bedroom window and it's out to the stairs. We have a two-story house, and when I go up and down the stairs, I see this. So I think about this building a whole lot. I work on the other side of the building from my house, so I get to walk by it. One of the things that I've been complaining about all along is wind, and I have heard nothing that says that the conclusions of their wind consultant, which was that this would actually make the wind worse, has changed. They certainly have not provided any new studies that I'm aware of to change that conclusion. They've said that the new architecture will make it different, but I don't see any studies to back that up. The wind currently is bad enough that it's knocked me off my feet twice. And what I've heard, as Glenna said before me, is an awful lot of resignation. I

think that people are tired of fighting because what it comes down to is that we don't deserve good, we just deserve not horrible. And I have a lot more respect for this Board. I have seen you when you want to dig into something, really ask questions, and really make good changes. So I know it's in you. I also know that it could be in you to say no to something that is just too bad to rescue. And I think that this is something that is too bad to rescue.

And now someone pointed out all of the high priced talent that's sitting here and enjoying listening to me speak and all of the other people who have come before me, consider how much Leggat McCall is expecting to make on this because they can pay for all of this, they can pay for the fancy marketing campaign where they could send people out to

gather support, where they could print up a fancy brochure, and I'm sorry that I didn't have time to go home and get mine so I could show it to you, but you did see the view from the cover of it. And that is the one view that makes this not look like a gigantic thing sticking up above our neighborhood. You have to go all the way up to Cambridge Street, which is up the hill and three blocks. You go across the street so that you can get the very, very large Registry of Deeds and Probate Building right in front of you so that it can make this building not look huge. Go another block when you're walking down the hill, you'll get a very different view. Stand in front of the Dunkin' Donuts, you'll see. Now, why did they have to do this? Because what they want to do doesn't fit here.

H. THEODORE COHEN: Ms. Hoffman, can you wrap up?

HEATHER HOFFMAN: Sure. Please say no.

JANE CHIANG: My name is Jane Chiang, C-h-i-a-n-g. I live on 71 Fifth Street. I live in a three-bedroom apartment with my husband and two daughters. I live in an attached building with three units in each building. Above me is -- they're a young family with one child, architects. Above them is a couple, one of them works as an executive administrator and administrative assistant. And then next-door to me are two graduate students. Above them is a lawyer for a small firm and his wife who works for the government, and they have a young daughter. And above them are three to four young people who work as bar workers and

bicycle shop employees. And the reason I'm telling you all of this is that the neighbors that live across from -- next to us who are lawyer, the government worker with the young child, they have moved out of Cambridge because it's unaffordable for them any longer. They lived in the unit for five years, and prior to them living in was another family who lived in there for about three years. The landlord is now raising the rent by 30 percent without any major renovations. I believe he's just touching up the paint and maybe putting some wood flooring in two of the rooms.

Along with that is another neighbor of mine who is a single mother with two children. Her husband doesn't support her. She works as a part time nanny. She had to move out of her apartment and she had to look

for another one in the neighborhood. And God knows where she lives because a single mom with limited income can probably not find housing in this neighborhood the way rents are going up. Contrast to that is on Otis Street there are these beautiful brownstones being renovated from what I hear, executives from big corporations who are staying here on short-term assignments. So I pointed these out to you because I want you to pay attention to the impact that this project would have on our neighborhood, not just in terms of the traffic, parking, but the make up the city, the type of people that will be living here. At this point families, young families can't even rent in our neighborhood. Are we going to be a city of top earning individuals? Are we going to turn into another San Francisco? So as your -- as part

of your discretion, I believe that you have the capacity to take into consideration not just the present and the immediate future, the impacts of this project, but also the future effects of this project on the city. What you're not, I believe, supposed to take into consideration is the potential revenue that can come in as a result of this project. So I ask you to look just beyond the traffic and the parking but the city as a whole and what approving this Special Permit would mean.

Thank you.

HUGH RUSSELL: Thank you.

LEE FARRIS: Lee Farris, 269 Norfolk Street. Just two very quick points. I'm here asking you to reject this application and deny the permit. Many of the people that spoke in support seem to feel that the

asbestos was the biggest reason --  
remediating the asbestos was the biggest  
reason for supporting the building. And as  
one other person addressed, the asbestos is  
not a problem to people that live in the  
neighborhood except when it is disturbed and  
then it has to be remediated carefully and  
correctly. But simply having it in the  
building is not per se supposed to harm  
people. Therefore, that's not to me a very  
strong reason to support this proposal.  
Instead, I think that if you deny the permit,  
it will go back to the state and the state  
can rebid it and we'll get a better building  
that still has all the things that people  
want; retail and jobs, construction jobs,  
office jobs, and the remediation and  
renovation. And we know because one of the  
other bidders on this put in a proposal for a

shorter building, that the building can be shorter and still make money and still have the remediation. So we don't know -- unless you send the building back to the state by rejecting the permit, we don't know how much better of a building that we can get. I think that if the state goes to rebid the building, anybody that bids on it will look at what the neighborhood has been saying and the state will not be able to get people that are proposing to build as high a building as FAR. So I know that you can't -- it's not your job officially to weigh counterfactuals, but that is what a lot of what people are putting in front of you here. What is the best way to get to the best building? I'm not, you know, a park would be nice, but I think there is going to be a building there. I just think that we could

have a much better building that's closer to the existing Zoning.

Thank you.

HUGH RUSSELL: Okay, next group: James Williamson, Abigail Lewis Bowen, Peter Crawley, Catherine Hoffman, Phyllis Bretholtz, and Matt Wolfe. I'm not sure that some of these last people want to speak. They didn't indicate yes or no.

Mr. Williamson, please.

JAMES WILLIAMSON: Thank you. My name is James Williamson, 1000 Jackson Place. Speaking of podium, I just find it heartening that the podium in the school auditorium has Draper -- the Draper Lab logo on it. The target represents -- targets for nuclear warheads. Maybe we could have a tactical nuclear strike on the building courthouse and have it take care of it. But at least we can

have air conditioning in the auditorium.

I think that one of the big problems here is government that's not working for the people of the City of Cambridge. Government that's not working for the residents who have suffered with this building for 50 years. Government that's not working for residential communities and neighborhoods throughout the Commonwealth. And the way that's expressed is in the inability to get at the numbers as far as I'm concerned. And this question of, you know, how much did you pay for it? And how much can we afford? And who is going to be able to afford to do anything? And the fear in turn is what's driving some of the people who are feeling like they're ready to acquiesce is to -- a proposal that they are also saying they're not really entirely happy with. At the meeting of the East Cambridge

Planning Team meeting where they voted people ended up after a long meeting voted against the proposal, the proponents said you just have to trust us. Yeah, we spent a lot of money on this building, you just have to trust us. That reminds me of a group called PR Watching where they put out books, one of which is called "Trust Us We're Experts." And the other is "Toxic Sludge is Good For You." And now I'm not saying that this -- because there is an asbestos mediation, mitigation issue here so it's not quite toxic sludge. Without those numbers and an honest, full, open discussion, I, you know, I think at a certain point we have to say, "Send it back," as other people have said, and but by the way, there are monies available. There is other funding and if you're a big corporation like Novartis, they've got hundreds of

thousands of dollars worth of historic preservation, tax credits to do the Necco building. So, monies are available for the right kinds of corporations apparently but not something that's important to the neighborhood as this. For a moment of levity. I was thinking of -- terra-cotta really isn't going to fix it. It's all about the height of the building. I said, terra-cotta, not terra-cotta, how about tear-a-down-a. But apparently that's not in the offing either. So, I'll conclude with a couple of observations that I don't think have been touched on by others tonight.

One is there's going to be a disposition of the parking lot. Do we really need -- unless there's a better proposal, there may be a reduction of say five stories here, are we really ready for the battle of

the disposition process that's going to have take place? I don't think it's going to succeed. I also think there are going to be some curb cut issues that are coming before the City Council, and I don't think the City Council have voted unanimously for a substantial change. It's going on record for curb cuts for something that does represent a substantial change.

H. THEODORE COHEN: Mr. Williamson, can you wrap it up?

JAMES WILLIAMSON: Finally, residential building would be better. Residential use would be a lot better. We know that there would be less of traffic impact, less need for parking for a residential use, and a much lower building would I think probably go to satisfy a lot of people who are -- remain very concerned about

this limited alternative proposal.

Thank you.

HUGH RUSSELL: Thank you.

Abigail Lewis Bowen.

ABIGAIL LEWIS BOWEN: Good evening.

I'm Abigail Lewis Bowen, 80 Thorndike Street,

and I'm speaking as representing the

Neighborhood Association of East Cambridge.

I'm the President of that organization.

We're called NAEC. Just as a pointed out

earlier in Michael Hawley's presentation he

did say and I think people missed it, he was

officially representing the abutters' group.

I'm representing NAEC, there are two

different organizations. I'm sorry for any

confusion. I'll skip the points that have

already been made. We are encouraged to see

some of these design changes and we're --

they do generally and genuinely improve the

project we feel, and are a step in the right direction. We hope it's a first step in a continuing conversations with the developer with the goal of mitigating the building impacts to better match the infrastructure, capacity of the neighborhood. Because we do believe that a vital and feasible redevelopment can be achieved that is appropriately sized for this neighborhood. So we're asking the Planning Board to act appropriately tonight so that the developer perhaps would with help from the state might revise their proposal to achieve this end. We do just take the note of the points about substantial reduction from the City Council, we agree with that. And note that these changes do not represent the substantial modifications.

The concerns continue about traffic and

parking with this even in its modified state.

And the point of offloading trucks offloading off the street at which was one we brought up last week to the CDD, and they're going to look into that so there's something for the Planning Board to consider with the Second Street being -- having about 20 trucks a day backing into the loading dock because there's no off street loading and offloading. So that's something that maybe the developers can look into and further revision if that's possible.

So we just feel the, you know, over time it has been a long time where there was no movement on this and now there's movement. So we're really pleased and we hope we can continue this conversation.

Just a point, that this redeveloped courthouse would be the largest standalone

office building in Cambridge. So this is really a significant thing. And as you note, Chairman, one of the most complex issues that have come before you.

I'm going to speak now from my personal point of view. So no longer as a President NAEC. In February of this year I sent a letter from myself and my husband at the City Council meeting and at the time I noted that this is, you know, the character of East Cambridge with ying-yang of history and new this kind of trendy local combination that we all love, and there's one thing that exists in our neighborhood, one entity that belongs to no part of this balance, and that is this monstrous, brutish, ugly, and dramatically out of place courthouse. So it's acknowledged as you've seen tonight to have been nothing but a mistake.

You know, here we have a singular opportunity from the city to correct this error. This is, you know, really once in a lifetime opportunity to really rectify the size and impact of this building. And we are in favor of developing something, but to this point, to this size is the issue. I have to say that I'm so sorry to report that since February I feel that I witnessed from city officials, elected officials, and staff, I mean, amazing amounts of service and commitment to the city, but on this issue a colossal lack of backbone on this point. An unwillingness to kind of get together as a city to say to push back to the state. And I think that's really my feeling personally is that it -- there is some weird resignation and apathy sort of municipal shoulder shrug that everywhere you go where people say,

Well, the building's here so what are we going to do it with it? It's mystifying and frustrating as a citizens. I think --

H. THEODORE COHEN: Could you wrap up your comments, please?

ABIGAIL LEWIS BOWEN: That's all I wanted to say. So thank you very much.

PETER CRAWLEY: Thank you. Peter Crawley, 88 Thorndike Street. As Abigail just mentioned, this building would be amongst the largest standalone commercial office buildings in Cambridge. Big buildings are not inherently bad. The problem with this tower is that it's not located in one of Cambridge's commercial nodes. It's in a historic residential neighborhood of three- to four-story homes with narrow, low capacity street infrastructure. The development as mentioned will generate 2,000 daily vehicle

trips from about 1800 full-time employees versus the historic courthouse which according to the information, had about 500 full-time employees. So I understand that part of your evaluation of "no more detrimental impact" is based upon traffic, parking, wind, light, etcetera, and I'm wondering if the Board has commissioned an independent study to actually look at the relative impacts of the proposed building versus the historic impacts of the courthouse? I don't know how you could possibly do your job unless you had that data and that it was compiled by an independent consultant.

Jane Jacobs reminds us it is vehicles that ruin urban neighborhoods, especially commuter cars getting to and from work as quickly as possible. Cars and trucks

dehumanize neighborhood, they compromise the pedestrian experience and especially on narrow streets, they endanger bikers, strollers pets, etcetera. They also spew when they're stuck in traffic a lot more particular matter into the air. One thing I felt from the folks who were for this was they responded, you know, some may respond look, you live in a city so get used to it. But that is not the condition that Zoning was meant to enforce nor the picture of Cambridge that emerged from the recent master planning conversations when citizens described what they value most about Cambridge, they said it's what ability, intimate neighborhoods, the clean air, the green space. This is what makes Cambridge a treasure, and this is the resident experience. The Planning Board under Article 10.43 of the Zoning Code is

charged to protect. In order for the Planning Board to right size the building and properly evaluate the impact, please have this independent study done.

MEPA also requires the modelling of alternative --

H. THEODORE COHEN: Could you wrap up your comments, please?

PETER CRAWLEY: -- alternative developed scenarios that comply with the underlying Zoning.

And I did want to refer to the RFP by the state that indeed on page 7 discloses to any developer voting on the RFP that the property is shown on the City of Cambridge Zoning District Map adopted in 1961 --

HUGH RUSSELL: Excuse me, it doesn't sound like you're actually completing your remarks. It sounds like you're proceeding.

Would you please complete your remarks?

PETER CRAWLEY: Sure.

Finally some residents have suggested because the building already exists, it is more sustainable to preserve it. According to the developer the building is full of asbestos and contaminates --

HUGH RUSSELL: Excuse me, you're not listening to me. You're starting new subjects.

PETER CRAWLEY: Okay. Well I would just basically say --

HUGH RUSSELL: You can forward your remarks to the Board in writing. You've spent more than --

PETER CRAWLEY: Very good, sir.  
Thank you.

HUGH RUSSELL: Is Catherine Hoffman here and wishing to speak?

(No Response.)

HUGH RUSSELL: Phyllis Bretholtz.

FROM THE AUDIENCE: She left.

HUGH RUSSELL: Matt Wolfe, does he wish to speak?

(No Response.)

HUGH RUSSELL: There are three other names here that I cannot decipher and they did not check that they wanted to speak. I would very much like to conclude the public testimony for this evening so that the Board will have a chance to discuss this project.

Yes, there's a person with their hand raised.

FROM THE AUDIENCE: Yes, I did sign up to speak. I haven't been called.

JAMES WILLIAMSON: There's another sheet that's being delivered.

HUGH RUSSELL: I'm sorry, I can't

see who that is.

FROM THE AUDIENCE: My name is Wellens.

HUGH RUSSELL: Please come forward Marilyn.

DAVID BORIS: I'm David Boris. I should be on that list.

HUGH RUSSELL: Sir, would you start speaking, please?

DONNA KEEFE: Sorry. I'm probably one of the names you can't read on this lease. Donna Keefe, K-e-e-f-e. 263 Hurley Street.

I first wanted to say that well, first of all, I don't think you really -- it doesn't matter how long I lived here, why I moved here, or anything else. The fact that I live here now and it's this issue that's being raised and we're all discussing at this

moment. I want to actually acknowledge and appreciate the fact that it is a major community issue and that I think everyone has had various different opinions. I think everyone has the right to their opinion and has been very complicated and complex for many of us. I also appreciate you acknowledging that, saying that this has been one of the most complex cases you've heard over all these years. I actually struggled with it myself and I've also been a member and have gone to the East Cambridge Planning Team meetings. I've been to the NAEC meetings because I've wanted to get a grasp of this myself in understanding what it is that we need for the community and what could work. So, I didn't really prepare remarks until I sat here and started hearing people. And what I want to do is respond to a lot of

comments that were made here as to why I oppose this building. And mainly it is that it's not the building all by itself. People talk about so much speculation. What kind of jobs will be there? What kind of diversity is going to be there? What about parking? What business is going to be in the area? We had One First people come up to speak. They moved into the neighborhood. Are they supporting the businesses on Cambridge Street? We just had a recession. Does that make a difference to the surrounding area around us? Currently there's a lot of development. We have buildings all around going up. There's going to be a lot more residents, there's going to be a lot more commercial areas. It's going to be a vibrant community. I'm going -- and it's a very exciting place to live and I'm very happy to

see that. I'm not selfish. I'm not opposed to development. I'm not opposed to progress. What I am looking at this building, and the conclusion I came to, is this is the one opportunity that we won't have for the next 50 years and longer to do this right. To figure out what really fits in the scale of the community. What services the community best? I understand the problems of the building, the asbestos. There's a lot of creative ways to work this, to develop something there. I don't believe it's going to get torn down. I don't believe the building is going to come down a lot. But I think we need to look at what the scale is and what fits in this building to keep our own little pocket of a neighborhood the pocket in the lovely neighborhood that it is. And that I think is really meaningful to look

at and the creative ways to look at it, whether it's state, city, or private collaborator to figure out how to build this and build it right. To make every -- to compromise the scale of this and to also work for our community. We have First Street, we have Third Street, we have Binney Street, you have North Point, you have Cambridge Street, all of those building are coming into play the next five years. They will all have a great impact on the viability, the vibrancy, and the businesses in our area. So I don't know why we're looking, and there's plenty of work out there for people in the construction jobs, and I think by just saying this is the be-all and end-all is incorrect. I think we need to look at the master plan. People talk about master plan parks --

H. THEODORE COHEN: Please wrap up

your remarks.

DONNA KEEFE: So, that's what I'm asking. Is that we need to look at this and how to define it and build it to satisfy everyone and keep our neighborhood the nice neighborhood that it is.

Thank you for your time.

HUGH RUSSELL: Thank you.

PHYLLIS BRETHOLTZ: Thank you very much for the opportunity to speak. My name is Phyllis Bretholtz. I live at 65 Antrim Street. I actually was going to speak very much to the points that the previous speaker made. We are living in seven square miles, and while I live primarily in Inman Square, what's happening in any given part of the city, what's happening on Western Avenue, what's happening at Alewife with the flooding, what's happening in the development

behind Alewife, every bit of this is having an impact on all of us. We're at this particular moment in time when we have to -- I completely support the idea of the master plan. If we're going to think in terms of a master plan, then we have to take a deep breath, think about the scale of this building in relation to the scale of the rest of the neighborhood. It is completely out of scale in terms of the shadow, the wind, the sense of community. There are places for big buildings. The center of East Cambridge is not that place. And for those of us who came here to live in a community which I feel even though I live in Inman Square, I live in the City of Cambridge, we have to be able to think much broader than our own individual little neighborhood. So I strongly oppose the proposal and I thank you for your time.

HUGH RUSSELL: Thank you.

CATHERINE HOFFMAN: Cathy Hoffman, 67 Pleasant Street. I took Phyllis home because she's not well and then both of us came back independently because we just wanted to add our voices so here we are and thank you.

The last time I was in such a large crowd in this building was many years ago around the death of a young man and it was a very, very emotional time in this building when I worked for the city and tried to speak out about issues of making peace which is -- is always sometimes an unpopular thing. I heard a lot of the people tonight and I heard many, many -- in fact, almost everyone except for one saying we hate this building but we have to live with it. We can't imagine the opposite. It's not going to happen. We have

to live with it. And I just wanted to say I think all of us in our lives can think of things that we thought were impossible, impossible to end certain kinds of injustices, but if people didn't take a stand, didn't say no to something, it wasn't possible to create something we really do want. The other thing is people are saying we have to do this now because we want the building to be changed. There's going to be a lawsuit if this is voted down. It is not going to change. It's gonna be a long process no matter what. So let us appeal to our highest sense of what's possible and to put our energies into believing what is possible because that's the only way it will change, not to allow our hopelessness control us and say we have to do it this way because that's all there is. So I believe in

creating the kind of community we believe can happen, not giving in to the worst of what we think can't.

Thank you.

HUGH RUSSELL: Thank you.

Marilyn.

MARILYN WELLENS: Thank you. My name's Marilyn Wellens. I live at 651 Green Street. It's not in East Cambridge. I do live behind a four-story high building that's been converted to dry labs. And I believe that the developers have described that as one of the potential office uses in the building in question here. So I'm basically here to give testimony of what it's like to live not very far from such a building. And I believe that some of the people who have previously spoken in favor of the building and vibrancy in the neighborhood, I believe

they can't actually imagine because they don't know what it's like to live with a light and sound waves coming from these buildings. Now, I'm only talking about a four-story tall building. This one is much taller. The two-story diminution is only the size of the mechanicals on the roof. So that for the HVAC systems and the lighting that would be required for this kind of office building to say nothing of the retail, the quality of life is going to be significantly altered. And I would submit that it will be altered for the worst. And so I would submit that the Board can just think -- I mean you might be able to hire consultants, but I doubt it, what is the baseline? Is the baseline a courthouse when it was fully occupied? What were the hours of the courts? What were the noises that the inmates made

and how far up were they? And when did they make the noise? And what lights were coming from those windows? My experience would be working in the labs behind us is the people work over Thanksgiving weekend, 24/7. They work during blizzards or they leave the lights on. So that I would also point out that the effects of traffic are going to be significantly different because courthouse is basically not been used for many years now. And if people talking about the traffic building up now, it will change. So first of all, I'd like to second Mr. Levy's point about Section 10.43 because it seems to me that's the basic question that you all face. I would hope that you would keep in mind the legal questions, but I can't imagine that you would turn away from the City Solicitor's opinion even though I think it's rightfully

challenged.

I'd also second certainly Mr. Teague's comments about light. The city's light task force is not going to deal with indoor sources. The city's ordinances dealing with light and noise are inadequate to protect the public from these health hazards. And the last light hearing or meeting the Chair was looking to the Planning Board to deal with this. So, you know, if you do see fit to grant the Special Permit, I would certainly think that you should mandate automated blackout shades throughout the building because they are the only thing that you can rely on and even then I don't know. The good will and the good neighbor policy is not necessarily going to help the people of East Cambridge when they're facing this building if it's converted as now proposed.

H. THEODORE COHEN: Could you wrap up your comments, please?

MARILYN WELLENS: I will.

And so I would also second Mr. Strazzillo's points. And I would like to point out that the people who are looking for vibrant communities when those light and noise waves are interrupting their children's sleep or interfering with their own day-to-day living, they will find that the children's learning diminishes and heart problems and high blood pressure and diabetes tend to follow. Those are known public health hazards. And I would also second the other points that --

H. THEODORE COHEN: Please wrap up your comments.

MARILYN WELLENS: -- this is not the only proposal that came in. The asbestos is

going to be removed and so, thank you.

HUGH RUSSELL: Okay, I'd like a --  
what we have to do --

DAVID BORIS: I didn't get to speak.

HUGH RUSSELL: Okay.

DAVID BORIS: My name is David Boris  
(phonetic), 9 Hollis Street. I'm speaking in  
favor of granting the Special Permit. I  
have -- I'd like to -- I live in a different  
neighborhood. I live in North Cambridge and  
I'd like to say 20 years ago when I bought  
there, Harvey Street in particular where I  
lived for 14 years, had a lot of not just one  
derelict building but several, including a  
chemical plant, a printing plant with  
chemicals in it. There was an abandoned  
slaughterhouse. And it takes time to heal  
these kinds of wounds that are left in the  
neighborhood. And what really heals it is

the cycles of the construction industry. When a boom comes along and developers are willing to put money into it, that's when it starts to pick up and clean-up. We can discuss it until the end of the day, but the reality is the -- it took two cycles to clean-up much of North Cambridge and now it is a vibrant and desirable place to live. For a lot of those years there was a lot of empty spaces, derelict houses, houses were depressed when we bought our house, and I was really wondering is this a place to raise my kids? There are empty factories down the street. And developers did come in, cleaned it up, put in housing, and it's a really wonderful place to live. So I think one thing the neighborhood needs to consider is that this is a natural process by which, by the construction cycle and economic cycles

clean-up neighborhoods, people come in with money, and they do change the, you know, this is what's -- how the neighborhood -- I suppose from what I've heard from everyone is take the building down would be best. That probably -- we would have liked to see parks go in where some of these old, the old lumber yard was and things like that. But in fact that's not gonna happen. People are gonna build housing. People are gonna build what they can. And you have an opportunity now there's a construction boom going on, the money is there, and it is a good time to develop and grow your community. So as a Cambridge resident, I'd love to see this area boom, but not so much boom but develop and get rid of this eyesore. So I think it's a wonderful thing. I am a member of the carpenter's union. I work for Pile Drivers

Local 56 for the last 30 years, and I have seen construction up and down. And I know when it -- when it really gets going, is when the changes take place. So I'd encourage people to take advantage of this and grant the Special Permit to make changes that can only happen at certain times and not let it go and have a chain link fence to look at for another 20 years.

Thank you.

HUGH RUSSELL: Okay.

So, in order for us to deliberate this question we will need I think several hours of time. We're not going to -- we can't do that tonight. We've spent over three hours listening. I think it would be productive if any member has comments, questions that they're mulling over in their mind so that we have an idea among ourselves where we are.

And I think we will -- Jeff, have you come up with a date for deliberation?

BRIAN MURPHY: September 30th.

HUGH RUSSELL: September 30th. We will be doing that back at the Annex?

JEFF ROBERTS: We would have to confirm the location, but I assume it would be back at the Annex. I think that's the most reasonable place to find space at this point.

I encourage the Board to continue discussing, but before closing the meeting we will need to grant an extension of time for action to go to that date.

HUGH RUSSELL: So why don't we do that business first.

Is there a request?

ATTORNEY JAMES RAFFERTY: I guess we would request a date two, three weeks after

September 30th?

JEFF ROBERTS: I would perhaps propose October 15th as a date to extend the time. Is that amendable?

ATTORNEY JAMES RAFFERTY: That's amendable.

HUGH RUSSELL: Okay, is there a motion?

STEVEN COHEN: So moved.

HUGH RUSSELL: Second?

H. THEODORE COHEN: Second.

HUGH RUSSELL: Ted second.

All those in favor?

(Show of hands.)

HUGH RUSSELL: Okay.

So, does anyone want to start? If not, I'll start.

CATHERINE PRESTON CONNOLLY:

Mr. Chair, just as a point of clarification.

Are we closing the public hearing for comment and/or accepting written comment only after this point?

HUGH RUSSELL: So, the way that we're now operating is our next job is to deliberate. People want to send written testimony to us between now and September 30th, that's fine. Send to Liza Paden at the CDD Department or send it to Jeff. But we're going to be deliberating based on what we've heard to date. So we're not going to be reopening the verbal testimony. If our deliberation results in a request for more information and changes to the project, then we would reopen public testimony --

CATHERINE PRESTON CONNOLLY: Thank you.

HUGH RUSSELL: -- any changes that come forward that are significant.

Okay, you want to start?

STEVEN COHEN: Sure.

First of all, I want to thank everybody for their comments, both the proponent and all of the neighbors. I think for the most part it was a lot of good input and we have a lot to think about. But the only thing that I wanted to start with is I think there are certain threshold issues that we as a Board have to look at. And in part those issues were addressed by the City Solicitor as to whether this is a legal non-conforming use. And while some of us may differ on that legal interpretation, I think I for one, and we end up as a Board, you know, must defer to the opinion of the City Solicitor, on her interpretation of that legal provision as applicable to this case.

However, a couple of things were

brought up in the testimony today that I think are also threshold issues related to that, and one of them is this business of the Craigie land grant. It's a title issue in that sense, and I don't think that any of us here are qualified to address that issue, but I would like to see that threshold issue addressed. And I guess once again, I would suggest that the City Solicitor enlighten us on that issue to determine what is the city's position on whether in fact there is a deed restriction or a restriction of the land grant that is or is not still applicable to the use of this site.

HUGH RUSSELL: That may affect our deliberations.

STEVEN COHEN: Clearly.

The second is I heard reference, I think all from Mr. Hawley I believe. I heard

reference to a Mendes case and I'm not at all familiar with it. And I see Ted shaking his head on it, but if it is as was described here, it would be very relevant to this determination as to a legal non-conforming or not. And I think once again as a threshold matter, it would be advantageous to the Board and beneficial for the public to hear the City Solicitor address the point and decide whether it is an issue or it is not an issue here. And, Ted, if you can address this or maybe you want to address it right now?

H. THEODORE COHEN: Well, I'm sorry, I think we've asked the City Solicitor -- City Council asked the City Solicitor for her opinion with regard to whether it was a legal non-conforming use. And I think the City Solicitor has rendered an opinion and I think we should follow that opinion and not

question it. I would suppose that there's a likelihood that whatever we decide is going to be appealed and that this, that issue would be in some court proceeding, and I think that's the next place it should be addressed is in a court. I think the City Solicitor has told us what her opinion is and that it's not for us to second guess it. And I assume, you know, everyone, yeah, you and I are lawyers and everyone here can be a lawyer can have their own opinion, but I think it's the City Solicitor's opinion that is of significance to us.

STEVEN COHEN: I agree with you in the sense that I too want to defer to the City Solicitor on all of these things. However, if in fact there's a line of cases which will suggest here and perhaps the City Solicitor wasn't aware of, I would appreciate

it if she simply say I'm aware of it, it doesn't change my conclusion, or I wasn't aware of it and it may change my conclusion. I think in as much as was raised in a serious matter by one of the neighbors here, I think that it would be appropriate to address it. And unfortunately, you know, we're not qualified to address it. I think it is something that the City Solicitor should address.

So anyway, those are threshold issues. I have lots of thoughts on the substance of the matter here, but I don't think this is the time to get into it myself. I do think, however, in terms of organizing our discussions, I mean, once we get passed those legal threshold issues, I think the next threshold issue for us to discuss is, you know, focusing of a non-conformity provisions

and to determine whether the application before us is substantially more detrimental than the existing use. And I think it would be worth our while, it would be logical and helpful in our discussions to address that as a threshold issue before we get into the other project review issues because I think how we answer that question not only clarifies the whole matter, but what affect I think might potentially affect how we pursue and lies the project, you know, review standards.

That's all I have to say.

HUGH RUSSELL: Steve.

STEVEN WINTER: Thank you, Mr. Chairman. I concur with my colleagues that an opinion from the Law Department is not a negotiable issue for this Board to discuss. It's the opinion that we need to

pay attention to. I also think that there's a lot of misinformation about how DCAMM operates or the division of capital management, what its authority is. You know, clearly DCAMM received bids. Clearly DCAMM selected a bid and not others. What is the basis on how DCAMM awards bids? Is it for the benefit of the community? Is it for the total dollar amount that goes in the Commonwealth? What is it? So these are unknowns. Well, I think they're unknowns in a general sense to the public. And I think that we would all do well by educating ourselves on how DCAMM operates and possibly contact your elected officials at the State House and say, tell me how DCAMM works. Tell me how you can change DCAMM to work for me and see what you hear.

But I also feel that approval of

operational procedural issues of the Commonwealth are, again, not in our purview. That's not what we're here to talk about.

I think that I see approving the permit and moving forward with something that looks at the future or denying the permit on the basis that there's inappropriate standard operating procedure that got us to this point in the bid. I think that it's not reasonable and realistic to imagine that that building would be torn down by the Commonwealth of Massachusetts, fully funded by the Commonwealth of Massachusetts, and left open for the community to do with -- for us to do with what we please. I don't think that's reasonable. So those are the issues that I'm working on, that I'm struggling with. And I also feel that I learned a great deal tonight by listening to folks here.

HUGH RUSSELL: Tom.

TOM SIENIEWICZ: So I guess this is where I'm thinking about it and I'm looking forward to the conversation actually. I actually want to start my remarks by just acknowledging somebody who couldn't be here tonight, who is Seth Teller. Somebody who I probably wouldn't agree with, maybe where I'm going to come out on this I sense, but somebody I feel a real kindred spirit with because he cared so much about this community and we miss him because of that and I'm sorry that he's not here. So I wanted to start by just acknowledging his absence.

And then I wanted to think about what we could agree upon. What did I hear tonight that we can agree upon?

So, first of all, we're to consider four Special Permits. And I think we can

agree on that. And I'm very much looking forward to the conversation when we're not exhausted amongst the fellow board members, making findings on each of the points that we will do. The question in my mind that's prompted by Steve's remarks is comparison to existing conditions. Is that a courthouse that is bounded by a chain link fence and abandoned? Is that the existing condition that we compare it to? Or is it a courthouse that's filled with noisy prisoners and the comings and goings of the Commonwealth. (Inaudible). I think we'll discuss that at the next hearing. I think we can agree that the proposal has been changed and modified and tempered by an extraordinary amount of effort by our neighbors and the developers. I want to measure the way in which that's changed and suggest it to comments and both

the Board and the community.

I think we can agree that implosion is not going to happen. That it isn't going to get erased magically. That the build is something is a fact. And that was stated by a number of the first speakers tonight and that resonates with me and I believe that to be true. That it's there and we have to figure out how we're going to deal with it.

I think we can agree that there's 8,000 people in East Cambridge and that there's 107,000 people in the City of Cambridge and so we've only heard from a small fraction of those voices and that's the nature of this process. But we as a Board have to take that into consideration and we have to take that fact seriously.

I think we can agree that DCAMM has left us a bit of a mess here and more than a

bit of a mess here, and we have to figure out how to make the best of it, but we're not here to work on that as my good colleague next to me said.

We can all agree that we do not like the division of the neighborhood, but I believe, and I am confident that when we're finished with our deliberations, that it will heal and that something great will come out of this process and there will be new life here.

And I'm looking for the wisdom of Sullivan. I always do that in the many years that I've been on public boards. It's not apparent to me what that wisdom is right now. I am confident after we deliberate, when we're rested, we will find some pearl, we'll find something -- it's not going to make everybody happy, but it will make everybody

we serve equally unhappy.

And that's where I am on there.

Probably not any comments on substance, more philosophical musings at this hour.

CATHERINE PRESTON CONNOLLY: So, I would first agree with my colleagues and particularly Steve's comments about DCAMM. That is as broken and disputing a process as that may be and as confusing as it is to myself and many of you who are here and who were here. I would encourage people to talk to their elected representatives about how that can be changed. And while I may wish it were in the purview of the Planning Board to force DCAMM to change, I don't see that in as something we're empowered to do.

I do like the proposed way forward that has been outlined here where we look at each of the Special Permits that have been applied

for individually and make findings on them and discuss what -- whether or not each -- the project meets those criteria individually. I especially appreciate Steve's comment that we should start with the question of whether it qualifies as a non-conforming -- for the non-conforming use treatment and that Special Permit. And I would start there, but there are obviously other Special Permits to go for. And I do think that is a bit of a threshold question. But I also, I agree with Tom that the question is what are we comparing it to? And is it the empty building? Is it what was there before? I would also add to that list, is it what the state could do with it as of right? And to me those are all important things to think about as we -- you know, if we were to deny this permit, what would, you

know, someone mentioned that we're not always tasked with dealing with a hypotheticals, but to a large extent when thinking about is something more detrimental to the neighborhood, we are asked to think about what is the alternative. And I think we do need to think about what the state could do as of right as part of thinking about that alternative.

And I would say that we need to think about that in terms of many of the issues that's been raised by the community tonight. And I would just take off, and this was also reflected in the multitude of written comments and the reports from the working group that we got, you know, basically people are concerned about traffic, parking, light, noise, and wind as the primary but not exclusive list of issues associated with this

reuse of an existing building. And I think those would be my big issues that I would want us to specifically make findings on.

That's what I've got.

H. THEODORE COHEN: Thank you.

I think this was a great meeting and a great hearing and I appreciate everybody's comments. Hugh said it's the toughest decision he's had to make. This case has had me more conflicted than any other case I've heard. I spent enormous amounts of time going through the materials, walking around the courthouse. I spent many years inside the courthouse. If you don't like the outside, you'd really love the inside. It's even worse.

But I, you know, I think we have to deal with the hand we were dealt with and that I agree with, you know, what Tom and

others have said. I just don't think the building's going to be imploded and that it's going to become a park. And so I think we have to deal with what then can, you know, possibly be done and what will be in the best for the community and for Cambridge at large within the confines of the Ordinance and what we can do under the Ordinance. You know, I agree that the initial question is whether what is proposed is substantially more detrimental than what existed. And if we make that finding, and I really am looking forwards to what I assume will be a very lengthy conversation on September 30th on all our different points of views about everything. And, you know, if this is not the right building and not the right height, well, is there something that is the right height? I guess we'll be discussing that,

too.

I actually have one question for the proponent if, Hugh, that's okay with you.

The reference to the market and the garage, does that only occur if City Council enters into a lease with you to rent parking spaces in the city garage or does it also -- does the market obligation also occur if you end up with spaces in the Cambridgeside Galleria?

ATTORNEY JAMES RAFFERTY: In our request to the City Council to lease portions of the garage, we also identified the portion, the retail portion, in anticipation of an expectation that part of the city's interest in our leasing of the spaces would include activity at the ground level of First Street. So the short answer is that it is part of the proposed lease of the garage. So

if we do not secure the lease, it would not be part of the process.

H. THEODORE COHEN: Okay. I wanted to be clear about that because a lot of people had been talking about that as being one of the benefits, but you've also asked if you can't get the parking in the city garage, that there was the request for the Special Permit for the parking at Cambridgeside Galleria.

ATTORNEY JAMES RAFFERTY: Correct.

H. THEODORE COHEN: I guess I have nothing else to say right now. It's been a very long night. It's been -- I really think it's been a great night. And I really look forward to our very lengthy conversation about this.

HUGH RUSSELL: So, what should have been done at 40 Thorndike Street? What's the

proper planning process that should have taken place? And I would submit that is first the state would demolish the building and remediate it. Then they would ask if the city would consider what Zoning is appropriate for this block since the current Zoning is based on the notion that this was a public building, courthouse, and was given the maximum Zoning in 1960 that was available, all three blocks were.

Then DCAMM would go out and seek proposals for disposing of that piece of land in accordance with the Zoning that the City of Cambridge would have set up.

I don't think this is -- there's any -- it's not likely that this is going to happen now, but I think that's what should have happened, and I think in whatever -- when we make a decision, I think we should address

what was -- what as a Planning Board we think should have happened. This will perhaps be of interest to whatever court reviews this -- and it may help us to try to address the question on how we apply the project review standards to the project.

We should clearly state our vision for what should be done with the site, and then the other thing we have to do is we have to apply a specific Zoning standard to the project based on the findings that we make. Right now the building is very detrimental and the use is not compatible with most of the surrounding residential areas. And I don't think we want to see this level of detriment perpetuated.

I didn't like the City Solicitor's opinion. It made -- it may make legal sense but it doesn't make planning sense that a

decision based on how to use the basement of a post office should apply to a 700,000 square foot 22-story building in the middle of the city. Maybe that's how lawyers think, but to me those are substantially different and I would hope that should this -- should we not find the matching solution that Tom was hoping that we'll find, and that this goes -- and that goes on that courts and judges look at it, that I would hope that someplace up the line the appellate courts would say, you know, this is different. This is not -- this is different than Durkin. But I'm not a lawyer. I'm -- and I'm, you know, I'm a member of the Planning Board.

I think the, if you say you've got to keep most of the building, then the proposal that's on the table has received, and has gotten a lot of thought, a lot of very good

thought. The proposal -- how to deal with the podium seems to make a lot of sense to me. The work as it's evolved on the Spring Street open space, you know, the -- and the work on the tower is, you know, work through help remediate some of the problems. I think more work needs to be done, and I think we can condition a proposal on that. I think it's possible to put a requirement that there be no light spillage from the tower outside the building. It requires some very close attention to how the light fixtures are designed and what happens, but it's technically possible to study that and to achieve that and it's not a particularly onerous thing to do. That means to use Mr. Teague's standard, that when you're standing outside and looking up at night, you can't see any light luminaire, you can't see

any reflectance of a luminaire, and that may be oversimplified. I'm not sure the information provided to us, that if a tall tower remains there, the maximum has been done to ameliorate the light. Clearly they've had a consultant. Maybe we need to have an independent consultant come and advise us and say -- you know, to evaluate the report and to tell us whether they think there are other opportunities.

And then I've been thinking about well, how tall should the building be? And the different ways of thinking about that. There's the 22-stories of the existing structure. There's the 20-story option which is sort of trying to do something. If you were to make it 12 stories tall roughly, you wouldn't be able to see it from the next block unless your windows are up there. But

from the street, if you walk around the next block over and see how much of the courthouse can you see from the street? The answer is you can see the top of ten stories roughly. Obviously if you're looking down the street, you'll see more.

Or should enough of the tower come off to make it compliant with the FAR of four? And so that you say, okay -- sort of say well, the standard ought to be what could legally have been built in -- at that time? Now at that time you could have built a slender tall tower of (inaudible) but you would have been limited by the bulk. And there's, you know, there are things that could be done to make the tower seem more slender, more can be taken away from it. Or do you say the standard really ought to be compatibility with the three-story houses

that are across the street or the four-story or five-story adjacent court buildings and that may leave a building of four stories. Those are all ways of thinking about it.

I find on the one hand I think we need to reach some conclusion, and at the same time I think it in some way exceeds our authority and say no, it's got to be whatever; 17, 12, or 6 or whatever. So if these thoughts seem to be not coherent, we'll work it out. All I can say is these are the thoughts that I've had and I look forward to our discussions. I would very much like that we could come out of this process with the grudging notion that what we approve is, you know, doable and for most people would say it's like this is what can be done. That to me would be the best thing that we can do, is to try to put forward what we believe is the

best possible compromise. And if it's good enough, maybe people will say okay, let's let it happen. Because there's tremendous sentiment to go forward with something and there's tremendous sentiment to make the building smaller and possible.

And those are the -- if you will, those are the two ideas that are there.

Okay, so --

STEVEN COHEN: Could I?

HUGH RUSSELL: Sure.

STEVEN COHEN: I said first time around I didn't want to say anything of the substance. But as I'm listening to my wise colleagues, I prompted a few thoughts.

First of all, I want to say that the design itself, height aside, I think it's a great design. I like it a lot. I think it's enormous improvement over the former design.

I think using the terra-cotta, that makes it fit in better. I think breaking it down into that grid sort of breaks down the perception of height to some extent. I think the changes on the ground floor are good. Again, height aside, I'm very pleased with the design and the proposal.

Height, of course, is the 800 pound gorilla in the room. And as Hugh alluded to, I'm not sure about our authority. And I think it's really important that we not act simply in our own whims or preferences or subjective thoughts. I think that's known as arbitrary and capricious, and I think it's important that we understand exactly what the law says and what it dictates and what the limits of our authority may be in this situation, and I think that's still an open question for us to discuss, but I think it's

an important question. It's a matter of our own integrity that we try to apply the law using our best judgment, certainly, but not on a purely subjective basis. And having said that, if we find that this is a legal non-conforming use, and if we find that the application before us is not substantially more detrimental to the neighborhood than the existing use, then I'm not sure where we go on height. Because then as we shift to the other project review Special Permits, it seems to me that what we need to do is to require that those design goals and guidelines be addressed to the greatest extent possible as reasonable. But I think, you know, within the existing building, because I think that first round, that first analysis that it's a non-conforming use, and if we so find that if it's not more

substantially more detrimental, I think that kind of establishes the fact that we have to work as best as we can with the mass, the height of the building as is. And I think, you know, within that there's a lot that we can do, as you say, with wind and light, and design and so forth. But I'm just really not sure that we would be within our rights to subjectively decide here that eight stories or twelve stories or what have you is the right number. And, again, as far as threshold issues go, I think it's really important for us to discuss and sort of come to an understanding about what the limits of our authority here are.

HUGH RUSSELL: Any more comments?

Okay, so we are adjourned. And we'll discuss this September 30th.

I just want to comment that for a

hearing that's had so many people speak and on -- with different points of view, this has been a model of the decorum and respect and we really appreciate that.

(Whereupon, at 11:25 p.m., the  
Planning Board Adjourned.)

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