CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY MARCH 26, 2012

Chairman's Note: ***This report is a revised version of what was distributed in the Friday Packet. The only change is the location at which Ald. Sangiolo would like a walking trail. The previous report stated that she was interested in a walking path along the Lower Falls side of the development; the correction is that she's interested in a walking path along the Auburndale side of the development.***

Present: Ald. Johnson (Chairman), Baker, Lennon, Sangiolo, Yates, Kalis, Danberg, Swiston
Also present: Ald. Hess-Mahan, Gentile, Crossley, Albright, Fischman, Schwartz
Planning and Development Board: Joyce Moss (Chair), Doug Sweet, David Banash, Leslie Burg, Eunice Kim
Economic Development Commission: Chris Steele
City Staff: Candace Havens (Director of Planning and Development), Seth Zeren (Chief Zoning Code Official), Eve Tapper (Chief Planner for Current Planning), Dave Turocey (Commissioner of Public Works), Clint Schuckel (Director of Traffic Division, DPW), Rebecca Smith (Committee Clerk)

#400-11 Ald. Gentile, Harney, Sangiolo requesting amendment to Section 30-13 to establish a Mixed-Use 3/Transit Oriented District (MU3/TOD) including a list of permitted uses and a requirement for all development greater than 20,000 square feet of gross floor area to obtain a "mixed-use development" special permit. The mixed-use development special permit shall require the creation of a development parcel governed by an organization of owners and limit development to no more than 225,000 square feet of office in one building, no more than 290 dwelling units in up to two buildings, and 20,000 square feet of retail and other commercial uses with a requirement for residential, office, and retail uses. Amend Section 30-15 to create a new Subsection (v) and revised Table 3 providing dimensional standards for development in the MU3/TOD. Section 30-15(v) shall include required setbacks from public ways of one half building height with exceptions for setbacks along public highways and rail yards, a requirement for a minimum of 15% beneficial open space, a maximum height of 135 feet for buildings, and a maximum FAR of 2.4. Amend Section 30-24 to include, but not be limited to, standards for project phasing; require pre-construction and post-construction studies of road and traffic impacts, water, sewer, and storm water impacts, and net fiscal impacts; incorporate additional criteria for the granting of a special permit; and set additional special permit filing requirements. Amend Section 30-19 to create new parking standards for this mixed-use development, which incorporates a shared-parking study. Amend the definitions in Section 30-1 for key terms related to the above provisions. Amend Section 30-5 to allow those public uses described in Section 30-6 in all zoning districts.

ACTION: HELD 8-0

NOTE: The meeting began by the members of the committee sharing their thoughts from the public hearing. What they took away from the public hearing was that the vast majority of the public in attendance that night were not in favor of this development as proposed. The major issues that the committee expressed as their takeaways from the public hearing were the need to discuss flexibility for the site, the schedule for post construction reviews (which need to be clarified), the impact to Williams School, and the possibility of direct access to the site.

Following these opening comments, Candace Havens, Director of Planning and Development, introduced Mark Boyle, Assistant General Manager for Development for the MBTA. Mr. Boyle explained that the MBTA will accrue $270 million over this 85 year lease with BH Normandy. The leased property is fully taxable by the city. The Riverside location is very important facility for the MBTA but is also a large services asphalt parking lot. Six years ago he met with the city for the first time about this potential development. After this brief introduction the committee posed some questions to Mr. Boyle and Ms. Havens.

Ald. Johnson inquired about access to the river. It was explained that the riverbed is owned by DCR. Expanding the development parcel to get closer to the river would require discussions with DCR. Seth Zeren, Chief Zoning Code Official illuminated for the committee the fact that along that line by the river is a change of grade amounting to a 20-30 foot drop. Even still the committee is interested in somehow providing river access for the development and the Planning Department has a conference call with DCR about how access can be granted.

Ald. Sangiolo asked Mr. Boyle what the issue is with not allowing the equity office park to connect to the riverside site and therefore piggyback on direct access to the highway, should it occur. This would alleviate traffic on Grove Street even more. Mr. Boyle explained that the MBTA is not in favor of this because it would be an issue for safety, security, operations, and environmental protection. All of these respective departments within the MBTA looked at the options and came back with a strong negative recommendation for that thought. There is too much activity in the area for this sort of egress; it is the MBTA's principle maintenance yard. Furthermore, the MBTA's top priority is site safety and security. There are many tracks that circulate back there. Additionally, the MBTA's facility is right against the property line. To push things out farther would encroach into DCR reservations. These reasons were outlined in a letter to the Mayor.

Ald. Sangiolo requested an explanation for why bike paths and walking paths would be considered through the area but a road would not. Mr. Boyle explained that to create a fully functioning road that is up to code would take up a substantial amount of track area and would require extensive permitting with DCR because of the impact to the river and the reservation.

The committee also questioned the need for the MBTA to require all 960 spaces on the new development since the lot never seems full now. Mr. Boyle explained that prior to the recession the lot was always full and as time proceeds the MBTA is seeing an upswing in use and expect it to recover to previous numbers. Additionally, during baseball season the lot is always full. Mr. Boyle also explained that there is a precondition in the lease with BH Normandy that there be a 1:1 replacement of existing spaces. The MBTA does support shared parking, however, since most of their parking is used during business hours.

Regarding direct access, Mr. Boyle explained that the MBTA is still pushing and supporting the direct access proposal.

Ald. Hess-Mahan pointed out unused train tracks on the edge of the site that go towards Newton Lower Falls. Mr. Boyle explained that these tracks are owned by DCR. Ald. Hess-Mahan suggested perhaps creating a walking path where these tracks are that would lead people across the site and perhaps this could be used as a safe pathway to get to the green line and Williams School instead of having people walk down a very busy Grove Street. Mr. Boyle sees no issue with this if it can be done in a safe way. Ald. Sangiolo expressed her frustration with the

Conservation Commissions of Newton and Weston as she has been pushing for a walking path along the Auburndale side of the development but has received little cooperation in finding a way to accomplish this.

Ald. Yates expressed his view that though a detailed site plan would be necessary to determine this, having school children walk across the development doesn't sound safe to him. He also floated the idea that wherever the walking trail connects to lower falls will have traffic and parking issue from people trying to get out of paying for parking at the lot.

Ald. Fischman inquired as to whether the MBTA would look into overnight parking leases and whether they do this at Arborpoint. Mr. Boyle stated that yes they do have overnight leases at Arborpoint and any potential for additional revenue on this site would be considered.

Candace Havens then introduced Clint Schuckel, Director of the Traffic Division, Department of Public Works, to discuss direct access. Mr. Schuckel explained that the barriers to this proposal are set forth by Federal Highway and the Department of Transportation (Mass DOT) and are non-negotiable. A good amount of Mass DOT's funding comes from Federal Highway and they have standards that they have to follow in order to retain this federal funding. From the city staff, side they have done the due diligence to push for this access. He stated that if we were to get federal highway and Mass DOT to approve the access we have to think about what that would look like. The current standards for ramps require a large radius so people can decelerate safely; additionally, the law is that the interchange has to first connect to a public road before entering a private development, therefore, the ramp would have to service Grove Street first and then the development. This would end up being a huge flyover, with possibly some impacts to homes. Mr. Schuckel posed the question to the committee that if access is granted, is this really something that they want at this location.

Mr. Schuckel also provided the perspective that direct access would allow more development. It would create more trips and more density because the direct access is only going to serve a portion of the trips. Not everyone will use the highway because it's not the fastest or cheapest route; people won't want to go through the Weston tolls so they will get off the highway and travel down Grove Street anyway.

Ald. Gentile asked about the standards that need to be met with DOT. He recalls them saying that the city won't get past the first standard because there is engineering work to date that shows an acceptable alternative. Mr. Schuckel explained that the developer had to show that the scheme without an interchange would works. The proposal for Grove Street uses round-a-bouts and the round-a-bouts do work. The caveat is how much development you put on the site because there is a threshold where they would no longer suffice. But as proposed, what the proposal shows is that Grove Street can be made to support the development. Ald. Gentile inquired about the other criteria from Mass DOT. Mr. Schuckel stated that there are 8 pieces of criteria and he will provide them to the committee.

Ald. Sangiolo inquired about Liberty mutual in Weston and how they have direct access to their site if it is not legally allowed. Mr. Schuckel will look into this and provide the answer to the committee.

Yates inquired about whether the possibility has been explored for using the Mass DOT section of the parcel as a right of way going north to interchange at route 30 and have people exit there are turn around on route 30 to use existing ramps to go southbound. Ms. Schuckel explained that his understanding is that Mass DOT is working on some kind of interchange reconfiguration but he will have to get back to committee with specifics.

Ms. Havens then addressed the committee. She distributed the revised zoning amendment (attached) which includes some changes based on what was heard at the public hearing. The first topic discussed was flexibility. On page 3 of the text the change to the total square footage of the three uses was changed so some flexibility is allowed around each use. The percentages of the uses can change by 5%. The total density doesn't change though because

where you increase 5% or decrease 5% that space has to be captured or relinquished within another use. 5% would equate to 11,500 square feet of office, 1,000 square feet of retail, and 14,000 square feet of residential.

Ald. Crossley had made the suggestion that ancillary uses in office or residential buildings don't count towards the percentage of retail. This suggestion was adopted by the Planning Department. The space will not be counted towards retail if it serves that building but will instead be counted toward commercial or residential, depending on what type of building is housing it. Ald. Crossley inquired about the size of residential units, and how the total square feet of dwelling space was determined. Mr. Zeren explained that 1150 was the number used as the amount of square feet per dwelling unit; this number includes circulation space. Ald. Crossley expressed some surprise with how low that number is, but Mr. Zeren explained that these units will be mostly 1-2 bedrooms and the developer is comfortable with this number.

The possibility of allowing the office space to be built in 2 separate structures was proposed by Joyce Moss of the Planning Department. It was determined that the developer is in favor of only 1 office building. They've considered many proposals and this is the one that they feel is the most logical and the one they can make work. Additionally, Ald. Gentile expressed that it was never his intention to cloud the understanding that office space should be in one structure. He requested that that portion of the ordinance be returned to how it was originally drafted so that office space is contained within one structure. Even still, Ald. Sangiolo, Leslie Burg, and Ald. Albright, and Ald. Danberg expressed the desire for vertical integration to make a better and more interesting project.

Ald. Hess Mahan inquired as to whether there would need to be advertised again because of these changes in this draft. Ouida Young, Associate City Solicitor, clarified that re-advertising will not be necessary as these are just minor changes to the overarching plan.

The committee then moved on to the use chart. Ald. Kalis asked about laundry and dry cleaning drop off and whether that would create more trips. Ms. Havens explained that it wouldn't generate more trips as a majority of their patrons are picking up and dropping off as they're getting on and off the T for their commutes to and from work.

Mr. Zeren then walked the committee through the remaining changes in the revised zoning amendment which sparked some additional comments by Ald. Sangiolo and Ald. Kalis. Ald. Sangiolo requested that Attorney Young look at the language for the requirement of post construction studies to make sure there are no loopholes that would allow for people to obtain temporary occupancy permits and therefore get out of post construction studies (post construction studies are set to commence after the final occupancy permit is granted). It was noted as well that traffic studies can occur at any time should the traffic situation be worsening. Ald. Hess Mahan and Ald. Johnson recommend that post construction reviews are done after each phase of construction is complete.

Ald. Gentile also requested that the Land Use Committee be given the power to request a traffic study during the process but Attorney Young expressed her opposition to this stating that the Board itself should not get into the business of policing or regulating an issue that has already passed through its hands. Ald. Gentile accepted that judgment.

The topic of school analysis was brought up by Ald. Kalis. Eve Tapper, Chief Planner for Current Planning explained that the city cannot regulate the interior space of the residential building. There is a requirement that the developer do a fiscal analysis, which will be peer reviewed, and which requires that the city attain a positive impact from the development. If the developer realizes that they are not going to create a positive impact they can reduce the number of bedrooms themselves but the city can't force them to do so. Again the topic of specific review of the impact to schools, due to the dwellings included in the development, was touched upon. Caution was again expressed by the Law Department about getting too involved with regulating space and having it appear that the city is discriminating against families. Attorney Young

referenced the Franklin Decision, a case recently heard in relation to a matter pertaining to dwellings. She has provided this document to the committee (attached to report).

The motion to hold was made on the item which carried unanimously. The committee will take this item up again at their regularly scheduled meeting on April 9th.

#400-11(2) The Planning Department, requesting in the event that #400-11 is adopted, to amend Section 30-15(v) and Table 3 to allow up to 250,000 square feet of additional gross floor area and a maximum FAR of 3.0 for providing direct access to and from Route 128.

ACTION: HELD 8-0

NOTE: See note for #400-11.

Respectfully Submitted,

Marcia Johnson, Chairman

#400-11(2)

WHEREAS, the 22-acre area owned by the Massachusetts Bay Transportation Authority ("MBTA") and including the MBTA Station and lands adjacent to existing highways in the Riverside area of the City of Newton represents an unique opportunity to encourage mixed-use development based upon smart growth principles; and

WHEREAS, the purpose of a mixed-use development within the Riverside area is to allow development appropriate to the area and its surroundings, provide enhancements to infrastructure, integrate with and protect nearby neighborhoods, provide a mix of compatible and complementary commercial and residential uses appropriate for transit-oriented sites, and advance the City's long-term goal of strengthening alternatives to single-occupancy automobile use while remaining consistent with the City's *Comprehensive Plan*; and

WHEREAS, the Zoning Ordinances of the City of Newton do not presently provide the appropriate development controls and incentives to encourage and control the transit-oriented development of the Riverside area; and

WHEREAS, such controls and incentives are in the public interest and further the objectives of the City's *Comprehensive Plan*; and

WHEREAS, this proposal provides a new zoning district for Mixed-Use Development and no land will be placed in this zone until the Board of Aldermen approves a map change;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

#400-11 TIER I – INITIAL ACTION

1. *By re-designating the current Section 30-13(f) as Section 30-13(h); re-designating the current Section 30-13(g) as Section 30-13(i); and inserting a new Section 30-13(f) and a new Section 30-13(g) as follows:*

(f) Establishment and purpose of the Mixed-Use 3/Transit-Oriented District.
(1) Purpose. The purpose of the Mixed-Use 3/Transit-Oriented District is to allow the development of a mixed-use center on a ~~9.33-acre~~ parcel of no less than nine (9) acres near the terminus of a mass transit rail line, an interstate highway, a scenic road, and the Charles River, commonly referred to as the Riverside MBTA station, pursuant to the City's *Comprehensive Plan,* particularly the Mixed-Use Centers and Economic Development Elements. This district shall encourage comprehensive design within the site and with its surroundings, integrate complementary uses, provide enhancements to public infrastructure, provide beneficial open spaces, protect neighborhoods from impacts of development, allow sufficient density to make development economically feasible, foster use of alternative modes of transportation, and create a vibrant destination where people can live, work and play.

(2) Allowed uses. In the Mixed-Use 3/Transit-Oriented District, land, buildings, and structures may be used or may be designed, arranged, or constructed for one or more of the purposes listed in Section 30-13 Table A, subject to the density and dimensional controls of Section 30-15 and the parking requirements of Section 30-19.

TABLE A: PRINCIPAL USES [1]	
Uses similar to or accessory to the following as determined by the Commissioner of Inspectional Services	
Mixed-Use Development	
• **Mixed-Use Development per section 30-13(g)**	**SP**
Category A	
• **General office:** including but not limited to research and development, professional offices, ~~medical offices~~, business incubator, and similar uses	
• Medical offices	**SP**
• On the ground floor	**SP**
• Manufacturing	
Category B	
• **Retail sales,** up to 5,000 square feet of gross floor area, including, but not limited to specialty food stores, convenience store, newsstand, bookstore, food coop, retail bakery, excluding sales of motor vehicles or gasoline	
• **Retail banking** and financial services	**SP**
• **Automated Teller Machines**	
• **Personal services**: up to 5,000 square feet of gross floor area, including but not limited to barbershop, salon, tailor, cobbler, personal trainer or fitness studio, and similar uses, excluding repair, servicing, or washing of motor vehicles	
• **Retail laundry or dry cleaning drop-off**	
• **Eating and drinking establishments**, up to 5,000 square feet of gross floor area, excluding fast food establishments as defined in section 30-1	
• **Car rental, car-sharing services** that enhance alternative transportation modes, electric car charging	
• **Health club**	
• On the ground floor	**SP**
• **Place of entertainment and assembly**, theater	**SP**
• **Lodging**, hotel, motel	**SP**
• **Parking**, non-accessory commercial	**SP**
• Retail, service, eating and drinking establishments over 5,000 square feet of gross floor area	**SP**
• **Drive-in** business	
Category C	
• Multifamily dwelling (a building containing three or more dwelling units)	
• Live/work space or home business	
• Single-room occupancy dwelling or single-person occupancy dwelling	**SP**
• Assisted living or nursing home	**SP**
Public and Community	
• **Community use space**	
• **Day care (adult or child)**	
• **Place of religious assembly**	
• **Government offices or services**	
• **Park or garden**	
• **Nonprofit or public school**	
• **Rail or bus terminal**	
• **Public parking**	
• **Library or museum**	

[1] A use listed in Table A is permitted as of right in the Mixed-Use 3/Transit-Oriented District where denoted by the letter "BR." Uses designated in the Table by the letters "SP" may be allowed only if a special permit is issued by the Board of Aldermen in accordance with the procedures section 30-24. Uses denoted by an "X" are prohibited.

[2] Any accessory use or use determined to be similar to a use allowed by right shall be allowed by right. Any accessory use or use determined to be similar to a use allowed by special permit shall be allowed by special permit only. Any accessory use or use determined to be similar to a prohibited use shall be prohibited.

(g) ***Development by special permit in the Mixed-Use 3/Transit-Oriented District.*** Land and buildings in the Mixed-Use 3/Transit-Oriented District may be used for any of the purposes authorized in 30-13(f)(2). Notwithstanding section 30-13(i), any development that proposes an aggregate gross floor area of 20,000 or more square feet of gross floor area among all buildings within the Development Parcel shall require a special permit for a Mixed-Use Development, which is defined to include a Development Parcel combining a residential use with at least two other principal uses listed in Table A as allowed by right or by special permit, in accordance with the procedures provided in section 30-24. Any proposed Mixed-Use Development shall comply with the following provisions and the provisions of sections 30-15(v) and Table 3, 30-24(c)(7), 30-24(c)(8), 30-24(c)(9),30-24(i), 30-24(j), and 30-24(f).

(1) ***Establishment of a Development Parcel.*** The area developed under a special permit by this section must be organized into a Development Parcel as defined in Section 30-1. The Development Parcel may contain more than one lot and/or a portion of a lot. The provisions of this Zoning Ordinance shall apply to the Development Parcel as it exists on the date that the special permit is granted as if the Development Parcel were a single lot for zoning purposes, without reference to interior lot lines dividing separate ownerships. After the grant of a special permit per Section 30-13(g), the ownership may be further divided (subject to the establishment of an organization of owners defined in (3) below) and any interior lot lines shall be disregarded for zoning purposes. The Development Parcel may be modified from time to time to accommodate land swaps or the purchase of adjacent land, provided that the Development Parcel is not less than 9.33 acres in size and does not create or expand any nonconformities.

(2) Intensity of development. The development must have at least one use from each of the three categories (A, B, and C) enumerated in Table A, and a community use space. The total floor area of all uses from Categories A, B, and C in Table A shall not exceed 580,000 square feet of gross floor area. The square footage in each category shall not exceed the maximums listed below, except where approved by the Board of Aldermen through special permit, they may be adjusted by up to 5% in each category so long as the total does not exceed 580,000 square feet of gross floor area:

a) Category A shall not exceed 225,000 square feet;

b) Category B shall not exceed 20,000 square feet, excluding those uses that are accessory to a use listed in Category A or C as determined by the commissioner of inspectional services, and are not open to the public;

c) Category C shall not exceed 335,000 square feet or 290 dwelling units.

~~*(2) Intensity of development.* The aggregate gross floor area of all structures, including private accessory parking structures within the Development Parcel, excluding any structures or portions of structures dedicated to public use and owned by a state instrumentality, shall be subject to all of the following provisions:~~

~~a) The total area of office uses shall not exceed 225,000 square feet of gross floor area and must be contained within one structure (excluding offices incidental to residential, retail and/or community uses);~~

~~b) The number of dwelling units within the Development Parcel shall not exceed 290 and must be contained within up to two structures;~~

~~c) The total area of uses in Category B in enumerated Table A shall not exceed 20,000 square feet; and~~

~~d) The development must have at least one use from each of the three categories (A, B, and C) enumerated in Table A.~~

(3) Organization of Owners. Prior to exercise of a special permit granted under this section, an organization of all owners of land within the Development Parcel shall be formed. The organization of owners will be governed by special permit with the authority and obligation to act on behalf of all such owners in contact with the city or its representatives regarding compliance with the zoning ordinance. The organization shall serve as the liaison between the city and any owner, lessee, or

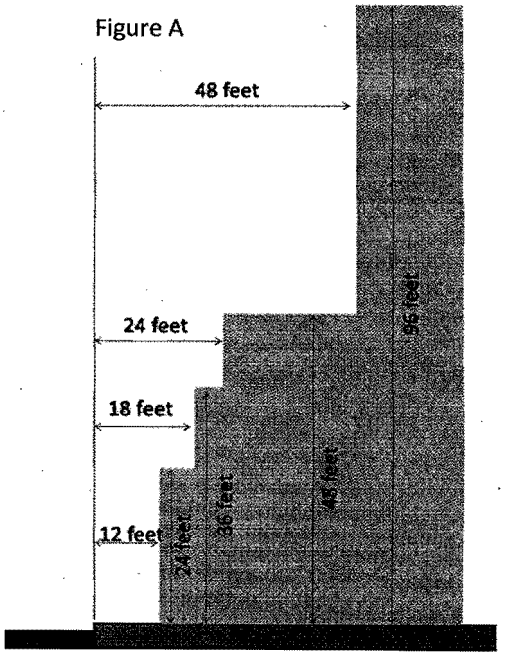
licensee within the Development Parcel governed by a special permit granted under section 30-13(g). Such organization shall be the primary contact for the city in connection with any dispute regarding violations of the zoning ordinance and, in addition to any liability of individual owners, shall have legal responsibility for compliance of the Development Parcel with the terms of the special permit for a Mixed-Use Development, site plan approval, and other applicable provisions of the zoning ordinance. In addition, any special permit granted under this section shall provide for the establishment of an advisory council consisting of representatives of the adjacent neighborhoods and this organization to assure continued compatibility of the uses within the Development Parcel and its neighbors during and after construction. Membership of this advisory council shall be provided for in the special permit and shall be structured to ensure all neighborhood interests are represented.

2. *By adding a new Section 30-15(v) as follows:*

(v) ***Mixed-Use Developments in the Mixed-Use 3/Transit-Oriented District.*** Any development permitted by special permit per section 30-13(g) must meet the following requirements and the requirements of Table 3. The Board of Aldermen may grant a special permit per section 30-24, including section 30-24(i), to allow exceptions to the by-right dimensional standards of the Mixed-Use 3/Transit-Oriented District, provided that the requirements of this section are met and no dimension exceeds those allowed in Table 3 for the Mixed-Use Development Special Permit.

(1) ***Setbacks.*** Any structure or building must be set back a distance equal to at least half the height of that structure or building from any ~~public way~~lot line, except that for perimeter lot lines adjoining a state highway right-of-way or land owned by a state instrumentality, the setback may be zero feet for nonresidential uses. To encourage stepped setbacks for taller structures, each portion of a building shall be treated as if it is a separate building for purposes of calculating required building heights and setbacks (as illustrated in Figure A). In accordance with the procedures provided in Section 30-24, the board of aldermen may grant a special permit to allow a reduction in the minimum setback if it determines that the proposed setback is adequate to protect abutting uses.

Figure A



(2) ***Beneficial Open Space.*** At least 50% of the beneficial open space provided as part of a Mixed-Use Development must be freely open to the public.

(3) ***Exclusion of Public Structures from Zoning Requirements.*** Any portion of the Development Parcel for the proposed development owned by a state instrumentality and devoted to a governmental function from which the general public is excluded, including, but not limited to a rail yard, maintenance facility, or railroad right of way and any portion of a building or structure dedicated for public use by a state instrumentality, such as a passenger station or associated facilities for use by customers of the Massachusetts Bay Transportation Authority, shall not be included in the calculation of:

i. The quantity of beneficial open space required;
ii. Minimum lot area; or
iii. Floor Area Ratio.

(4) ***Impacts of Takings by or Conveyances to a Public Entity:*** The provisions of section 30-26(a) shall apply to any taking by or conveyance of land within the Development Parcel to a public entity or to any land otherwise dedicated and accepted as a public way.

3. *By adding the dimensional requirements for the Mixed-Use 3/Transit-Oriented District to Table 1 and Table 3 of Section 30-15 as follows:*

Table 1:

Zoning District	*Minimum Required Lot Area*	*Lot Area per unit*[1]	*Frontage*	
MU3/TOD	~~*40,0009*~~ *acres*	*1,200*	*80*	*SEE TABLE 3 for other dimensional controls*

Table 3:

Zoning District[11] *MU3/ TOD*	*Max. # of Stories*	*Bldg. Ht*[12] *(ft.)*	*Total Floor Area Ratio*	*Gross Floor Area/ Site Plan Approval (SF)*	*Threshold by Special Permit (Gross Floor Area; SF)*	*Min Lot Area (SF)*	*Lot Coverage*	*Beneficial Open Space*	*Front (feet)*	*Side (ft.)*	*Rear (ft.)*
As of Right	*N/A*	*36*	*1.0*	*10,000-19,999*	*20,000*	*40,000*	*N/A*	*N/A*	*15*[9]	*10*	*15*
Mixed-Use Development Special Permit, per 30-13(g)[13]	*N/A*	*135*	*2.4*	*N/A*	*N/A*	~~*40,000*~~ *9 acres*	*N/A*	*15%*[13]	*½ bldg. ht.*[13]	*½ bldg. ht.*[13]~~*0*~~	*½ bldg. ht.*[13]~~*0*~~

13. See sec. 30-15(v) for additional dimensional requirements for developments within the Mixed-Use 3/Transit-Oriented District.

4. *By adding new sections 30-24(c)(7), 30-24(c)(8), 30-24(c)(9), 30-24(i), 30-24(j) as follows (and renumbering all the others):*

(c)(7): ***Project Phasing.*** Any development subject to a special permit under section 30-13(g) may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted, provided that all off-site improvements and enhancements to public roadways are completed prior to issuance of any occupancy permits.

(c)(8): ***Adequacy of public facilities.*** Transportation, utilities, water, sewer and storm water infrastructure, public safety, schools including capacity, and other public facilities and infrastructure shall serve the Mixed-Use Development appropriately and safely and without deterioration in service to other locations. To determine the adequacy of public facilities, impact studies of the following must be undertaken by the petitioner as part of the special permit application process under 30-13(g) with the project scope determined by the director of planning and development and the commissioner of public works (peer reviews may be required, hired by the city and paid for by the petitioner):

a) Adequacy of road and traffic infrastructure, including the traffic analysis required in section 30-24(j)(6)

b) Adequacy of water, sewer, and storm water infrastructure, including use of the water, sewer, and storm water analysis required in section 30-24(j)(8)
c) Net fiscal impacts, including use of the fiscal impact analysis required in section 30-24(j)(9)

As part of any special permit granted per section 30-13(g), post-construction studies for impacts on road and traffic capacity and water, sewer, and storm water service shall also be required. These studies must be conducted within twelve months of full occupancy, or earlier if requested by the director of planning and development and commissioner of public works, and continue annually for two years following final build-out. If the actual impacts are consistent with projections, no further study or mitigation shall be required. If the actual impacts exceed projections, further mitigation shall be required. Following completion of such additional mitigation, annual follow-up studies shall be conducted until these studies show for five consecutive years that the impacts from the development comply with the special permit.

The special permit shall also require a bond or other security satisfactory to the director of planning and development and commissioner of public works to secure performance. The bond or other security may be forfeited, at the ~~city's~~ election of the director of planning and development and commissioner of public works, and proceeds used by the city for mitigation if the petitioner fails to complete any required mitigation or to manage impacts within acceptable levels identified by special permit, subject to reasonable extensions under the circumstances,

(c)(9): ***Post-Construction Traffic Study.*** A special permit issued under section 30-13(g) shall provide for monitoring to determine consistency between the projected and actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the site and their distribution among points of access to the Mixed-Use Development. The special permit shall require a bond or other security satisfactory to the commissioner of public works and director of planning and development to secure performance as specified below:

i. Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy and shall continue annually over the following twenty-four months. Measurements shall be made at all driveway accesses to the Mixed-Use Development and/or intersections studied in the pre-construction Roadway and Transportation Plan. The commissioner of public works may require traffic monitoring earlier or more frequently if in his or her judgment, there appears to be degradation from the LOS projected by the pre-construction Roadway and Transportation Plan.
ii. The actual number of weekday peak hour, Saturday peak hour, and weekday daily vehicle trips to and from the Mixed-Use Development at all points studied in the pre-construction Roadway and Transportation Plan shall be measured by a traffic engineering firm retained by the city and paid for by the petitioner or successor.
iii. Mitigations will be required if actual total number of vehicle trips to and from the Mixed-Use Development measured per subsection (ii), above, summed over the points of access exceeds the weekday evening Adjusted Volume projected per section 30-24(i)(5) by more than ten percent (10%) as a result of traffic generated by the Mixed-Use Development. Within six months of notification, the owner of the Mixed-Use Development site shall begin mitigation measures (reflecting applicable roadway design standards at the time and pending receipt of all necessary state and local approvals), as described in the Roadway and Transportation Plan submitted by the petitioner and listed in the Mixed-Use Development special permit in order to reduce the trip generation to 110% or less of the Adjusted Volume. Such reduction is to be achieved within twelve months after mitigation begins. The commissioner of public works and director of planning and development must approve any mitigation efforts prior to implementation.

(i) ***Additional special permit criteria for a Mixed-Use Development in the Mixed-Use 3/Transit-Oriented District.*** In granting a special permit for a Mixed-Use Development under section 30-13(g), the Board of Aldermen shall not approve the special permit unless it also finds, in its judgment, that the proposal meets all of the following criteria in addition to those listed in section 30-24(d):

(1) *Not inconsistent with the Comprehensive Plan.* The proposed Mixed-Use Development is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Mixed-Use Development and applicable general laws relating to zoning and land use.

(2) *Housing, public transportation and parking improvements, and utility infrastructure enhancements*. The proposed Mixed-Use Development offers long-term public benefits to the city and nearby areas such as:

a) Improved access and enhancements to public transportation;
b) Enhancements to parking, traffic, and roadways;
c) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
d) Public safety improvements;
e) On-site affordable housing opportunities except where otherwise allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and
f) Water, sewer, and storm water infrastructure enhancement.

(3) *Fiscal Impacts*. The proposed Mixed-Use Development has a positive fiscal impact on the city after accounting for all new tax revenue and expenses related to, but not limited to, school capacity, public safety services and public infrastructure maintenance.

(4) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths are appropriately designed between the proposed Mixed-Use Development and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the Mixed-Use Development as well as to improve traffic and access in nearby neighborhoods

(5) *Enhanced open space*. Appropriate setbacks, buffering, and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the proposed Mixed-Use Development; and meaningful bicycle and pedestrian connections to open spaces, recreational areas and natural resources, including the bank of the Charles River and associated walking trails that are publicly accessible and take full advantage of the unique opportunities for use and enjoyment by the community at large.

(6) *Excellence in place-making*. The proposed Mixed-Use Development provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the Mixed-Use Development and its surroundings.

(7) *Comprehensive signage program*. Notwithstanding the requirements of Section 30-20, all signage for the proposed Mixed-Use Development shall be in accordance with a comprehensive signage program developed by the petitioner and approved by the Board of Aldermen, which shall control for all purposes, shall supersede any other sign requirements, and shall be complementary to the architectural quality of the Mixed-Use Development and character of the streetscape.

(8) *Pedestrian scale*. The proposed Mixed-Use Development provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel.

(9) *Public space*. The proposed Mixed-Use Development creates public spaces as pedestrian-oriented destinations that accommodate a variety of uses, promote a vibrant street life, make connections to the surrounding neighborhood, as well as to the commercial and residential components of the Mixed-Use Development, to other commercial activity, and to each other.

(10) Sustainable design. The proposed Mixed-Use Development at least meets the energy and sustainability provisions of subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h).

(11) Adequacy of parking. Parking for the site is appropriate to the intensity of development, types of uses, hours of operation, availability of alternative modes of travel and encourages the use of alternatives without over-supplying parking.

(12) Pedestrian and Neighborhood Considerations. If the proposed Mixed-Use Development project proposes any of the measures listed below, and if such measures, singly or in combination, create a ~~substantial~~ negative impact on pedestrians or surrounding neighborhoods, the petitioner has proposed feasible mitigation measures to eliminate such ~~substantial~~ negative impact:

a) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
b) Removal of pedestrian crossing, bicycle lanes, or roadway shoulder;
c) Traffic signal additions, alterations, or roundabouts; and
d) Relocation or alterations to public transport access points.

(j) ***Additional Filing Requirements for Special Permit in the Mixed-Use 3/Transit-Oriented District***

In addition to the provisions of sections 30-23 and 30-24, petitioners for a grant of a special permit under section 30-13(g) shall submit:

(1) Conceptual Plans. Prior to submittal of an application for a special permit in the MU3/TOD, which will include items (2) to (12) below, petitioners shall present conceptual plans for review by the Land Use Committee of the Board of Aldermen at a public meeting. The Committee shall provide a forum for a public presentation whereby the Committee and public may ask questions, gain an understanding of the project proposal, and provide feedback that can inform further development of the project. Submittal for conceptual review shall not require engineered plans, but shall include the following:

a) Project description, including project purpose or design rationale;
b) Project statistics, including zoning, current and proposed uses on site, total square footage for each use proposed, area to be covered by structures, FAR, number of bedrooms in all dwelling units, percentage of affordable units, percentages of open space with breakdown of beneficial and publicly-accessible open spaces;
c) Preliminary site plan, including dimensioned property lines and all building setbacks and building footprints, impervious surfaces, location of waterways, top of bank and distance from waterways, proposed demolitions, location and number of parking spaces, landscaping and open spaces, trees to be removed, any access proposed to public lands nearby, north arrow and scale; and
d) Other information as may be requested by city staff to perform a zoning review and preliminary impact analyses.

(2) Computer model that shows the relationship of the project to its surroundings consistent with section 30-24(b);

(3) Narrative analysis describing design features intended to integrate the proposed Mixed-Use Development into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site-specific considerations, as well as an explanation of how the proposed Mixed-Use Development satisfies each criterion in ~~this section~~Section 30-24(i);

(4) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;

(5) Site plans showing any by-right or zoning-exempt alternatives;

(6) A Roadway and Transportation Plan reflecting the "EOEEA Guidelines for EIR/EIS Traffic Impact Assessment" with further attention to public transportation and exceptions, subject to review by the commissioner of public works, director of planning and development, and peer review consultants. The Plan should include the following:

a) Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles
b) Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts
c) Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the Mixed-Use Development, documenting:
    i) The projected Base Volume of trips to and from the Mixed-Use Development based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the commissioner of public works and director of planning and development;
    ii) The projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for "pass-by" trips, and noting how those reductions compare with the Mixed-Use Development guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;
    iii) The means of making mitigations if it is found pursuant to the monitoring under section 30-24(c)(7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more; and
    iv) The projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.
d) Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the Mixed-Use Development may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues. Analysis shall include:
    i) The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and
    ii) Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service.

(7) A shared-parking analysis that demonstrates that the number of parking spaces to be provided is appropriate to the context, taking into consideration the mix of uses; the demand for parking spaces at different times of day, week, and year; availability of alternative modes of transportation; and other site-specific influences on parking supply and demand.

(8) Water, sewer, and storm water impact analysis. The analysis shall be subject to review by the commissioner of public works, director of planning and development, and peer review consultants and shall include the following:
a) A study of the proposed project's surface water runoff relating to the Charles River and associated deep marsh system, which explores all feasible methods of

reducing impervious surfaces, including underground parking and/or more compact site layouts, as well as the possibility of roof water harvesting for irrigation reuse, including:

i) A conceptual drainage plan demonstrating the consistency of the drainage infrastructure plan with the DEP Storm Water Management Policy and the City of Newton drainage policy;

ii) A drainage analysis based on the City's 100-year storm event of six inches over a 24-hour period, showing how runoff from impervious surfaces will be infiltrated on-site;

iii) An on-site soil evaluation identifying seasonal high groundwater elevation and percolation rate and locations of these tests shown on the site plan;

iv) A closed circuit television (CCTV) inspection, if a connection to the city's drainage system is proposed, prior to approval of this permit, which shall witnessed by the engineering division, the petitioner shall provide the city inspector with a video or CD prepared by a CCTV specialist hired by the petitioner. A post-construction video inspection shall also take place and witnessed as described above; and

v) An evaluation of hydraulic capacity of the downstream drainage system submitted to the engineering division to determine any impact to the municipal drainage system.

b) A master plan and schedule of the sanitary sewer system improvements, including:

i) A plan showing a reduction in infiltration and inflow into the sanitary sewer system of at least eight gallons for every one gallon of sanitary sewage contributed by this development;

ii) A calculation of the life cycle cost of the proposed sanitary system;

iii) A quantitative analysis of the capacity to dispose, verified by the Massachusetts Water Resource Authority (MWRA); and

iv) A study showing how the developer will comply with the city's cross connection control program.

c) A 21E Environmental Site Investigation Report that evaluates the site for any contaminants related to underground fuel or oil tanks, creosote, leachate from existing trolley tracks, cleaning and/or washing facilities, or local dry wells.

d) A solid waste master plan, including a detailed explanation of how the uses will control solid waste through reduction, reuse, recycling, compaction and removal, that demonstrates compliance with the city's solid waste master plan. The plan shall provide estimates of the expected solid waste generation by weight and volume for each of the uses proposed for the site with consideration to peak volumes; and

e) A quantitative analysis that demonstrates that the water demands of the proposed development will not overburden the water supply of existing infrastructure provided by the city, including fire flow testing for the proposed fire suppression system, as well as domestic demands from the entire development. The petitioner must coordinate this test with both the fire department and utilities division; representatives of each department shall witness the testing and test results shall be submitted in a written report. Hydraulic calculations shall be submitted to the fire department for approval. Hydraulic analysis for both domestic and fire suppression will be required via hydraulic modeling in a format acceptable to the utilities director.

(9) Fiscal impact analysis that includes new tax revenue and expenses related to, but not limited to, school capacity, public safety services, and public infrastructure maintenance.

(10) Proposed phasing schedule, including infrastructure improvements;

(11) Shadow study showing shadow impacts on the surrounding properties for four seasons at early morning, noon, and late afternoon; and

(12) Submittal in electronic form of all documents required by sections 30-23 and 30-24 (including this section 30-24(i)) and any supplemental reports, memoranda, presentations, or other communications submitted by the petitioner or its representatives to the Board of Aldermen and pertaining to the special permit application, unless the petitioner demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city website within a reasonable time after receipt.

5. *By adding a new Section 30-19(d)(22) as follows:*

(22) Notwithstanding the other requirements of 30-19(d), by special permit from the Board of Aldermen in accordance with the procedures provided in section 30-24, the parking requirement for a mixed-use development approved under Section 30-13(g) shall be set through a shared-parking analysis, which demonstrates that the number of stalls provided is sufficient for the combination of uses proposed taking into account the proximity to public transportation and other factors. This analysis shall be subject to review by the director of planning and development and peer reviewer at the petitioner's expense, if requested by the director of planning and development. Following the grant of a special permit under this section, no material change in the combination of uses, <u>permitted either by right under section 30-13(f) or as part of a Mixed-Use Development special permit under section 30-13(g),</u> shall be authorized until the petitioner submits a revised analysis demonstrating to the satisfaction of the director of planning and development that sufficient parking exists to accommodate the new combination of uses or requests and receives a modification of the special permit to authorize a change in the number of stalls provided.

6. *By deleting the definition of "Development Parcel" as it appears in Section 30-1, Definitions, and substituting the following definition:*

Development Parcel: The real property on which a Planned Multi-Use Business Development or a Mixed-Use Development is located in connection with a special permit under Section 30-15(s) or 30-13(g).

By deleting the definition of "Open Space, Beneficial" as it appears in Section 30-1, Definitions, and substituting the following definition:

Open Space, Beneficial: Areas not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens, playgrounds, walkways, plazas, patios, terraces and other hardscaped areas, and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, (ii) surface parking facilities or associated pedestrian circulation, (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public.

And by adding the following Definition in Section 30-1 as follows:

"Community Use Space: Space that is open to the public and used for, but not limited to, ball courts, gymnasia, play areas, community meeting rooms, community gardens, social services, outdoor play areas, playgrounds, related seating areas, and similar uses."

7. *By inserting a new Section 30-5(a)(4) as follows:*

   (4) Public uses described in Section 30-6(a) through (k); provided that such uses shall be subject only to site plan review as required under Section 30-6 and shall not be subject to dimensional, parking or any otherwise applicable zoning requirement.

Petition #400-11(2) - TIER II

If #400-11 is adopted, consider amending it by inserting the following as Section 30-15(v)(5) and modifying Table 3 of Section 30-15, provided that all other dimensional standards are met:

(5) ***Incentives.*** For providing direct access to and from an interstate highway both northbound and southbound, the maximum allowed gross floor area may be increased up to 250,000 square feet not to exceed 1,200,000 square feet total gross floor area and an FAR of 3.0, including above-ground parking.

Department of Planning and Development

ZONING AND PLANNING COMMITTEE
WORKING SESSION
MARCH 26, 2012

RIVERSIDE REZONING

#400-11: Ald. Gentile, Harney, Sangiolo requesting establishment of a Mixed-Use 3/Transportation-Oriented District at the site of the current Riverside MBTA rail station. The proposed new zone shall allow by special permit a single commercial office building not to exceed 225,000 square feet with a maximum height of 10 stories or 135 feet, two residential buildings not to exceed 290 housing units in total, retail space not to exceed 20,000 square feet, along with a multi-use community center.

$400-11(2): Planning Department requesting, in the event that #400-11 is adopted, to amend Section 30-15(v) and Table 3 to allow up to 250,000 square feet of additional gross floor area and a maximum FAR of 3.0 for providing direct access northbound and southbound to and from Route 128.

Riverside MBTA Station

22 acres bordered by:

- Charles River
- Route 128
- Woodland Golf Course
- MBTA Tracks
- Hotel Indigo

Near residential areas:

- Condos
- Lower Falls
- Auburndale

Riverside Ownership

Yellow – MBTA

Purple – Hotel Indigo

Orange – MassDOT

Green - DCR

Setbacks

½ building height

0 feet for nonresidential, along highway or MBTA

May be modified by special permit

Setbacks

½ building height

0 feet for nonresidential, along highway or MBTA

May be modified by special permit

Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor
Jeffrey B. Mullan, MassDOT Secretary & CEO
Richard A. Davey, General Manager
and Rail & Transit Administrator

massDOT
Massachusetts Department of Transportation
Rail & Transit Division

October 18, 2010

Mayor Setti D. Warren
City of Newton
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Re: Rear Access Roadway, Riverside Development Project

Dear Mayor Warren:

As you know, the MBTA has been asked to consider allowing an alternative access road behind its maintenance and layover facility at Riverside Station. The original concept for the road was contained in the permits granted for the adjacent 275 Grove Street-Riverside Center office complex. To avoid burdening Grove Street with additional site traffic, there was a permit condition to study the feasibility of constructing alternative access through the MBTA property. Now that a new project has been proposed for the MBTA's parcel, there is a renewed interest in this concept.

Please be advised that after serious analysis and consideration, the MBTA has determined that an alternative access roadway through the rear of the Authority's Riverside complex is neither feasible or safe. Staff from MBTA operations, safety, and environmental departments toured the site to evaluate the impacts on their respective areas of responsibility.

The area of the proposed roadway is adjacent to the Green Line's primary maintenance facility, as well as storage tracks associated with those functions. As a result, the MBTA believes construction of the access roadway would:

- Have a serious adverse effect on current maintenance operations;
- Present a significant safety issue due to its proximity to these maintenance functions;
- Require removal of the storage tracks which are a necessary component of current operations;
- Encroach upon the immediately adjacent watershed and wetland impact areas of the Charles River.

Based upon the above referenced impacts to the safe and efficient operation of the MBTA's Riverside maintenance facility, the Authority cannot approve an alternative access roadway through the rear of the complex.

Thank you and please contact me if you have any questions or need additional information regarding this matter.

Sincerely,

Mark E. Boyle
Assistant General Manager for Development

Cc: Richard A. Davey, MBTA General Manager and Rail & Transit Administrator

400-11&(2)

Context Sensitive Solutions

Design Awards

Design Standards

Interstate System

Subsurface Utility Engineering

Utility Program

Value Engineering

Interstate System Access

Formerly Federal-Aid Policy Guide Non-Regulatory Supplement NS
23 CFR 630C
June 17, 1998
See Order 1321.1C FHWA Directives Management

This document includes information on additional access to the interstate system, temporary closure of interstate highways, and locked gate access points on interstate highways that was formerly included in FHWA Federal Policy Guide Supplement NS 23 CFR 630C

1. *Additional Access to the Interstate System*
   a. Policy. It is in the national interest to maintain the Interstate System to provide the highest level of service in terms of safety and mobility. Adequate control of access is critical to providing such service. Therefore, new or revised access points to the existing Interstate System should meet the following requirements:
      1. The existing interchanges and/or local roads and streets in the corridor can neither provide the necessary access nor be improved to satisfactorily accommodate the design -year traffic demands while at the same time providing the access intended by the proposal.
      2. All reasonable alternatives for design options, location and transportation system management type improvements (such as ramp metering, mass transit, and HOV facilities) have been assessed and provided for if currently justified, or provisions are included for accommodating such facilities if a future need is identified.
      3. The proposed access point does not have a significant adverse impact on the safety and operation of the Interstate facility based on an analysis of current and future traffic. The operational analysis for existing conditions shall, particularly in urbanized areas, include an analysis of sections of Interstate to and including at least the first adjacent existing or proposed interchange on either side. Crossroads and other roads and streets shall be included in the analysis to the extent necessary to assure their ability to collect and distribute traffic to and from the interchange with new or revised access points.
      4. The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" for special purpose access for transit vehicles, for HOV's, or into park and ride lots may be considered on a case-by-case basis. The proposed access will be designed to meet or exceed current standards for Federal-aid projects on the Interstate System.

Contacts

Brooke Struve
Office of Program Administration
202-366-1317
E-mail Brooke

Michael Matzke
Office of Program Administration
202-366-4658
E-mail Michael

5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.
6. In areas where the potential exists for future multiple interchange additions, all requests for new or revised access are supported by a comprehensive Interstate network study with recommendations that address all proposed and desired access within the context of a long-term plan.
7. The request for a new or revised access generated by new or expanded development demonstrates appropriate coordination between the development and related or otherwise required transportation system improvements.
8. The request for new or revised access contains information relative to the planning requirements and the status of the environmental processing of the proposal.

b. Application

1. This policy is applicable to new or revised access points to existing Interstate facilities regardless of the funding of the original construction or regardless of the funding for the new access points. This includes routes incorporated into the Interstate System under the provisions of 23 U.S.C. 139(a) or other legislation. Routes approved as a future part of the Interstate system under 23 U.S.C. 139 (b) represent a special case because they are not yet a part of the Interstate system and the policy contained herein does not apply. However, since the intention to add the route to the Interstate system has been formalized by agreement, any proposed access points, regardless of funding, must be coordinated with the FHWA Division Office.
2. This policy is not applicable to toll roads incorporated into the Interstate System, except for segments where Federal funds have been expended, or where the toll road section has been added to the Interstate System under the provisions of 23 U.S.C. 139(a).
3. For the purpose of applying this policy, each entrance or exit point, including "locked gate" access, to the mainline is considered to be an access point. For example, a diamond interchange configuration has four access points. Generally, revised access is considered to be a change in the interchange configuration even though the number of actual points of access may not change. For example, replacing one of the direct ramps of a diamond interchange with a loop, or changing a cloverleaf interchange into a fully directional interchange would be considered revised access for the purpose of applying this policy.
4. All requests for new or revised access points on completed Interstate highways must be closely coordinated with the planning and environmental processes. The FHWA approval constitutes a Federal action, and as such, requires that the National Environmental Policy Act (NEPA) procedures are followed. The NEPA procedures will be accomplished as part of the normal project development process and as a

condition of the access approval. This means the final approval of access cannot precede the completion of the NEPA process. To offer maximum flexibility, however, any proposed access points can be submitted in accordance with the delegation of authority for a determination of engineering and operational acceptability prior to completion of the NEPA process. In this manner, the State highway agency can determine if a proposal is acceptable for inclusion as an alternative in the environmental process. This policy in no way alters the current NEPA implementing procedures as contained in 23 CFR part 771.

5. Although the justification and documentation procedures described in this policy can be applied to access requests for non-Interstate freeways or other access controlled highways, they are not required. However, applicable Federal rules and regulations, including NEPA procedures, must be followed.

c. Implementation. The FHWA Division Office will ensure that all requests for new or revised access submitted by the State highway agency for FHWA consideration contain sufficient information to allow the FHWA to independently evaluate the request and ensure that all pertinent factors and alternatives have been appropriately considered. The extent and format of the required justification and documentation should be developed jointly by the State highway agency and the FHWA to accommodate the operations of both agencies, and should also be consistent with the complexity and expected impact of the proposals. For example, information in support of isolated rural interchanges may not need to be as extensive as for a complex or potentially controversial interchange in an urban area. No specific documentation format or content is prescribed by this policy.

2. *Closures or Partial Blockages of Interstate Highways*

a. It is FHWA's policy and responsibility to assure that the national system of Interstate highways is operated and maintained in a manner that will enhance safety and minimize disruptions to road use. The primary purpose of the Interstate System is to provide safety and efficient transportation for the movement of persons and goods. Proposals to use Interstate highways for special events which will disrupt the flow of traffic or endanger the safety of the public should be vigorously discouraged.

b. The States are solely responsible for controlling all activities which take place on their highways. However, when a regional or division office becomes aware of a proposed event involving their region or State which they consider inconsistent with this policy, that office should advise the highway agency of the FHWA's specific safety concerns with the particular event.

c. If the State does approve such events, the closure or disruption should be minimized, a reasonable alternate route should be provided, full consideration for the safe operation of detours and connecting facilities must be assured and all elements of the Interstate facility must be restored to their pre-existing conditions.

3. *Additional Access Points to Existing Full Access-Controlled Interchange Ramps*

a. Local connections within interchanges -- especially on freeway-to-freeway ramps -- violate driver expectancy and

Rebecca Smith

From:	**"Clint Schuckel" <cschuckel@newtonma.gov>**
To:	**szeren@newtonma.gov, rsmith@newtonma.gov**
Date sent:	**Thu, 29 Mar 2012 17:10:05 -0400**
Subject:	**Re: Liberty Mutual Ramp and other Riverside Questions**
Send reply to:	**cschuckel@newtonma.gov**
Copies to:	**jdanila@newtonma.gov**
Priority:	**normal**

Jim and I discussed the Liberty Mutual question and viewed a recent aerial photograph.

There is direct access to/from Liberty Mutual via ramps at an existing interchange (I-95 at I-90), however, Liberty Mutual does not have it's own interchange. The access currently proposed by the Riverside developer with a roadway that goes directly to the northbound I-95 off ramp (existing ramp for exits 23,24,25) is similar to Liberty Mutual's access.

I hope the difference is clear between private access to or from an existing interchange ramp (Liberty Mutual and Riverside proposed) and private access via a NEW interchange, which is not allowed by the Federal regulations cited in the email below.

On 29 Mar 2012 at 16:56, Seth Zeren wrote:

Thanks for the info Clint!
~Seth

On 29 Mar 2012 at 16:48, Clint Schuckel wrote:

> The Federal (USDOT) requirements for new interchanges can be found
> here:
>
> http://www.fhwa.dot.gov/design/access.cfm
>
> The 8 criteria I referenced at the ZAP meeting are listed under
> section # 1. The fourth criteria requires that the "...proposed
> access connects to a public road only and will provide for all
> traffic movements."
>
> I have a call into the State re: Liberty Mutual access in Weston. I
> can't promise an answer for tomorrow's Friday packet, but I will
> try.
>
> On 29 Mar 2012 at 16:34, Seth Zeren wrote:
>
> Hello Clint, I am working on pulling together materials for the
> planning Department memo following up on the last Public Hearing and
> working session. I was wondering if you had had any luck figuring
> out how Libery mutual got (sort of) direct access through a ramp? As
> I look at it in google earth, it looks like they are basically
> participating in an existing interchange with very significant
> infratstructure already in place, so it looks rather different than
> the site. I was also wondering if you had a copy of the specific
> Federal requirements for highway access?
>
> Thanks,
> ~Seth
>
>

#400-11

GREATER FRANKLIN DEVELOPERS ASSOCIATION, INC., & others[1] *vs.* TOWN OF FRANKLIN & another.[2]

No. 98-P-1032.

Norfolk. January 13, 2000. - June 26, 2000.

Present: PORADA, GREENBERG, & RAPOZA, JJ.

Municipal Corporations, By-laws and ordinances, Fees. *Constitutional Law*, Taxation.

A "school impact fee," charged by the town of Franklin to persons constructing new housing or expanding an existing dwelling, was an impermissible tax, where, although paid by choice, the charges did not benefit the payers in a manner not shared by other residents and were collected to augment general revenues out of which payment was made for necessary improved and expanded school facilities. [502-505]

CIVIL ACTION commenced in the Superior Court Department on December 4, 1995.

The case was heard by *Gordon L. Doerfer*, J., on motions for summary judgment, and entry of a separate and final judgment was ordered by him.

Eric W. Wodlinger & Mark Bobrowski for town of Franklin & another.

J. Owen Todd for Greater Franklin Developers Association, Inc., & others.

Thomas A. Reed, for Home Builders Association of Massachusetts, amicus curiae.

Elaine M. Lucas, for City Solicitors & Town Counsel Association, amicus curiae, submitted a brief.

GREENBERG, J. Sheltered by geography from the bustle of Boston, yet within a reasonable commute to work, the town of

[1]Dennis F. Marguerite, Francis A. Molla, John C. Colella, Sean Skahill, and Anthony Marinella.

[2]Town council of town of Franklin.

Franklin has drastically changed demographics. From 1980 to 1995, the town's population increased by 41 percent from 17,500 to 25,000. Despite the building of a brand new school, completed in 1995, a research group hired by the town that same year projected that growth would cause the town's schools to overflow by the year 2000, with an estimated 320 more pupils than spaces.

On December 4, 1995, the date on which the Greater Franklin Developers Association (association) brought this action, by-law amendment 95-300, adding a new chapter 83 to the town code, had come into effect, under which the town imposed a "school impact fee" to "ensure[] that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development and to promote and protect the public health, safety and welfare." § 83-2(2). The association and certain of its individually named members sought declaratory and injunctive relief in the Superior Court to set aside the imposition and collection of those fees. On cross-motions for summary judgment, the judge decided in favor of the association. The judge declared that the fees were "an invalid and unauthorized tax." The town appeals.

The material facts are not disputed. Essentially carrying out the recommendations of the town council's forecast of overcrowding in the public schools, the legislative findings of the by-law amendment state that "Franklin must expand its school systems if new development is to be accommodated without decreasing current [educational] standards." § 83-2(1). The findings further state that "[e]ach type of residential dwelling unit [subject to this by-law] will create demand for the acquisition, expansion or construction of school improvements." § 83-2(3).

The pertinent part of the by-law reads as follows: "No certificate of use and occupancy for any new or expanded residential building . . . shall be issued unless and until the impact fees hereby required have been paid, unless exempted by this By-Law." § 83-3(A). The by-law sets out a fee schedule, based on the estimated cost increase imposed by each kind of housing unit. Each single-family house, for example, is estimated to bring .68 children into the public school system, while each condominium brings .25 children. Initially, the town determined how much of the cost to expand the school system would remain after it utilized all other funding sources, and

then applied the above formula to cover the deficit, charging proportionately higher school impact fees for single-family homes than for condominiums.[3] Money collected under the by-law is funneled into one of two accounts earmarked to cover the cost of expanding schools in either the northern or the southern district, depending on the location of the new housing. §§ 83-3(C)(2), 83-4. The funds may not be used to maintain existing buildings, and after eight years, any remainder not used for expansion will be returned to the payer, if the payer applies for it. §§ 83-3(D)(1), 83-3(F).

Under Massachusetts law, towns do not have the power to tax. See art. 89, § 7, of the Amendments to the Massachusetts Constitution ("Nothing in this article shall be deemed to grant to any city or town the power to . . . levy, assess and collect taxes . . . ."); *Commonwealth* v. *Caldwell*, 25 Mass. App. Ct. 91, 92 (1987). Towns may, however, exact fees. See G. L. c. 40, § 22F ("Any municipal board or officer empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons, may, from time to time, fix reasonable fees for all such licenses, permits, or certificates . . . and may fix reasonable charges to be paid for any services rendered or work performed"). This case turns on whether the by-law imposes an impermissible tax or a permissible fee.

Fees "share common traits that distinguish them from taxes: [1] they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner 'not shared by other members of society'; [2] they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and [3] the charges are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses." *Emerson College* v. *Boston*, 391 Mass. 415, 424-425 (1984) (citations omitted).

We apply the analysis developed in the *Emerson College* case to distinguish valid municipal user fees from unlawful taxes

[3]Although the occupancy permit fee payer has the option of preparing and submitting to the town administrator an independent fee calculation study, the by-law amendment requires that the calculation must follow the town's methodology and establishes that the town administrator is at liberty to accept or reject the permit seeker's calculations. See § 83-3(B)(2). According to the record, the school impact fee schedule charges $2,500 for single family detached homes; $528 for condominium/single family attached homes; and $726 for multi-family/rental residences. See *id.* at § 83-4(2).

and, more specifically, to determine whether the judge in the case at hand correctly concluded that the purported "impact fee" was invalid because it failed to benefit fee payers in a manner not shared by other members of the community. We agree with the judge that the benefit of expanded school facilities is not particularized to the fee payers. First and foremost, expanded school capacity benefits the entire community. We hardly need state that society as a whole gains with the education of its children and suffers at the lack.

More than that, assuming without deciding that individuals under the by-law are able to demonstrate that their new housing will not contribute to the demand for more schools and thereby exempt themselves from the fee requirement, the benefit of new school facilities still is not limited to fee payers. An example may be illustrative: The funds are earmarked for capital improvements, such as a new cafeteria or an entirely new school. No one has proposed, as we expect no one would, that only students living in homes assessed this fee be granted access to the new cafeteria, while those living in older homes must continue to eat in the gymnasium; nor that children living in homes not assessed the fee be prevented from attending the new school, and instead must be bused to an older facility.[4] Under the first *Emerson College* factor, therefore, the school impact fee is better characterized as a tax because it does not benefit the fee payer in a manner not shared by others. See *Emerson College* v. *Boston*, 391 Mass. at 424.

As for the second test, that the fee be paid by choice, it is true that developers can decide not to build residences in the town and that homebuyers, if they are the fee payers, can buy elsewhere. See *Bertone* v. *Department of Pub. Util.*, 411 Mass. 536, 549 (1992); *Baker* v. *Department of Envtl. Protection*, 39 Mass. App. Ct. 444, 446 (1995). The motion judge so held,[5] but correctly noted that this factor is not conclusive. See *Berry* v. *Danvers*, 34 Mass. App. Ct. 507, 512 n.6 (1993); *Morton* v. *Hanover*, 43 Mass. App. Ct. 197, 202 (1997).

[4]As it is not before us, we do not pass on the dubious legality of such segregation. We simply illustrate the point that beyond the obvious benefit accruing to society at large from the availability of sufficient facilities to educate every child, the benefit accruing to individual children — and through them to the actual fee payers — is not particularized.

[5]Although the town's counsel devotes considerable energy on appeal to claiming that the motion judge erred in determining that the voluntariness prong was not met, in fact he concluded that it was.

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GREATER FRANKLIN DEVELOPERS ASSOCIATION, INC., & others[1] *vs.* TOWN OF FRANKLIN & another.[2]

No. 98-P-1032.

Norfolk. January 13, 2000. - June 26, 2000.

Present: PORADA, GREENBERG, & RAPOZA, JJ.

Municipal Corporations, By-laws and ordinances, Fees. *Constitutional Law*, Taxation.

A "school impact fee," charged by the town of Franklin to persons constructing new housing or expanding an existing dwelling, was an impermissible tax, where, although paid by choice, the charges did not benefit the payers in a manner not shared by other residents and were collected to augment general revenues out of which payment was made for necessary improved and expanded school facilities. [502-505]

CIVIL ACTION commenced in the Superior Court Department on December 4, 1995.

The case was heard by *Gordon L. Doerfer*, J., on motions for summary judgment, and entry of a separate and final judgment was ordered by him.

Eric W. Wodlinger & Mark Bobrowski for town of Franklin & another.

J. Owen Todd for Greater Franklin Developers Association, Inc., & others.

Thomas A. Reed, for Home Builders Association of Massachusetts, amicus curiae.

Elaine M. Lucas, for City Solicitors & Town Counsel Association, amicus curiae, submitted a brief.

GREENBERG, J. Sheltered by geography from the bustle of Boston, yet within a reasonable commute to work, the town of

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The third test, together with the first, demonstrates the taxing nature of this fee. In true fee situations, charges are collected not to raise general revenue but to compensate the governmental entity for its expenses in providing that particular service. The provision of sufficient school facilities is not a particular service which is unavailable to the general public; it is the government's obligation to provide such facilities to the general public out of general revenue funds. See *Jenkins* v. *Andover*, 103 Mass. 94, 96-97 (1869) (noting that, since the founding of the colony, towns have been required to provide "free education . . . supported by taxation of the inhabitants"). The point can be seen in *Emerson College*, where the court stated that the fee — there for augmented fire protection services — did nothing in particular for the properties that paid it: "instead, fire protection once included within the general property tax has been reclassified as a special service and an incremental cost imposed." *Emerson College* v. *Boston*, 391 Mass. at 418 n.5. In the case at bar, school facilities once included within the general property tax have been improperly reclassified as a special service. In a strikingly similar school impact fee case, the court in *Daniels* v. *Point Pleasant*, 23 N.J. 357, 362 (1957), struck down an ordinance raising the cost of building permits to cover the increased school costs incurred by growth. "What the Borough of Point Pleasant is attempting to do here," that court said, "is to defray the general cost of government under the guise of reimbursement for the special services required by the regulation and control of new buildings. . . . The philosophy of this ordinance is that the tax rate of the borough should remain the same and the new people coming into the municipality should bear the burden of the increased cost of their presence. This is so totally contrary to tax philosophy as to require it to be stricken down." *Daniels* v. *Point Pleasant*, *supra*. We agree.

The town points to *St. John's County* v. *Northeast Florida Builders Assn., Inc.*, 583 So. 2d 635 (Fla. 1991), a case in which the Florida Supreme Court upheld a school impact fee. The law of Florida, however, requires only that the town satisfy a "rational nexus" test. See *id.* at 637. The *Emerson College* test is far more stringent. The case before us also differs in several key ways from the other case the town relies on, *Bertone* v. *Department of Pub. Util.*, 411 Mass. 536 (hook-up charges assessed to those seeking electrical service at a location not previously serviced are valid fees). Most importantly, a

statute in *Bertone* gave the municipality the authority to set electricity rates, and the court concluded that hook-up fees fell within that power. See *id.* at 542-545. No statute grants the town in the case at bar similar authority.[6]

In concluding that the school impact fee is really a tax, we are not without sympathy for the town's position. "There can be no controversy about the obvious fact that the orderly development of a municipality must necessarily include a consideration of the present and future need for school . . . facilities." *Pioneer Trust & Sav. Bank* v. *Mount Prospect*, 22 Ill. 2d 375, 380-381 (1961). As said in *Daniels* v. *Point Pleasant*, 23 N.J. at 362, however, "the remedy must come not from the municipalities nor from the courts, but from the Legislature."

Finally, the town fastens upon the notion that the service bought with this fee is the increased marketability that new homes boast when located near schools with sufficient capacity for incoming pupils. It is enough to say that the by-law itself states that the money is being collected to pay for the cost of new school facilities. See § 83-3(D)(1). The town filed nothing — and the record contains nothing — setting forth facts which unsettle the conclusion that the benefits obtained by exacting the school impact fee are expanded and improved school facilities.

Judgment affirmed.

[6]Amici curiae for the town claim the Superior Court erred in failing to consider three additional cases from other jurisdictions upholding school impact fees or land dedications. The motion judge explicitly discussed these very cases in his decision, correctly distinguishing them as upholding such fees or dedications either under a statute that specifically permits the imposition of fees or dedications for schools, or under a Florida-style rational nexus test. See *Loyola Marymount Univ.* v. *Los Angeles Unified Sch. Dist.*, 45 Cal. App. 4th 1256 (1996) (statute); *Krughoff* v. *Naperville*, 68 Ill. 2d 352, 358-359 (1977) (statute plus rational nexus); *Jordan* v. *Menomonee Falls*, 28 Wis. 2d 608, 614-620 (1965) (statute plus rational nexus). Furthermore, as these amici intended to persuade us that the by-law at issue was not a tax and therefore could be grounded on home rule, one of the above was particularly poorly chosen. *Jordan*, *supra* at 621, reads: "The provision possesses sufficient attributes of a tax so that it cannot be grounded upon the home-rule amendment, sec. 3, art. XI of the Wisconsin constitution."