



August 2, 2016

BY HAND

David Olson, Newton City Clerk
City Hal
1000 Comm. Ave.
Newton, MA 02459

Re: Buccella, et al v. Storage Development Partners, LLC, et al.
Middlesex Superior Court CA No. _____

BOARD OF ELECTION
COMMISSIONERS
2016 AUG - 2 P 1:57
NEWTON, MASS

Dear Mr. Olson:

Pursuant to G.L. c. 40A, § 17, you are hereby notified that the plaintiff in the above-referenced action has appealed the decision of the Newton City Council filed in the Newton City Clerk's office on July 13, 2016, granting a special permit to the developer Storage Development Partners, LLC and Norcross Trust, LLC under the Newton Zoning Ordinance. A copy of the Complaint, filed in Superior Court today, is attached to this Notice.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dennis Murphy', written over a horizontal line.

Dennis Murphy

Enclosure

cc: Alan Schlesinger, Esq.
Ouida Young, Esq.
Clients

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court Department
Civil Action No. _____

DONATO BUCCELLA, MARY HENEY,
KATHRYN REBECCA KATSENES, EDWARD
MINTS, and EZRA SAMET

Plaintiffs

v.

ALLAN L. CICCONE, JR., SUSAN S.
ALBRIGHT, JAMES R. COTE, AMY
MAH SANGIOLO, DEBORAH J. CROSSLEY,
VICTORIA L. DANBERG, MARC C. LAREDO,
RICHARD A. LIPOF, SCOTT F. LENNON,
JACOB D. AUCHINCLOSS, TED
HESS-MAHAN, LEONARD J. GENTILE,
BRIAN E. YATES, GREGORY R. SCHWARTZ,
RUTHANNE FULLER, DAVID A. KALIS,
ALISON M. LEARY, EMILY NORTON,
BARBARA BROUSAL-GLASER, JOHN W.
HARNEY, JOHN B. RICE, RICHARD B.
BLAZAR, R. LISLE BAKER, and
CHERYL LAPPIN as they comprise the
NEWTON CITY COUNCIL, STORAGE
DEVELOPMENT PARTNERS, LLC,
and NORCROSS TRUST, LLC

Defendants

BOARD OF ELECTION
COMMISSIONERS
2016 AUG -2 P 1:57
NEWTON, MASS

VERIFIED COMPLAINT

1. This is an appeal of a special permit pursuant to G.L. c. 40A, §9 & §17 from a decision of the Newton City Council (the "Council") filed in the Newton City Clerk's Office on July 13, 2016, granting a special permit to Storage Development Partners, LLC (the "Developer") and Norcross Trust, LLC (the "Owner") for a 1,025-unit self storage facility located at 255-257 Newtonville Avenue, Newton, Massachusetts (the "Project" and the "Site"). A true copy of the

Council's special permit decision (#48-16) is attached hereto as Exhibit A (the "Decision").

The Parties

2. Plaintiff Donato Buccella, who owns and resides at 165 Newtonville Avenue, Newton, Massachusetts, is an abutter to the Project Site who is aggrieved by the Council's Decision.

3. Plaintiff Mary Heney, who owns and resides at 214 Bellevue Street, Newton, Massachusetts, is a direct abutter to the Project Site who is presumed aggrieved, and in fact is aggrieved, by the Council's Decision.

4. Plaintiff Kathryn Rebecca Katsenes, who owns and resides at 174 Newtonville Avenue, Newton, Massachusetts, is an abutter to the Project Site who is aggrieved by the Council's Decision.

5. Plaintiff Edward Mints, who owns and resides at 7-9 Munroe Street, Unit 3, Newton, Massachusetts, is a direct abutter to the Project who is presumed aggrieved, and in fact is aggrieved, by the Council's Decision.

6. Plaintiff Ezra Samet, who owns and resides at 7-9 Munroe Street, Unit 2, Newton, Massachusetts, is a direct abutter to the Project who is presumed aggrieved, and in fact is aggrieved, by the Council's Decision.

7. Defendant Newton City Council is a municipal body designated as the special permit granting authority for the City of Newton. Its principal place of business is located at Newton City Hall, Room 105, 1000 Commonwealth Avenue, Newton, Massachusetts 02459. The names and addresses of the 24 members of the Council, each sued here in his or her official capacity, are attached hereto as Exhibit B.

8. Defendant Storage Development Partners, LLC is a foreign limited liability company originally organized in Michigan with a principal place of business c/o David Levenfield, 40

Battery Street, #309, Boston, Massachusetts 02109. Mr. Levenfield is the resident agent in the Commonwealth for Storage Development Partners, LLC.

9. Defendant Norcross Trust, LLC is a Massachusetts limited liability company with a principal place of business at 25 Fisher Avenue, Newton, Massachusetts 02461. Dorothy L. Norcross is the Manager and Resident Agent for Norcross Trust, LLC.

The Site

10. The Decision concerns a 75,634 square foot (1.7 acres) parcel of land identified as Section 12, Block 16, Lot 8 on the Newton Assessor's map 032SE, located in the Manufacturing Zoning District.

11. The Site is improved by a single story office building with a gross floor area under 20,000 square feet. The Site is further improved by a wood frame building built circa 1907 as a railroad station master's house. A demolition delay has been imposed by the City on that historic structure. The remainder of the Site is largely wooded.

12. The Site is bounded to the east by Lewis Terrace and to the south by Newtonville Avenue, both residential streets. To the north, the Site is bounded by the Massachusetts Turnpike. And it is bounded to the west by another property currently used for manufacturing, 285 Newtonville Avenue (know as the "NEFCO Property").

The Project

13. As approved in the Decision, the Project consists of a three-story building with 112,201 square feet of gross floor area and 1,025 self-storage units.

14. The Project as approved has 16 parking spaces, including two handicapped spaces and three loading spaces on the Site.

15. Three special permits were issued in order to construct the Project as proposed: (1) for a building in excess of 20,000 square feet of gross floor area; (2) for a building of three stories in height; and (3) to reduce the number of required parking stalls.

The Zoning Relief

16. The Newton Zoning Ordinance (“NZO”) requires a special permit for any development in the manufacturing district of 20,000 square feet or more of new gross floor area. (NZO Sec. 4.3.2.B.1)

17. The NZO also requires a special permit for a three-story building in the Manufacturing District. (NZO Sec. 4.3.2.B.3)

18. By right, buildings in the Manufacturing District may be up to two stories with a floor area ratio (“FAR”) of 1.0. The allowable FAR increases to 1.5 for specially permitted three-story buildings. (NZO Sec. 4.3.3)

19. In addition to the special permits for gross floor area and building height, the Project also required zoning relief to waive the number of parking stalls required by the NZO.

20. Parking requirements are calculated using a formula from the NZO where there is an enlargement of the gross floor area or change in use. (NZO Sec. 5.1.3.B)

21. The NZO grants the Council some authority to reduce or waive parking requirements calculated under the formula, but not where there is an increase in gross floor area. (NZO Sec. 5.1.3.D)

22. The number of parking stalls required for a storage warehouse or business under the NZO is 1 stall per 2,500 square feet of gross floor area, plus 1 stall per 4 employees. (NZO Sec. 5.1.4) Under this section, the Newton Zoning Ordinance required 46 parking spaces for the Project.

23. Where there is more than a single use involved, the Council may by special permit reduce

the number of parking stalls by up to one-third of the total required. (NZO Sec. 5.1.4.C)

24. The NZO also purports to authorize the special permit granting authority to allow for exceptions to the parking ordinance “if it is determined that literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features.” (NZO Sec. 5.1.13)

The Decision

25. On July 11, 2016, the Board voted 22-1-1 to grant the special permit, as detailed in the Decision that was recorded with the City Clerk on July 13, 2016 and is attached hereto as Exhibit A.

26. The Decision approved a special permit for a building of three stories because “its sloping topography allows for a significant portion of the structure’s mass and height to be concealed from neighboring properties and streets.” (Ex. A ¶ 1)

27. The Decision approved a special permit for a building greater than 20,000 square feet because “the site is zoned Manufacturing and consists of approximately 76,000 square feet of land [and] Furthermore, its sloping topography allows for a significant portion of the structure’s mass and height to be concealed from neighboring properties and streets.” (Ex. A ¶ 2)

28. The Decision approved a special permit to reduce the required number of parking stalls from 46 to 16 because “the number of stalls proposed will be sufficient to meet expected demand without spillover onto neighborhood streets.” (Ex. A ¶ 5)

The Special Permit Criteria

29. The Newton Zoning Ordinance forbids the Council from issuing a special permit unless it finds all of the following criteria have been met:

- a. The specific site is an appropriate location for such use, structure;
- b. The use as developed and operated will not adversely affect the neighborhood;
- c. There will be no nuisance or serious hazard to vehicles or pedestrians;
- d. Access to the site over streets is appropriate for the types and numbers of vehicles involved; and
- e. For buildings in excess of 20,000 square feet in gross floor area, the site planning, building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy. (NZO 7.3.3.C)

**Count I – Zoning Appeal
(G.L. c. 40A, §§ 9 & 17)**

30. Paragraphs 1- 29 are re-alleged.

31. The Decision violates G.L. c. 40A, §§ 9 & 17, and the Council acted arbitrarily, capriciously and abused its discretion, by granting special permits for the Project without adequate justification for each of the special permit criteria.

32. The Decision's finding that the Site is an appropriate location for the Project cannot be supported. Instead of determining whether the Site is an appropriate location for the Project -- in particular whether the increased intensity of use on the Site from two to three stories and from 1.0 to 1.5 FAR was appropriate -- the Council focused on other possible by-right uses for the Site and never properly evaluated whether a Project of this magnitude is appropriate for the Site.

33. The Decision made no specific findings about the adverse affect of the Project on the neighborhood. Only three out of 18 residents spoke in favor of the Project at the public hearing, and a petition with 666 signatures opposing the Project was submitted. Moreover, the Council failed to consider how the three-story building would impact neighbor's views, particularly from

Munroe Street. Based on the public hearing record, the Council could not properly find there to be no adverse affect on the neighborhood. That other theoretical uses of the property might have a greater adverse affect, does not equate to a finding that this Project would have no adverse affect on the neighborhood, a required finding under the special permit criteria.

34. The Decision made no specific findings about whether the increased intensity of use and reduction in required parking at the Site would result in a nuisance or serious hazard to vehicles or pedestrians. As part of the public hearing, the Council received data from MassDOT that this intersection (Newtonville Avenue and Lewis Terrace) experienced 43 crashes in the past five years. Based on the public hearing record, the Council could not properly find that there would be no nuisance or hazard to vehicles or pedestrians.

35. The Decision's finding that access over streets is appropriate for the types and number of vehicles involved is likewise not supported. Instead of following the standard engineering manual for calculating vehicle trips -- Institute of Transportation Engineers, Trip Generation Manual, 9th Ed. ("ITE Manual") -- the Council relied on anecdotal evidence from one of its members, not a traffic engineer, who visited two storage facilities in other communities. Where the ITE Manual shows 16 trips per hour, the Council relied on the anecdotal data that showed 6-12 trips per day. Because it failed to conduct a traffic study in accordance with good engineering practice and universally accepted standards outlined in the ITE Manual, the Council granted the special permits without adequate justification.

36. Rather than conduct a traffic study before issuing the special permits, the Council imposed a condition that post-occupancy studies of parking and traffic be conducted at one- and three-years post-occupancy. These post-occupancy studies do not support any present finding regarding traffic or parking. To the contrary, they further undermine the Council's finding on this

special permit criterion because it cannot possibly have determined whether “access to the site over streets is appropriate for the types and numbers of vehicles involved” if it does not know the types and numbers of vehicles involved.

37. The Decision’s finding that the Project, with more than 20,000 square feet of gross floor area, “will contribute significantly to the efficient use and conservation of natural resources and energy” is not supported. While the Decision requires a cistern to collect rainwater from the roof for onsite irrigation, this alone does not “contribute significantly.” The Council failed to consider impacts to natural resources and energy from the more intensive use of the Site (additional story, increase in FAR), which undermine its finding on this special permit criterion.

38. The Decision granting the special permits was without adequate justification for each of the special permit criteria and therefore unreasonable, arbitrary, capricious, an abuse of discretion and should be annulled.

Count II – Parking Variance Required
(G.L. c. 40A, §§9, 10 & 17)

39. Paragraphs 1- 38 are re-alleged.

40. The Decision reduced the required number of parking stalls by two thirds from 46 to 16.

41. By special permit, the Council may reduce parking by up to one third. (NZO Sec. 5.1.3.D)

42. The Council abused its discretion by granting a special permit that reduced the required parking by two-thirds, where at most the discretion to reduce parking spaces by special permit is limited to up to one-third, and under circumstances that do not apply here.

43. To the extent the Decision purports to rely on an exception to the parking ordinance under Section 5.1.13 of the NZO, that provision was incorrectly applied in this case. Exceptions

to the parking ordinance would be appropriate only if “literal compliance is impracticable”.

(NZO Sec. 5.1.13) There is nothing in the public hearing record to support a finding that literal compliance with the parking ordinance would be impracticable.

44. In addition, Section 5.1.13 of the NZO is invalid because it purports to allow by special permit zoning relief that requires a variance. G.L. c. 40A, §9, provides that zoning ordinances must specify a maximum limit of special permit granting authority. Unlike Section 5.1.3, which specifies a limit of up to a one-third reduction in parking stalls, Section 5.1.13 contains no maximum, no range, no limits whatsoever.

45. Because the Council’s parking reduction was beyond its special permit authority, twice as much as could be allowed by special permit, and did not stem from any impracticability, the Decision was unreasonable, arbitrary, capricious, an abuse of discretion and should be annulled.

**Count III – Lack of Notice
(G.L. c. 40A, §§11 & 17)**

46. Paragraphs 1- 45 are re-alleged.

47. State law requires that parties in interest, including abutters to the subject property in a special permit proceeding, are entitled to written notice of a public hearing by mail, postage prepaid. G.L. c. 40A, §11. This is also a requirement of the Newton Zoning Ordinance. (NZO Sec. 7.3.2.B.)

48. Plaintiffs Edward Mints, 7-9 Munroe Street, Unit 3, and Ezra Samet, 7-9 Munroe Street, Unit 2, are direct abutters to the Project who are listed on the Abutter’s List dated Wednesday March 16, 2016 prepared by the Newton Assessors.

49. By statute, the certification of parties in interest by the assessors “shall be conclusive for all purposes.” G.L. c. 40A, §11.

50. Plaintiffs Mints and Samet were not provided the required written notice of the public hearing in this matter.

51. Because the statutorily required notice was not provided to abutters on the certified list, who were denied a full and fair opportunity to participate in the public hearing, the Decision was unreasonable, arbitrary, capricious, an abuse of discretion and should be annulled.

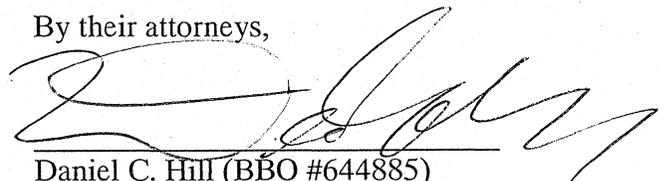
Prayer For Relief

WHEREFORE, the Plaintiffs request that this Court:

1. Annul the Decision;
2. Declare that the Project may not proceed as specially permitted by the Council;
3. Declare that NZO, §5.1.13 is invalid on its face;
4. Award the plaintiffs their costs (including fees of expert witnesses) and attorneys fees in this action; and
5. Grant the plaintiffs such other relief as it deems just and proper.

PLAINTIFFS,

By their attorneys,



Daniel C. Hill (BBO #644885)

Dennis A. Murphy (BBO #645168)

Of Counsel

HILL LAW

Bulfinch Square

43 Thorndike Street

Cambridge, MA 02141

(617) 494.8300

dhill@danhilllaw.com

Dated: August 2, 2016

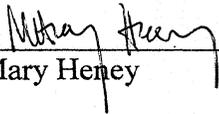
VERIFICATION

We the undersigned plaintiffs in the above-captioned action verify the truth of the factual allegations stated herein under pains and penalties of perjury.

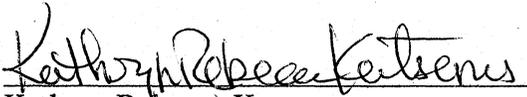


~~Donato Buccella~~

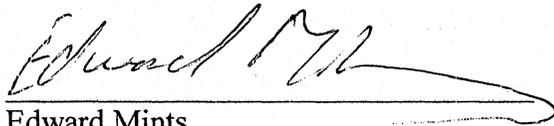
Donato Buccella



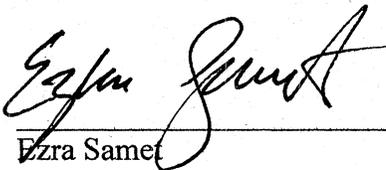
Mary Heney



Kathryn Rebecca Katsenses



Edward Mints



Ezra Samet

CITY OF NEWTON

IN CITY COUNCIL

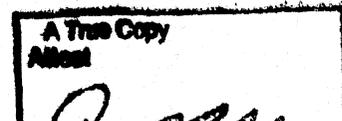
July 11, 2016

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ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL for a three-story, 112,201 square foot self-storage facility, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The site is an appropriate location for a building of three stories and 27 feet, 6 inches in height with a floor area ratio (FAR) of 1.5 as its sloping topography allows for a significant portion of the structure's mass and height to be concealed from neighboring properties and streets. (§4.3.2.B.3 and §7.3.3.C.1)
2. The site is an appropriate location for a building of greater than 20,000 square feet as the site is zoned Manufacturing and consists of approximately 76,000 square feet of land. Furthermore, its sloping topography allow for much of the structure's mass to be concealed from neighboring properties and streets. (§4.3.2.B.1 and §7.3.3.C.1)
3. Access to the site over streets is appropriate for the types and numbers of vehicles involved as the proposed low intensity, transitional use, based on the traffic surveys submitted, will have limited impact on the adjacent roadways that also serve the adjacent residential neighborhood. (§7.3.3.C.4)
4. The site planning, building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy. The proposed site plan has been reviewed and approved by the Newton Conservation Commission and the petitioners will be enhancing natural habitat areas with native plantings and improving the quality of runoff into Laundry Brook. Additionally, the project shall include a cistern system that allows for the collection and use of rainwater on-site for landscape irrigation purposes. (§7.3.3.C.5)



5. The requested exceptions related to the number of parking stalls, the number of handicapped accessible stalls, landscaping and lighting of the parking facility are appropriate because such exceptions would be in the public interest and provide for the protection of environmental features addressing the concerns of the Conservation Commission by reducing the amount of unnecessary paving on site as information pertaining to the parking demand generated by the proposed use at this site indicates that the number of stalls proposed will be sufficient to meet expected demand without spillover onto neighborhood streets. (§5.1.13).

6. Pursuant to the City's Tree Preservation Ordinance, Section 21-80 of the Revised Ordinances 2012, the City will receive a significant contribution towards the City's Tree Replacement Fund. The City understands that the City's Tree Warden has a policy that disbursements from the fund will result in substantial plantings of trees in the general vicinity of the project.

PETITION NUMBER: #48-16

PETITIONER: Storage Development Partners, LLC/Norcross Trust

LOCATION: 255-257 Newtonville Avenue, Ward 2, Newtonville, on land known as Section 12 Block 16 Lot 8, containing approximately 75,634 square feet of land

OWNER: Norcross Trust

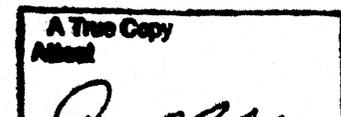
ADDRESS OF OWNER: 25 Fisher Avenue, Newton, MA 02461

TO BE USED FOR: Three-story, 112,201 square foot self-storage facility

CONSTRUCTION: Masonry

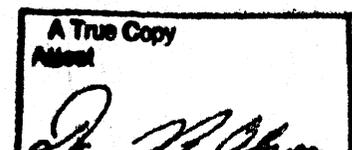
EXPLANATORY NOTES: §4.3.2.B.1 to allow a building greater than 20,000 square feet; §4.3.2.B.3 and §4.3.3 to allow a building with three stories, up to 36 feet in height and a maximum FAR of 1.5; §5.1.4 and §5.1.13 to waive 36 parking stalls; §5.1.8.A.1 and §5.1.13 to allow parking in the side setback; §5.1.8.B.3, §5.1.8.B.4 and §5.1.13 to waive one accessible parking stall; §5.1.9.A.1 and §5.1.13 to waive landscape screening requirements; §5.1.10.A and §5.1.13 to waive lighting requirements.

ZONING: Manufacturing District



Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Land Development Plans prepared by BL Companies, stamped and signed by Raymond B. Gradwell, Registered Professional Engineer, consisting of twenty-six (26) sheets, as follows:
 - i. Title Sheet; dated February 5, 2016, as revised through July 7, 2016;
 - ii. "Existing Conditions Survey," dated May 15, 2015, signed and stamped by Timothy R. Bennett, Registered Professional Land Surveyor;
 - iii. "General Notes," dated February 5, 2016, as revised through April 20, 2016, as revised through July 7, 2016 (GN-1);
 - iv. "Demolition Plan," dated February 5, 2016, as revised through July 7, 2016 (DM-1);
 - v. "Site Plan," dated February 5, 2016, as revised through July 7, 2016 (SP-1);
 - vi. "Grading and Drainage," Plan dated February 5, 2016, as revised through July 7, 2016 (GD-1);
 - vii. "Utility Plan," dated February 5, 2016, as revised through July 7, 2016 (SU-1);
 - viii. "Sedimentation and Erosion Control Plan- Phase 1," dated February 5, 2016, as revised through July 7, 2016 (EC-1A);
 - ix. "Sedimentation and Erosion Control Plan- Phase 2," dated February 5, 2016, as revised through July 7, 2016 (EC-1B);
 - x. "Sedimentation and Erosion Control Notes," dated February 5, 2016, as revised through July 7, 2016 (EC-2);
 - xi. "Landscape Plan," dated February 5, 2016, as revised through July 7, 2016 (LL-1);
 - xii. "Landscape Details," dated February 5, 2016, as revised through July 7, 2016 (LL-2);
 - xiii. "Site Lighting Plan," dated February 5, 2016, as revised through July 7, 2016 (LP-1);
 - xiv. "Details," dated February 5, 2016, as revised through July 7, 2016 (DN-1);
 - xv. "Details," dated February 5, 2016, as revised through July 7, 2016 (DN-2);
 - xvi. "Details," dated February 5, 2016, as revised through July 7, 2016 (DN-3);
 - xvii. "Details," dated February 5, 2016, as revised through July 7, 2016 (DN-4);
 - xviii. "Details," dated February 5, 2016, as revised through July 7, 2016 (DN-5);
 - xix. "Details," dated February 5, 2016, as revised through July 7, 2016 (DN-6);
 - xx. "Details," dated February 5, 2016, as revised through July 7, 2016 (DN-7);
 - xxi. "Massing Model Plan," dated February 5, 2016, as revised through July 7, 2016 (MA-1);
 - xxii. "Main Level Floor Plan," dated April 20, 2016, as revised through July 7, 2016 (A1.01);

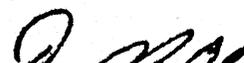


- xxiii. "Second Level Floor Plan," dated April 20, 2016, as revised through July 7, 2016 (A1.02);
 - xxiv. "Third Level Floor Plan," dated April 20, 2016, as revised through July 7, 2016 (A1.03);
 - xxv. "Exterior Elevations," (South and East) dated April 20, 2016, as revised through July 7, 2016 (A5.01);
 - xxvi. "Exterior Elevations," (North and West) dated April 20, 2016, as revised through July 7, 2016 (A5.02).
2. Prior to the submission of an application for any building permit pursuant to this Order, the petitioner shall submit a Final Landscape Plan showing compliance with the City's Tree Preservation Ordinance and indicating all new trees and other plantings, including any to be provided off the property, for review and approval by the Director of Planning and Development. Petitioner shall ensure that said landscaping shall be maintained in good condition and any trees and plant material that become diseased or dies shall be replaced annually with similar material.
 3. Prior to the submission of an application for any occupancy permit pursuant to this Order, the petitioner shall seek all required permission from the Public Works Commissioner and the Parks and Recreation Commissioner to install any trees and/or other plantings to be located on City-owned property, i.e., at the intersection of Newtonville Avenue and Lewis Terrace and the Newtonville Avenue / East Side Parkway traffic island, as identified in the Final Landscaping Plan. The petitioner shall not be required to install the off-site plantings pursuant to this condition in the event the City refuses to grant permission for such plantings nor shall the petitioner be required to install the off-site plantings until after any modification of the intersection(s) is completed following the traffic study anticipated in Condition #5 of this Order.
 4. Prior to the submission of an application for any building permit pursuant to this Order, the petitioner shall seek all required action of the City Council authorizing the relocation of the City-owned sewer line that traverses the property as shown in the above-referenced plans.
 5. At the time of issuance of a building permit pursuant to this Order, the petitioner shall contribute \$10,000 towards the cost of conducting a traffic study of the area at East Side Parkway/Newtonville Avenue/Lewis Terrace or other neighborhood improvements and \$10,000 towards improvements to Cabot Park, subject to the approval of the Parks and Recreation Commissioner.
 6. The petitioner Storage Development Partners, LLC or its successors or assigns shall not oppose any prohibition or regulation of on-street parking within 50 feet of the property's boundaries.
 7. The petitioner shall, at its expense, repair or replace the sidewalks located along the perimeter of the property subject to the approval of the Commissioner of Public Works prior to the issuance of any occupancy permit and keep the same in good repair.

A True Copy
Attest


8. The hours of operation of the facility shall be limited to 6:30 AM – 9:00 PM on weekdays, and 8:00 AM – 9:00 PM on weekends. The weekday opening time of 6:30 AM may be modified in accordance with the provisions of Condition #16 post-occupancy studies.
9. The petitioner shall comply with the City's Noise Control Ordinance, Sections 20-13 et seq of the Revised Ordinances 2012, at all times, which may require among other measures, the installation and maintenance of acoustical treatments of any and all Heating, Ventilation and Air Conditioning (HVAC) units to comply with the provisions of said Ordinance.
10. The petitioner shall install and maintain a cistern system of a capacity approved by the City Engineer as part of its storm water management review and sufficient to collect rainwater from a portion(s) of the facility's roof and to provide a significant and substantial portion of the irrigation required to support the landscaping required under this Order.
11. No auction(s) of any kind shall be permitted on-site unless such auction(s) is mandated by state or federal law or regulation.
12. The property shall not be used for the rental or sale of any vehicles.
13. The petitioner's Lease/Rental Agreement shall prohibit the storage of any explosives or any highly inflammable goods or Hazardous Materials, defined as any hazardous or toxic chemical, gas, liquid, substance, material or waste that is or becomes regulated under any applicable local, state or federal law or regulation. In addition, the petitioner shall not sell propane or sell or rent propane tanks or other inflammable goods and shall prohibit tenants from storing propane.
14. All utilities shall be located underground from the property line.
15. The petitioner shall comply with the City's Light Trespass Ordinance, Section 20-23 et seq of the Revised Ordinances 2012. No site lighting shall be controlled with motion-detection sensors and all site lighting on the Newtonville Avenue and Lewis Terrace sides of the building shall be of low intensity, appropriate for the residential character of the abutting properties, and subject to the review and approval of the Director of Planning and Development. The site lighting on Newtonville Avenue and Lewis Terrace may be modified in accordance with the provisions of Condition #16 post-occupancy studies.
16. As part of this special permit, the petitioner shall conduct two post-occupancy studies in the following areas: a) a study of the traffic coming to the site and on Newtonville Avenue and Lewis Terrace near the site between 6:00 AM and 7:00 AM on weekend mornings; b) sufficiency of parking and truck turning on site to prevent queuing or parking on Newtonville Avenue; c) compliance of the building's HVAC with the City's Noise Ordinance; and d) lighting along the Newtonville Avenue and Lewis Terrace sides of the building to determine whether the intensity of such lighting needs to be adjusted, or the lighting turned off.

The first post-occupancy study shall be conducted by the petitioner one (1) year after the building receives a certificate of occupancy, and the second post-occupancy study shall be conducted three (3) years after the building receives a certificate of

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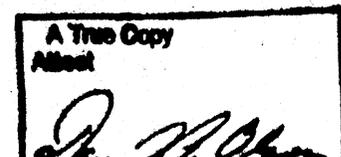
occupancy, at which point the building should be at or near full occupancy. The petitioner shall conduct either post-occupancy study earlier if so requested by the Director of Planning and Development. The petitioner shall be solely responsible for the costs of the post-occupancy studies. The petitioner shall provide the Director of Planning and Development with a proposed scope of work and methodology for the four areas to be studied for the Director's review and approval, provided that the lighting study may consist of an as-built plan showing the location of the lighting, the hours of operation, as well as information regarding the intensity of such lighting.

The Director of Planning and Development shall provide the Councilors from Wards 1 and 2 and the Chairman of the Land Use Committee with copies of the completed studies and request comments. Based upon the results of the completed studies and comments, the Director may require the petitioner to undertake remediation as follows:

- a. If the Director determines that traffic coming to the site at 6:30 AM on weekdays has a negative effect on traffic on Newtonville Avenue and/or Lewis Terrace which can be remediated by delaying the opening time to 7:00 AM, the Director shall direct the petitioner to delay the opening time until 7:00 AM on weekdays. Alternatively, if the Director determinates that traffic coming to the site at 6:30 AM has no negative effect or a negative effect can be remediated by an earlier opening time, the Director shall direct the petitioner to open no earlier than 6:00 AM.
- b. Work with the Director of Planning and Development to develop and implement strategies to improve parking and on-site circulation to prevent queuing or parking on Newtonville Avenue by tenants using the storage facility;
- c. Bring the HVAC system into compliance with the City's Noise Ordinance which may include the installation or maintenance of acoustical treatments; and
- d. Adjust or turn off the building's lighting along Newtonville Avenue and Lewis Terrace to minimize impact on the surrounding residential neighborhood.

The Director of Planning and Development shall advise the Commissioner of Inspectional Services and the Land Use Committee on the results of the studies and the remediation steps implemented.

17. Prior to the issuance of any Building Permit, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds, and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.



18. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
19. Prior to the issuance of any Building Permit, the petitioner shall submit a final Construction Management Plan (CMP) to the Commissioner of Inspectional Services, the Director of Urban Forestry, the Engineering Division of Public Works, the Director of the Department of Planning and Development, the Newton Fire Department and Newton Police Department, which plan should shall include at a minimum:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 5:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 3:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - c. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - d. A tree preservation plan to define the proposed method for protection of existing trees to remain on the site and on abutting properties during construction.
 - e. A plan for site access and traffic control.
 - f. A plan regulating the delivery of material to the site, including the staging and storage of construction vehicles.
 - g. A plan for rodent control during construction.
 - h. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.
20. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Received final approval from the Director of Planning and Development for the Construction Management Plan.
 - b. Recorded a certified copy of this Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - c. Filed a copy of such recorded Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - d. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
 - e. Obtained a written statement from the Engineering Division of Public Works that confirms the receipt of a certified copy of the recorded O&M in accordance with Condition #17.

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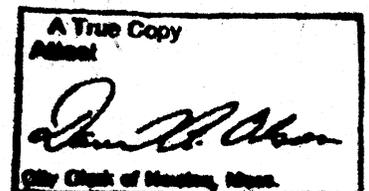

- f. Filed a final Landscape Plan to the Director of Planning and Development for review and approval.
21. No Final Inspection and/or Occupancy Permit for the buildings constructed pursuant to this Special Permit/Site Plan Approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect certifying compliance with Condition #1.
 - b. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
 - c. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - d. Filed with the Conservation Commission, Department of Inspectional Services, and the Department of Planning and Development a statement by the City Engineer certifying that finished grades and final construction details of driveways, parking areas and drainage systems have been constructed to the standards of the City Engineering Department.
 - e. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features and fencing.
22. Notwithstanding the provisions of Condition #21 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

Under Suspension of Rules

Readings Waived and Approved

22 yeas 1 nay (Councilor Harney) 1 absent (Councilor Baker)

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on July 13, 2016. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.



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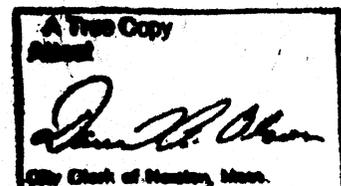


(SGD) DAVID A. OLSON, City Clerk
Clerk of the City Council

I, David A. Olson, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty Days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on _____ and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Council



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2016-2017

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