



# CITY OF NEWTON, MASSACHUSETTS

City Hall

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Ruthanne Fuller  
Mayor

## ZONING BOARD OF APPEALS

**To:** Zoning Board of Appeals Members  
**From:** Adrianna Henriquez, Clerk  
**Date:** January 21, 2021  
**Subject:** Materials for **January 27, 2021** Public Hearing

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Hello,

Please see the following supplemental materials for the upcoming hearing on January 27, 2021 Public Hearing. The following board members are scheduled to sit: *Brooke Lipsitt (Chair), Barbara Huggins Carboni, Stuart Snyder, Michael Rossi and Lei Reilley (Alternate)*

1. January 27, 2021 Revised Agenda
2. Memorandum from Frank G. Stearns of Holland & Knight LLP dated January 19, 2021 in response to item #07-20
3. Letter from Katherine Braucher Adams of Schlesinger and Buchbinder, LLP dated January 21, 2021 regarding item #03-83 and #17-96

Thank you,

Adrianna Henriquez

**ahenriquez@newtonma.gov | (617) 796 1133**



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Ruthanne Fuller  
Mayor

## ZONING BOARD OF APPEALS

Adrianna Henriquez, Board Clerk

**The Zoning Board of Appeals will hold this meeting as a virtual meeting on Wednesday, January 27, 2021 at 7:00 pm. No in-person meeting will take place at City Hall.**

To view and participate in this virtual meeting on your phone, download the “Zoom Cloud Meetings” app in any app store or at [www.zoom.us](http://www.zoom.us). At the above date and time, click on “Join a Meeting” and enter the following meeting ID: 842 0705 1653.

To view and participate in this virtual meeting on your computer, at the above date and time, go to [www.zoom.us](http://www.zoom.us), click “Join a Meeting” and enter the following Meeting ID: 842 0705 1653. Alternatively, the direct Zoom link to the meeting is <https://us02web.zoom.us/j/84207051653>

To dial into the meeting via telephone, call in by dialing 1-646-558-8656 and use the Meeting ID: 842 0705 1653#

## AGENDA

REVISED 01/21/2021

**A public meeting of the Newton Zoning Board of Appeals will be held virtually via Zoom on Wednesday, January 27, 2021 at 6:00 p.m. on the following petitions:**

1. Elections; discuss and/or adopt changes to the City of Newton Rules of the Zoning Board of Appeals, effective January 1, 2019; training by the Law Department on the role of the Board, the Open Meeting, Public Records and Conflict of Interest laws; any necessary briefing from the Law Department about items in litigation

**A public hearing of the Newton Zoning Board of Appeals will be held virtually via Zoom on Wednesday, January 27, 2021 at 7:00 p.m. on the following petitions:**

1. **#07-20** Bruce Leslie of 141 Aspen Avenue, Kathryn and Norman Thibeault of 66 Forest Avenue, Mandeep Sawhney and Suruchi Kaul of 52 Forest Avenue, and Thomas Fulchino of 150 Aspen Avenue, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing the November 16, 2020 issuance of a building permit by the Commissioner of Inspectional Services for the installation of four 70 foot tall sports lighting poles at 70 Studio Road, Newton, Massachusetts. The subject property is located at 70 Studio Road, Newton, Massachusetts and is located in a Single-Residence 1 (SR-1) District.
2. **#03-83** and **#17-96** 2Life Coleman Limited Partnership f/k/a Jewish Community Housing for the Elderly Coleman Limited Partnership, 2Life Communities Inc. f/k/a Jewish Community Housing for the Elderly III, Inc., requesting to change the details of Comprehensive Permits previously granted to the applicant on March 8, 1983, and on July 23, 1996, for a project

located at **677 Winchester Street**. The applicant proposes to construct an approximately 1000 square foot addition to Coleman I and II to be built on the existing outdoor patio and which is to include a new, accessible entrance. The applicant also proposes to improve existing outdoor space at the main entrance to serve as a replacement patio. This item will be heard for the purpose of determining whether the proposed changes to the Comprehensive Permits are substantial or insubstantial.

3. Review and approval of minutes for September 23, 2020 meeting.

The location of this meeting/event is wheelchair accessible and Reasonable Accommodations will be provided to persons with disabilities who require assistance. If you need a Reasonable Accommodation, please contact the city of Newton's ADA/Section 504 Coordinator, Jini Fairley, at least two business days in advance (2 weeks for ASL or CART) of the meeting/event: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

MEMORANDUM

To: Zoning Board of Appeals  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02450

From:



Frank G. Stearns  
Holland & Knight LLP

cc: Diane Parker, Lasell  
Howard A. Levine, Esq.  
Daniel P. Dain, Esq.

Date: January 19, 2021

Re: Building Permit # 20100457, dated November 16, 2020, Issued to Lasell University,  
f/k/a Lasell College, for Lighting at Grellier Field

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**I. Introduction**

This memorandum is submitted on behalf of Lasell University, f/k/a Lasell College (“Lasell”), in response to the administrative appeal (the “Appeal”) of the building permit issued November 16, 2020 for the athletic field lighting at Grellier Field at Lasell. For the reasons set forth below, the Inspectional Services Department Commissioner (“ISD Commissioner”) acted properly under the Newton Zoning Ordinance (“NZO”), under Newton’s longstanding practice with respect to reasonable regulation of Dover-protected institutions, under Massachusetts Dover Amendment case law applicable to athletic field lighting, and consistent with previous city approvals issued to allow construction of athletic field lights at other Dover-protected institutions and at city owned properties.

**II. Background**

On March 2, 2017, Lasell filed with the City of Newton Planning Department (the “Planning Department”) an administrative site plan review (“ASPR”) under Section 6.3.14 of the NZO. The Planning Department issued its review memorandum on July 14, 2017. The ASPR process was not legally required, because according to Section 6.3.14.B.1.a. of the NZO, ASPR

applies only to the “construction, alteration, enlargement, reconstruction, use or change of use...“**for a school or other educational purpose**” (emphasis added). “School or Other Educational Purpose” is defined to apply to **school buildings** (emphasis added). NZO § 6.3.14.A. Furthermore, “alteration” is defined in NZO § 6.3.14.B.1.a as those modifications which produce an increased parking demand pursuant to NZO Article 5. Not only are the proposed light poles not buildings, but they produce no increased parking demand as defined in the NZO. Notwithstanding that ASPR was not legally required, Lasell agreed to go through the ASPR process to facilitate additional discussion and input from City departments and the neighbors.

After completion of the ASPR, Lasell applied to the Auburndale Historic District Commission (“AHDC”) to obtain a Certificate of Hardship, because two of the four light poles are to be located within – and at the outer border of – the Auburndale Historic District. The AHDC did not issue the Certificate of Hardship within the required time period as required by the AHDC regulatory process in effect at that time. See Newton Ordinance §§ 22-40. Lasell petitioned the Metropolitan Area Planning Council (“MAPC”) to issue the Certificate of Hardship. The MAPC reversed the AHDC decision and ordered that the Certificate of Hardship be issued. AHDC appealed that decision to the Superior Court. The Superior Court agreed with Lasell that the Certificate of Hardship should issue. No further appeals were taken of either the AHDC Certificate of Hardship or the Superior Court decision. On July 15, 2020 the AHDC issued a Certificate of Hardship to Lasell. Lasell filed for its building permit on October 15, 2020, and the ISD Commissioner issued the permit on November 16, 2020. Exhibits A and B to this memorandum, dated June 28, 2017 and July 27, 2017, respectively, demonstrate that the Planning Department was aware of Lasell’s position, and the applicable law, during the ASPR, and that the ISD Commissioner was aware of Lasell’s position, and the applicable law, when it reviewed the building permit application following the ASPR and AHDC processes.

### **III. Light Poles Are Not Zoning-Regulated Structures and Are Not Subject to Zoning Height and Setback Measurement**

Light poles are not zoning-regulated structures under Section 8.3 of the NZO for which height and setback requirements apply. The NZO sets out a detailed specific method to regulate height. Height is measured from the average grade plane to the top of the roof. NZO § 1.5.4. Light

poles do not have a roof. The NZO definition of height includes no reference to a building or a structure – only to a roof. *See also* Definition of “Buildings” at NZO § 8.3.

In addition, a building is defined as a “structure ... having a roof... intended for the shelter of persons, animals or the storage of property.” NZO § 8.3. Thus, a light pole is not a building. Other types of structures without roofs are regulated uniquely based on their characteristics. *See* definition of “structure” at NZO § 8.3. Light poles are not listed in that definition. A light pole is not one of the listed examples of a zoning-regulated structure for good reason. Like a perimeter fence, a light pole must often be located in a setback and at an engineered height to properly serve its function. By contrast, the types of structures listed in Section 8.3 are justified to be subject to zoning-based height and/or setback requirements. For example, retaining walls in setbacks are subject to a height measurement specific to retaining walls. NZO § 5.4.2. Cellular towers and antenna arrays have their own customized height limitations in the wireless section of the NZO. NZO § 6.9. Most significantly, NZO § 5.8 clearly states that the City of Newton has decided to regulate light sources not in the Zoning Ordinance, but in the Light Trespass Ordinance.

This overall regulatory scheme therefore does not impose a height limitation or a minimum setback on a light pole. Since light poles are neither zoning-regulated structures nor buildings, they are not regulated in the Zoning Ordinance. The ZBA should therefore reject the argument put forward in the Appeal that the light poles do not comply with the NZO.

#### **IV. Light Poles Are Also Not Accessory Structures**

Accessory structures must be accessory to a principal building. NZO §3.4.3.B. The Grellier Field light poles are not accessory to a building. Section 3.4.3.B of the NZO states “Accessory structures other than accessory buildings ... must conform to the applicable setback requirements for the principal building.” The term "accessory structures" is not defined in the NZO and is only mentioned in Section 3.4.3.B. The application of a height or setback requirement to an accessory structure requires not only that the item be a structure, but also that it be accessory to a principal building. The light poles are clearly designed and located for the use of Grellier Field, an open space athletic field. There is no principal building connected to the field or the light poles. Thus even if a light pole is treated as a structure, without a principal building involved, and given prior City interpretations (discussed in more depth in Section V below) that field light poles

are not structures subject to height and setback requirements, there is no applicable height or setback requirement. Further, NZO § 8.8.1 requires definitions be given their commonly accepted and ordinary meaning.

**V. How The City has Treated Other Light Poles For Athletic Fields**

The City has in multiple contexts (Fessenden School, Boston College Newton Campus, Newton Highlands Playground, UMASS at Mount Ida Campus and Newton South High School) already determined that similar light poles at other locations are legally permitted to be constructed. It would be unfair, inappropriate and prejudicial, as well as arbitrary and capricious, for the City to treat the Lasell light poles in a manner which is inconsistent with the determinations the City has made regarding light poles at other city-owned and Dover-protected locations.

In *Trustees of Boston College v. City of Newton*, Land Court Case #272017 (2003), Boston College's position was that the height and setback requirements of the NZO (unchanged to this date) were not applicable to its 70 light poles and lights for its regulation soccer field at its Newton campus. The City entered into a settlement and Stipulation of Dismissal, together with a Memorandum of Understanding in which the City agreed that the 70 foot light poles were in compliance with zoning dimensional requirements. See Exhibit C.

At Fessenden School, the ASPR Planning Department review memorandum and the zoning review memorandum for the Fessenden School field lights (May 11, 2015) concludes that field light poles are not structures. See Exhibit D. These memos conclude that such field light poles are not subject to height and setback requirements and are compliant with dimensional requirements (then Section 30-15). These field light poles are also 70 feet tall and also built by MUSCO, the same supplier providing the Grellier Field poles and lights.

Additionally, the City recently constructed new 70 foot tall field light poles and lights designed by MUSCO as part of the renovation of the Newton Highlands Playground. Under the City Ordinance, public projects should conform to zoning standards. See Newton General Ordinances § 5-58.

**VI. Installation and Use of the Light Poles is Allowed by Right Under the NZO and the Dover Amendment because Enforcing the Suggested Setback and Height Restrictions is Inherently Infeasible and Unreasonable**

Under the Dover Amendment, installation and use of the light poles is allowed by right because enforcing a setback and height requirement as set forth in the Appeal would constitute a restriction that is inherently infeasible, unsafe and unreasonable due to the location of Grellier Field. As documented above, the Planning Department and CZCO have not recommended imposing a height or setback requirement in previous analyses of the installation of light poles for educational uses and for municipal uses. The ZBA should not ignore that precedent here.

The proposed height and locations of the light poles was chosen to provide Grellier Field with safe and adequate lighting that abides by national industry standards and NCAA requirements while at the same time limiting the glare or overspill off of the field. MUSCO, the same design firm that designed and manufactured the light poles for other field lights in Newton, has spent considerable effort in determining the height and location of the light poles, and in its professional opinion such heights and locations provide the most efficient combination of a safely lit playing field and a limitation of glare and spillover on neighboring properties. The MUSCO analysis was fully vetted during the ASPR process.

The Appeal does not present any alternatives to MUSCO's lighting design, but rather suggests that a lower height and a 450 foot setback is required, the imposition of which would completely prevent Lasell from safely and properly lighting Grellier Field. That result would prevent Lasell from implementing its non-profit educational mission which is specifically protected by the Dover Amendment. Even assuming the light poles were zoning-regulated structures, it would be an unreasonable dimensional limitation and a violation of the Dover Amendment to impose a height or setback requirement that would be unsafe and cannot be physically met due to the existing location of Grellier Field.

**(i) Enforcing the Suggested Height and Setback Restrictions is Inherently Infeasible**

State law protects use of the field and the field lights. In *Forster v. Board of Appeals of Belmont*, 60 Mass. App. Ct. 1118 (2004), the Appeals Court reviewed circumstances surrounding Belmont High School's implementation of four 80 foot light poles and two 60 foot light poles.



The Court noted that a height limitation of 20 feet was inherently infeasible as it applied to the proposed light poles because “taller light poles were necessary to avoid glare or overspill into the adjoining residential properties.” Much like the circumstances under *Forster*, the Appeal’s recommendation to impose the height limit applicable to houses in a single residence zoning district (30’ to 36’) and for a 450’ setback requirement is inherently infeasible for the legal and practical reasons stated above. It is impossible for Lasell to abide by the minimum setback which the Appeal argues is applicable. And it would create more glare and more light spillover to light the field.

**(ii) Enforcing the Suggested Height and Setback Restrictions is Unreasonable**

The Appeals Court in *Forster* acknowledged that school athletics and the use of lights on an athletic field constitute a protected and reasonable use under the Dover Amendment. *See also The Bible Speaks v. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19, 34 (1979) (holding that light poles on a school’s athletic field are a protected use under the Dover Amendment). The Appeals Court held that once a dimensional restriction is found to be inherently infeasible as applied to the reasonable use of an athletic field, the Dover Amendment requires relief from such restriction. It is against the very purpose of the Dover Amendment to enforce a dimensional requirement (in this case, also, where none legally exists under the NZO) that effectively prohibits Lasell from utilizing its property in a manner that routinely qualifies for Dover Amendment protection.

It is also instructive to compare Newton’s ordinances regarding field light poles to those of other Massachusetts cities and towns in which Dover institutions have lights serving playing fields as part of their educational mission. The Appeal cites to the *Forster v. Board of Appeal of Belmont*, 60 Mass App Ct 1118 (2004) case by suggesting that it is authority to defend moving light poles a substantial distance from neighboring properties, but the Belmont case involved a By-law that provides specific dimensional requirements for light poles. In Newton, by contrast, the NZO and previous interpretations applied to other light pole installations do not impose a height or setback requirement. Rather, they defer to the Light Trespass Ordinance. The same can be said for *Bible Speaks v Board of Appeals of Lenox*, 8 Mass. App. Ct. 30 (1979), which also involves interpretation of a Zoning By-law with specific enumerated standards applicable to light poles. The NZO does not follow this approach. It is entirely unreasonable and incorrect to imply that

because the field is located in a single residence district, a height or setback requirement applicable to single family residential buildings and structures applies to light poles. Other provisions of the *Lenox Bible Speaks* case strongly support the legal doctrine that a City or town may not use bulk and dimensional requirements to nullify the broad scope of the educational use protections embodied in the Dover Amendment.

Additionally, the Forster case rules that if you find that compliance with the height restriction would be “inherently infeasible,” and would interfere with the reasonable use of the athletic field, relief from the restriction is *required* under the Dover Amendment. The case concludes that the ZBA does not have the discretion to enforce an infeasible height restriction. Even in the *Bible Speaks* case, where the proposed lighting of the softball fields involved 35-foot lights, conformance with the existing Zoning Bylaw or the distance from neighboring homes did not enter into the Appeals Court’s discussion in holding that a local By-law exceeded the “tolerably permissible limits in its regulation of educational uses” by requiring a special permit as a condition precedent to obtaining a building permit for the construction of the field lights.

## **VII. Use of the Lights**

The Dover Amendment legally protected use of these lights applies to Lasell’s use of the field as a whole, not limited to scheduled Lasell athletic events. The protections under the Dover Amendment may not be splintered between students who participate in scheduled events and students who do not. To limit the benefit of the lights only to scheduled events would require a determination that Grellier Field and the lights provide an educational purpose to scheduled events only but do not provide an educational purpose to non-scheduled events. Case law interpreting the Dover Amendment clearly rejects such a narrow viewpoint.

In *The Bible Speaks v. Board of Appeals of Lenox*, 8 Mass. App. Ct. 19, 24 (1979), the construction of a snack bar was also approved for the benefit of “students **and others** using the field” (emphasis added). In *Martin v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints*, 434 Mass. 141, 152 (2001), the SJC refused to apply Dover to each element of the use in a piecemeal, segmented way. It said: “To view each element, each section of a ‘structure,’ as requiring an independent ‘religious’ use leads to impossible results: Is a church kitchen or a church parking lot a ‘religious use? We have not formulated the test so narrowly.”

Furthermore, in *Trustees of Tufts College v. Medford*, 415 Mass. 753, 754-755 (1993), the SJC considered the applicability of the Dover Amendment to several construction projects proposed by an educational institution, including a multi-level parking garage and a library. The court applied the Dover Amendment to both the garage and the library and in doing so, recognized that it is impermissible to analyze whether there is a greater educational purpose for the use of a library or for the use of a parking garage. Both structures are owned by an institution that is protected under the Dover Amendment, and therefore both the library and the parking garage are afforded its protections.

Lasell contends that it may use the lights for scheduled events and for general use by students, faculty, staff and in appropriate cases by outside groups. This is common practice by Dover protected institutions, including in Newton. Lasell will comply with the City Light Trespass Ordinance. Lasell's position is supported by the SJC's decision in *Regis College v Town of Weston*, 462 Mass. 280, 293 (2012). There, the SJC summarized long standing Massachusetts Dover case law that "we have considered as protected structures facilities not themselves used for educational activities but operated with the primary goal of supporting an institution's educational mission." *Id.* at 294, fn. 15. The case acknowledges that a Dover-protected educational institution may derive revenue from its facilities as long as the primary purpose of the use of the land is educationally significant. On this basis Lasell rejects the argument that it cannot rent out the field including rentals at night that lawfully take advantage of the lights, unless such a concession is mutually agreed to by the University and the neighbors.

#### **VIII. Conclusion**

For the foregoing reasons, the ZBA should uphold the ISD Commissioner's decision to issue the building permit for the light poles at Grellier Field.

#### **IX. Discussion with Neighbors and Reservation of Rights**

Since the outset of Lasell's consideration of installing the field lights at Grellier Field, dating back many years, Lasell has tried very hard to respect the reasonable concerns of the neighbors and to be responsive to such concerns to the extent reasonable and practical. Lasell continues to have ongoing dialogue with many of the neighbors to the campus if as and when concerns are raised. Lasell will of course continue to have active dialogue with its neighbors which

January 19, 2021

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in many cases may result in Lasell taking steps to address legitimate concerns raised. Notwithstanding the foregoing, Lasell must reserve all of its rights since some of the neighbors have brought this Appeal which argues that Lasell should not be allowed to install and use the proposed field lights.

**Exhibit A**

[Attached following this page.]

# Holland & Knight

## Exhibit A

10 St. James Avenue | Boston, MA 02116 | T 617.523.2700 | F 617.523.6850  
Holland & Knight LLP | www.hklaw.com

Frank G. Stearns  
(617) 854-1406  
frank.stearns@hklaw.com

June 28, 2017

Mr. Barney S. Heath  
Director of Planning and Development  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: Lasell College Grellier Field Proposed Poles and Lights

Dear Mr. Heath:

On behalf of Lasell College, we feel compelled to respond to the letter dated May 23, 2017 from counsel to some neighbors to Lasell College's Grellier Field (the "neighbors letter"). This letter provides you with a very different view of the Newton Zoning Ordinance ("NZO"), Newton's longstanding practice with respect to reasonable regulation of Dover protected institutions, and a more detailed and accurate description of the applicable and governing Massachusetts Dover Amendment case law. The proper conclusions from this analysis are (1) the poles and lights are not subject to zoning height and setback measurement; and (2) the College has a legal right to install and operate the proposed poles and lights in a manner which is wholly consistent with Newton Ordinances, the NZO and Lasell's non-profit educational mission.

1. Applicability of Administrative Site Plan Review ("ASPR")

Grellier Field was constructed in 1998. The results of a search of city and College records are that the city did not conduct an ASPR for the construction of Grellier Field. Despite no city ASPR, Lasell worked with neighbors nonetheless regarding screening and parking management.

It should not be surprising that the city did not conduct an ASPR for Grellier Field because an ASPR is not required. According to the NZO sec. 6.3.14.B.1.a. ASPR applies only to the "construction, alteration, enlargement, reconstruction, use or change of use...**for a school or other educational purpose**" (emphasis added). "School or Other Educational Purpose" is defined to apply to **school buildings** (emphasis added). NZO sec. 6.3.14. A. Further "alteration" is defined as those modifications which produce an increased parking demand pursuant to NZO Article 5. Not only are the proposed poles and lights not buildings, but they produce no increased parking demand. Thus, ASPR was not required for the field and is not

currently required for the poles and lights. NZO sec. 6.3.14.B.1.a. Parking for those attending events at Grellier Field has been managed as have all other College events per the Dover Amendment, the NZO and the College's parking management plans.

Notwithstanding the non-applicability of ASPR to the field poles or the lights, the College accommodated the city's request to use the ASPR process to facilitate discussion and input from the city and the neighbors, as it did more informally in 1998. Under full reservation of rights the College will continue to participate in the ASPR process for the poles and lights conditional upon the process not becoming a vehicle by neighbors, their counsel or city officials to impose delay or unreasonable regulation. In this regard, you have informed us and the College is relying upon your statement that the information provided to the city is complete and the Planning Department will complete its review and provide its non-binding recommendations to the Inspectional Services Department Commissioner on or before July 14, 2017.

## 2. The Dover Amendment and the NZO As Applied to Dimensional Regulation of Athletic Field Light Poles

Your review of the College's proposal to install poles and lights on existing Grellier Field must be based on the NZO and its defined terms, and as the NZO and city ordinances are applied in the context of a Dover Amendment - protected project. The neighbors' letter is completely incorrect that zoning-based height, setback and parking regulation are applicable. In Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass. App. Ct. 803 (2003) the Appeals Court held that dimensional regulations were not to be given effect where "compliance with the dimensional regulations would substantially diminish or detract from the usefulness of [the proposed project], or impair the character of BC's campus, without appreciably advancing the municipality's legitimate concerns." As presented in the ASPR materials and as testified to in the Planning Department Meeting by MUSCO, the field cannot be lit properly without the poles in their proposed locations. This letter will demonstrate further that height and setback regulations do not apply to light poles and lights.

The neighbors' letter seeks to impose single residence zone height and setback requirements on the proposed light poles in a manner wholly inconsistent with the NZO and the above-cited Boston College case. First of all, the proposed light poles and lights are **not** buildings or structures for which height and setback requirements apply under the NZO. The NZO sets out a detailed and thoughtful method to regulate building height. Height is measured from the average grade plane to the top of the roof. NZO sec. 1.5.4. Light poles have no roofs. The NZO definition of height includes no reference to a building or a structure – only a roof. The height regulation applies to roofs (of buildings), which light poles do not have. See, also Definition of "Buildings" at NZO sec 8.3.

In addition, a building is a "structure...having a roof...intended for the shelter of persons, animals or the storage of property". NZO sec. 8.3. Thus a light pole is not a building. Other types of structures without roofs are regulated uniquely based on their characteristics. See definition of "structure" at NZO sec. 8.3. Light poles are not listed in that definition. A light pole is not one of the listed examples of a structure for good reason. Like a perimeter fence, a light pole must often be located in a setback and at an engineered height to properly serve its function. By contrast, the types of structures listed in sec. 8.3 are deemed sufficiently unique

that the NZO provides a specific and different way to regulate their height, or in some cases, as a result of drafting, have no mechanism to govern height. For example, retaining walls in setbacks are subject to a height measurement specific to retaining walls. NZO sec. 5.4.2. Cellular towers and antenna arrays have their own customized height limitations in the wireless section of the NZO. Section 6.9. Most significantly, light poles are **not** zoning-regulated structures. The NZO sec. 5.8 clearly states that the city of Newton has decided to regulate provisions for and light sources **not** in the Zoning Ordinance but in the Light Trespass Ordinance. Similarly, noise is regulated outside the NZO sec. 5.9.

Vague drafting leaves some defined structures that are not buildings with no height restrictions for lack of a roof. Light poles are neither structures or buildings, and not regulated in the Zoning Ordinance at all. Since light poles are not structures or buildings, there is no setback or height requirement. Any contrary interpretation of the NZO would produce an absurd result and ignore the ordinary principles of statutory construction. Ragonese v. Manzi 2007 WL 319439. Also, the NZO sec. 8.8.1 requires definitions be given the commonly accepted and ordinary meaning of the words.

In addition, the City has already determined that the same light poles at other locations are legally as-of right. It would be unfair and inappropriate for the city to attempt to treat the Lasell College light poles in a manner which is inconsistent with and prejudicial compared to the determinations the city has made regarding the same field light poles at other locations. Here are three examples.

One, the ASPR Planning Department review memorandum and the Zoning Review memorandum for the Fessenden School field lights (May 11, 2015) concludes that field light poles are **not** structures. These memos conclude that such field light poles are **not** subject to height and setback requirements and are compliant with dimensional requirements (then section 30-15). These field light poles are also 70 feet tall and also built by MUSCO, the same supplier providing the Grellier Field poles and lights.

Two, the city of Newton already constructed new 70 foot tall field light poles and lights designed by MUSCO as part of the renovation of the Newton Highlands Playground. See Planning Department Memo dated December 24, 2015. Under City Ordinance public projects are supposed to conform to zoning standards. See Newton General Ordinances 5-58:

***Sec. 5-58. Site plan approval for construction or modification of municipal buildings and facilities.***

*It shall be the policy of the city to apply similar standards of planning control of density and environmental impact, when the city's public buildings and facilities are constructed or modified, as the city applies under chapter 30, Zoning, of the Revised Ordinances when petitions for change in land use are initiated by its citizens or property owners. In implementing this policy for land in the public use district or otherwise classified city land, the prior establishment of a zoning classification or district (in accordance with section 30-4 of these Revised Ordinances) shall not be required.*



Yet, these poles were not subject to an ASPR type neighborhood review or site plan review nor any sort of standard or requirement that such poles be measured against any height or setback standards. The Planning Department Section 5-58 memo (December 24, 2015) once again affirms the dimensional compliance of the City's light poles and lights.

Three, in Trustees of Boston College vs. City of Newton, Land Court Case #272017 (2003) the college position was that the height and setback requirements of the NZO (unchanged to this date) were not applicable to its 70 light poles and lights for its regulation soccer field at its Newton campus. The city entered into a settlement and Stipulation of Dismissal, together with a Memorandum of Understanding in which the city consented to 70 foot light poles and deemed them to be in compliance with zoning dimensional requirements.

It is also instructive to compare Newton's ordinances regarding field light poles to those of other Massachusetts cities and towns in which Dover institutions have lights serving playing fields as part of their educational mission. The neighbors' letter cites to the Forster v. Board of Appeals of Belmont, 60 Mass App Ct 1118 (2004) case by suggesting that it is authority to defend moving light poles a substantial distance from neighboring properties. But the Belmont case involves a By-law that provides specific dimensional requirements for light poles. In Newton, however, the Ordinance and previous interpretations applied to other light pole installations do not impose a height or setback requirement. Rather, they defer to the Light Trespass Ordinance. The same can be said for the Bible Speaks v Board of Appeals of Lenox, 8 Mass App Ct 30 (1979) case which also involves interpretation of a Zoning By-law with specific enumerated standards applicable to light poles. Newton's Ordinance does not follow this approach, and it is entirely unreasonable and incorrect to imply that a setback requirement applicable to single family residential structures applies to light poles. Other provisions of the Lenox Bible Speaks case strongly support the legal doctrine that a city or town may not use bulk and dimensional requirements to nullify the broad scope of the educational use protections embodied in the Dover Amendment.

### 3. Who can use the field lights?

As previously stated in Section 1 above, the protections afforded by the Dover Amendment apply to the College's use of the Grellier Field as a whole. Therefore the protections under the Dover Amendment may not be splintered between students who are varsity athletes and students who are not. To allow only varsity athletes the benefit of the lights would require a determination that Grellier Field and the lights provide an educational purpose to varsity athletes but do not provide an educational purpose to non-varsity athletes. Case law interpreting the Dover Amendment rejects such a narrow viewpoint.

In Martin v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, 434 Mass. 141, 152 (2001) case, the SJC refused to apply Dover to each element of the use in a piecemeal, segmented way. It said: "To view each element, each section of a 'structure,' as requiring an independent 'religious' use leads to impossible results: Is a church kitchen or a church parking lot a 'religious' use? We have not formulated the test so narrowly." Furthermore, in Trustees of Tufts College v. Medford, 415 Mass. 753, 754-755, 616 N.E.2d 433 (1993), the SJC considered the applicability of the Dover Amendment to several construction projects proposed by an educational institution, including a multi-level parking garage and a

library. The court applied the Dover Amendment to both the garage and the library and in doing so, recognized that it is impermissible to analyze whether there is a greater educational purpose for the use of a library or for the use of a parking garage. Both structures are owned by an institution that is protected under the Dover Amendment and therefore both the library and the parking garage are afforded its protections.

The College wholeheartedly rejects the suggestion that the College can or should be restricted from using the lights for any and all members of the College community or other non-profit educational groups.

#### 4. Parking

During the daylight, Grellier Field is currently used for games and Lasell has accommodated visitor parking for such games. While the lights will change some of these games from day games to night games, it is not apparent, or supported by the neighbors' letter, that the parking needs will be different for a game played at 2:00 p.m. or at 7:00 p.m. Lasell currently provides parking for these games and it would be impermissible under Dover to impose additional parking regulations simply because the College changes the time at which it uses the field. Additionally, when analyzing the parking requirements for the College, its unique characteristics must be considered since a large percentage of those who attend these games are students that live on campus and thus do not require additional parking spaces. Such circumstances further support a limited application of parking regulations in connection with the College's use of the athletic field. Adding light poles does not create an additional parking demand. See also Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass App Ct 803 (2003).

Notwithstanding that the lights will not result in a change of use that increases the parking needs, the College has voluntarily and in good faith taken steps to devise a Parking Management Plan that offers numerous accommodations to neighbors of the College. For example the plan incorporates the use of multiple on-campus parking facilities that account for more than 180 off-street parking spaces and the College will assign a Campus Police Officer to prohibit parking on the College side of Forest Avenue and Studio Road (the College has no jurisdiction on the neighbor side of these roads nor does it have jurisdiction on Aspen Avenue since it is a public way owned by Newton). Additionally, the College has employed staff members to place temporary signage to direct attendants to these parking lots and will provide instructions for all visiting teams. The complete Parking Management Plan provides a more in detailed analysis of the College's actions and is attached to the College's Supplemental ASPR submission.

In Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass App Ct 803 (2003), the Supreme Judicial Court recognizes that to the degree reasonably possible, the Dover Amendment seeks to accommodate protected uses with critical municipal concerns, which include provision of adequate parking. The Court invalidated the Newton zoning parking requirements as applied to BC's middle campus project. Lasell recognizes that adequate parking is a municipal concern and has provided a Parking Management Plan in response. However the lights and the use of Grellier Field, if determined to be subject to zoning, are protected by the Dover Amendment and therefore any additional parking regulations must be reasonable. Lasell

has taken all reasonable steps to accommodate visitor parking for use of the field as well as when using the lights. Following the precedent of the BC case it would be beyond the city's authority to mandate more parking requirements.

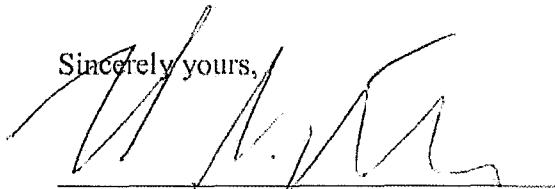
5. Light Trespass

The College will comply with the City Light Trespass Ordinance. Further, as an additional concession to the neighbors, the College will turn off the field lights at 9:30 pm. The Light Trespass Ordinance applies after 9:30 pm. By doing so, the College and the neighbors can avoid costly and contentious debate about the light levels.

6. Reserved Rights

The College's efforts to accommodate the neighbors' concerns regarding the implementation of the lights includes multiple emails and meetings that date back to September of 2016. During this time, the College has made numerous concessions and negotiated in good faith to limit adverse effects that the poles and lights may have on neighbors. The College presently intends to continue such discussions with the neighbors. While it is the College's intent to implement the construction of the poles and use of the lights in a respectful manner and on terms reasonably acceptable to the College and the neighbors, the College reserves the right to withdraw all concessions and all terms of negotiations, including without limitation any concession or provision stated in correspondence and e-mails, in the event a neighbor appeals or challenges the construction of the poles and use of the lights at any point under applicable law, rules, or regulations.

Sincerely yours,



Frank G. Stearns

FGS:dhb

cc: Maureen Lemieux, Mayor's Office  
John Lojek, Inspectional Services Department  
Ouida Young, Law Department  
Jane Santosuosso, CZCO  
Shawna Sullivan, City Clerk's Office  
Neil Cronin, Planning Department  
Steve Buchbinder, Esq.  
Councilor Leonard Gentile  
Councilor John Harney  
Councilor Amy Sangiolo  
Lindsey Beauregard, Lasell College  
Diane Parker, Lasell College  
Michael Hoyle, Lasell College  
Howard A. Levine, Esq.

**Exhibit B**

[Attached following this page.]

Frank G. Stearns  
(617) 854-1406  
frank.stearns@hklaw.com

July 27, 2017

John Lojek  
Commissioner of Inspectional Services  
Inspectional Services Department  
Newton City Hall, Room 202  
1000 Commonwealth Ave.  
Newton Centre, MA 02459

Anthony Ciccariello  
Deputy Commissioner of Inspectional Services  
Inspectional Department Services  
Newton City Hall, Room 202  
1000 Commonwealth Ave.  
Newton Centre, MA 02459

Re: Lasell College - Grellier Field

Dear Commissioner Lojek and Deputy Commissioner Ciccariello:

On behalf of Lasell College (the “College”), this letter is in response to the Inter-Office Correspondence (“**Planning Department Letter**”) dated July 14, 2017 sent by the Department of Planning and Development (the “**Planning Department**”), and the attached Zoning Review Memorandum (the “CZCO” Memo) dated July 13, 2017, from the Chief Zoning Code Official.

1. Project Overview

The College is proposing to install four 70 foot tall light poles at Grellier Field (the “**Light Poles**” or “**Lights**”) to properly light and utilize its athletic field for NCAA intercollegiate games and other College uses that are characteristic of educational institutions in the City of Newton and across Massachusetts (the “**Project**”).

## 2. Administrative Site Plan Review

In the very first sentence of the Planning Department Letter, the Planning Department incorrectly states that the Newton Zoning Ordinance (“NZO”), and more particularly Section 6.3.14, **requires** an administrative site plan review (emphasis added). According to the NZO sec. 6.3.14.B.1.a. ASPR applies only to the “construction, alteration, enlargement, reconstruction, use or change of use...**“for a school or other educational purpose”** (emphasis added). “School or Other Educational Purpose” is defined to apply to **school buildings** (emphasis added). NZO sec. 6.3.14.A. Furthermore “alteration” is defined in NZO § 6.3.14.B.1.a as those modifications which produce an increased parking demand pursuant to NZO Article 5. Not only are the proposed poles and lights not buildings, but they produce no increased parking demand, as acknowledged in Section II of the Planning Department Letter and Section 2 of the CZCO Memo. Thus, ASPR is not required for the Light Poles.

Notwithstanding the non-applicability of ASPR to the Light Poles, the College accommodated the city’s request to use the ASPR process to facilitate discussion and input from the city and the neighbors. In fact, despite neighbors having an attorney to oppose the Project, the College has prepared a Memorandum of Understanding (“MOU”) which sets forth voluntary restrictions regarding use of the lights if permits are issued without appeal. The College welcomes the role of the City in assisting with discussions of the MOU. Under full reservation of rights the College has participated in the ASPR process for the poles and lights conditioned upon the process not becoming a vehicle by neighbors, their counsel or city officials to impose delay or unreasonable regulation. As discussed more fully below, the Planning Department Letter and the CZCO Memo present legal interpretations of the NZO which are beyond their authority and which create unreasonable regulation on the Project.

## 3. NZO As Applied to Dimensional Regulation of Athletic Field Light Poles

The Planning Department Letter incorrectly states that Section 3.1.7 Multi-Use Institution: With Dormitory in the SR-1 Zone of the NZO is applicable to the Light Poles. The setback requirements set forth in Section 3.1.7 only apply to “Principal Building Setbacks”. The definition of Building under Section 8.3 is “a structure, including alterations, enlargements, and extensions, built, erected, or framed of any combination of materials having a roof, whether portable or fixed, designed or intended for the shelter of persons, animals, or the storage of property.” Since Light Poles do not have a roof and are not designed for any type of shelter or storage, Light Poles do not fall under the definition of Building and therefore the Light Poles are not subject to setback requirements set forth in Section 3.1.7 of the NZO.

Furthermore, Section I of the Planning Department’s Letter cites Section 3.4.3.B of the NZO, which states that, “Accessory structures other than accessory buildings...must conform to the applicable setback requirements for the **principal building**” (emphasis added). The term “accessory structures” is not defined in the NZO and is only mentioned in Section 3.4.3.B. Under

Section 3.4.3.B, application of a setback requirement to an accessory structure requires not only that the item be a structure, but also that it be accessory to a principal building. The Light Poles are clearly designed and incorporated for the use of Grellier Field, an open space athletic field, and there is no principal building that can logically be connected to the Light Poles. Thus without a principal building involved in the Project, and with prior City interpretations that field light poles are not structures subject to setback requirements, Section 3.4.3.B is not applicable. To apply any other interpretation would be contradictory to the plain language of the NZO and lead to an absurd result. Ragonese v. Manzi, 2007 WL 3170275.

4. The CZCO Memo.

In the CZCO Memo, "Administrative Determinations", it is acknowledged that the City, has historically not considered field light poles to be structures. That conclusion has been reached in writing by the Planning Department and the CZCO and by the City itself in an Agreement for Judgment in a Land Court case. Despite precedent with three other playing field light poles, in this case the CZCO recommendation is to take a contrary position.

5. Dover Amendment

As stated above, the Light Poles are not structures or accessory structures. Even if they were, they are not subject to height or setback requirements under the NZO, and therefore a Dover Amendment waiver is not necessary. Under the Dover Amendment, installation and use of the Light Poles is allowed by right because enforcing a setback requirement as recommended in the Planning Department Letter and the CZCO Memo constitutes a restriction that is inherently infeasible due to the location of Grellier Field and Forest Avenue. The Planning Department and CZCO have not recommended imposing a setback requirement in previous analyses of the installation of light poles, one for an educational use and one for a municipal use. They should not ignore that analysis for this Project. The other projects already installed do not legally become "grandfathered" because of this different interpretation. (See M.G.L. c. 40A s. 7). Further in 2003, the City consented to 70' light poles in a Single Resident Zone and deemed them to be in compliance with zoning dimensional requirements.

Attached to this letter are excerpts from the relevant city documents approving comparable light poles at Fessenden School, Boston College and the Newton Highlands Playground.

In Forster v. Board of Appeals of Belmont, 60 Mass App Ct 1118 (2004), the Appeals Court reviewed circumstances surrounding Belmont High School's implementation of four 80 foot light poles and two 60 foot light poles. The Court noted that a height limitation of 20 feet was inherently infeasible as it applied to the proposed light poles because "taller light poles were necessary to avoid glare or overspill into the adjoining residential properties." Much like the circumstances under Forster, the Planning Department Letter's recommending a setback

requirement is inherently infeasible for the legal and practical reasons stated above since there is far less than 60 feet between Grellier Field and Forest Avenue. It is impossible for the College to abide by the recommended setback requirements.

The proposed location of the Light Poles was chosen to provide Grellier Field with safe and adequate lighting that abides by national industry standards and NCAA requirements while at the same time limiting the glare or overspill into adjoining properties. MUSCO has spent considerable effort in reviewing the location of the Lighting Poles and the College is relying on its professional opinion that such locations provide the most efficient combination of a safely lit playing field and a limitation of glare and spillover on neighboring properties. On the other hand, the Planning Department Letter does not present any alternatives to MUSCO's lighting design but rather recommends the imposition of a setback requirement that effectively prevents the College from properly lighting Grellier Field. Even assuming the light poles were structures, it would be an unreasonable dimensional limitation and a violation of the Dover Amendment to enforce a setback requirement that cannot be physically met due to the existing location of the Grellier Field and Forest Avenue.

Furthermore, the Appeals Court in Forster acknowledged that school athletics and the use of lights on an athletic field constitute a protected and reasonable use under the Dover Amendment. See also The Bible Speaks v. Board of Appeals of Lenox, 8 Mass.App.Ct. 19, 34 (1979) (where the court held that light poles on an school's athletic field were held to be a protected use under Dover Amendment). The Appeals Court held that once a dimensional restriction is found to be inherently infeasible as applied to the reasonable use of the athletic field, the Dover Amendment requires relief from such restriction. It is against the very purpose of the Dover Amendment to enforce a dimensional requirement (in this case, also, where none legally exists) that effectively prohibits the College from utilizing its property in a manner that has routinely qualified for Dover Amendment protection.

6. Light Trespass

The Planning Department's Letter cites Article IV Light Trespass of Newton Ordinance 20 Civil Fines and Miscellaneous Offenses and the limitations regarding the illumination of a .35 vertical foot-candle more than five feet outside the boundary of the parcel of land upon which the light source is located. However Section 20-25(b) provides that such limitations do not apply between the hours of 6:00 a.m. and 9:30 p.m. The College intends to schedule games and other activities to respect the effective time of the Light Trespass Ordinance beginning at 9:30 PM.

7. Scheduled Events

The protections afforded by the Dover Amendment apply to the College's use of Grellier Field as a whole. Therefore the protections under the Dover Amendment may not be splintered between students who are participate in scheduled events and students who do not. To allow only



scheduled events the benefit of the Lights would require a determination that Grellier Field and the lights provide an educational purpose to scheduled events but do not provide an educational purpose to non-scheduled events. Case law interpreting the Dover Amendment rejects such a narrow viewpoint. Further, all uses of Grellier Field for College purposes are protected uses.

In Martin v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, 434 Mass. 141, 152 (2001), the SJC refused to apply Dover to each element of the use in a piecemeal, segmented way. It said: "To view each element, each section of a 'structure,' as requiring an independent 'religious' use leads to impossible results: Is a church kitchen or a church parking lot a 'religious' use? We have not formulated the test so narrowly." Furthermore, in Trustees of Tufts College v. Medford, 415 Mass. 753, 754-755, 616 N.E.2d 433 (1993), the SJC considered the applicability of the Dover Amendment to several construction projects proposed by an educational institution, including a multi-level parking garage and a library. The court applied the Dover Amendment to both the garage and the library and in doing so, recognized that it is impermissible to analyze whether there is a greater educational purpose for the use of a library or for the use of a parking garage. Both structures are owned by an institution that is protected under the Dover Amendment and therefore both the library and the parking garage are afforded its protections.

The College wholeheartedly rejects the suggestion that the College is restricted from using the lights only for scheduled events.

#### 8. Parking

During the daylight, Grellier Field has been used since it was constructed in 1998 for student recreational and competitive games and Lasell has accommodated visitor parking for such games, and recently implemented a new and enhanced parking management plan for varsity games. While the lights will change some of these games from daylight games to night games, it is not apparent, or supported by the Planning Department's Letter, that the parking needs will be different for a game played at 2:00 p.m. or at 7:00 p.m. Lasell currently provides parking for the games and it would be impermissible under Dover to impose additional parking regulations simply because the College changes the time at which it uses the field. Additionally, when analyzing the parking requirements for the College, its unique characteristics must be considered since a large percentage of those who attend these games are students that live on campus and thus do not require additional parking spaces. Such circumstances further support a limited application of parking regulations in connection with the College's use of the athletic field. Also, adding light poles does not create an additional parking demand. See also Trustees of Boston College v. Board of Aldermen of Newton, 58 Mass App Ct 803 (2003). The Planning Department's Letter supports this reasoning by stating in Section II of their letter that the Light Poles present no technical change in the parking requirement under Section 5.1 of the NZO. The CZCO Memo also cites no increased parking demand from the Project.

John Lojek  
Anthony Ciccariello  
July 27, 2017  
Page 6

Notwithstanding that the lights will not result in an increase of the parking needs, the College has voluntarily and in good faith taken steps to devise a Parking Management Plan that offers numerous accommodations to neighbors of the College. For example the plan incorporates the use of multiple on-campus parking facilities that account for more than 180 off-street parking spaces and the College will assign a Campus Police Officer to prohibit parking on the College side of Forest Avenue and Studio Road (the College has no jurisdiction on the neighbor side of these roads nor does it have jurisdiction on Aspen Avenue since it is a public way owned by Newton). Additionally, the College has employed staff members to place temporary signage to direct attendants to these parking lots and will provide instructions for all visiting teams. The complete Parking Management Plan provides a more in detailed analysis of the College's actions and is attached to the College's Supplemental ASPR submission.

9. Landscaping

The College agrees to install landscaping improvements as shown on the plan entitled Landscape Plan prepared by VHB Associates dated as of May 15, 2017, a copy of which is attached to the College's Supplemental ASPR submission. Lasell College shall maintain the landscaping improvements in accordance with campus standards and has incorporated the management thereof into its maintenance staff.

10. Antenna Affidavit

The College will confirm that the Light Poles will not be used for the installation of antennas.

10. Schedule of Varsity Events

The College agrees to provide a schedule of all varsity events and contact information for the department responsible for operating the event. The schedule shall be provided to abutters within 300 feet at least 30 days in advance of their start date.

Sincerely yours,

HOLLAND & KNIGHT LLP



Frank G. Stearns

FGS:dhb

cc: Howard A. Levine, Esq.

Excerpts from City of Newton Documents Related to Field Light Poles

From Boston College Memorandum of Understanding dated August 5, 2003 signed by Mayor David Cohen:

“Poles complying with the terms of this Agreement shall be deemed by the City of Newton to comply with all reasonably applicable dimensional zoning regulations. Newton, acting through its Inspectional Services Department, shall issue all necessary permits for the construction and use of the *Lighting Equipment*...”

From Planning Department ASPR Memorandum on Fessenden Field Project dated May 11, 2015:

“While they are not considered structures or buildings under the NZO, the applicant’s proposed athletic field lighting is proposed at a scale that is out of character with the surrounding neighborhood.”

From the Planning Department Memorandum to the Board of Aldermen pursuant to City Ordinance 5-58. Site Plan Approval to Renovate Newton Highlands Playground, dated December 24, 2015:

“It shall be the policy of the city to apply similar standards of planning and control of density and environmental impact, when the city’s public buildings and facilities are constructed or modified, as the city applies under chapter 30, Zoning... “ Newton Ordinance section 5-58.

“The Director of Planning and Development has determined that the site plans for a renovated Newton Highlands Park (*which include new 70’ tall field light poles designed by MUSCO*) are consistent with... the site plan review criteria listed in section 30-23.”

**Exhibit C**

[Attached following this page.]

Exhibit C

11/30/2013 WED 14:06 FAX 617 552 0961 BC GENERAL COUNSEL

008/023

**COPY**

Memorandum of Understanding

This Memorandum of Understanding (the "Agreement"), dated as of August 5, 2003, is entered into by and among (i) Trustees of Boston College ("Boston College"), a non-profit institution for higher education incorporated under the laws of the Commonwealth of Massachusetts; (ii) the City of Newton ("Newton"), a political subdivision of the Commonwealth of Massachusetts; and (iii) those individual property owners (together, the "Abutters") whose names and addresses appear below (collectively, the "Parties").

Recitals

A. Boston College desires to construct certain lighting equipment (the "Lighting Equipment"), consisting primarily of poles and mounted fixtures, at its existing "regulation" soccer field facility (the "Soccer Field"), located on its Newton Centre campus near the intersection of Colby and Rochester Roads in Newton, to permit the Soccer Field to be used at night and during late afternoon periods of low natural light, as provided herein.

B. Boston College and Newton, acting through its Commissioner of Inspectional Services, are involved in a dispute as to whether the restrictions set forth in Section 30-15 of the Newton Zoning Ordinance are applicable to the Lighting Equipment.

C. On March 21, 2001 Boston College commenced a declaratory judgment action (the "Lawsuit") in the Land Court Division of the Massachusetts Trial Court (Land Court Miscellaneous case No. 272017) to resolve the dispute.

D. The Abutters although not parties to the Lawsuit are concerned about the possible outcome.

E. Since the commencement of the Lawsuit, Newton, Boston College and the Abutters have entered into discussions in an attempt to settle the Lawsuit and to address concerns relating to the impact of the Lighting Equipment and nighttime use of the Soccer Field.

F. Boston College and Newton have reached an understanding and agreement, with the participation of the Abutters, pertaining to the nature of the Lighting Equipment to be erected at the Soccer Field, the use of such Lighting Equipment, the mitigation of any impacts of such use, and the issuance of permits for the installation and use of the

Lighting Equipment without the need of relief from the provisions of the Zoning Ordinance.

G. In consideration of the mutual agreements set forth in this Memorandum, the receipt and sufficiency of which are hereby expressly acknowledged, the parties to this Memorandum agree as follows:

1. Installation of Lighting Equipment and Related Landscaping. Boston College shall be permitted by Newton to install, use and maintain the Lighting Equipment as more particularly described and specified in Exhibit A attached hereto (the "Specifications") at the Soccer Field, subject to the following:

a. Boston College agrees that the poles constituting a portion of the Lighting Equipment shall not exceed seventy feet (70') in height, shall be painted and maintained black, and that the location of such poles shall be as indicated in the plan attached hereto as Exhibit B (the "Landscaping Plan").

b. Boston College shall make all reasonable efforts, consistent with player safety, to design, install and maintain the Lighting Equipment in a manner to minimize light "spillage" on the property of the Abutters. Boston College agrees that, as part of the installation of the Lighting Equipment, it shall notify the Abutters in advance of the time to adjust the "light hoods" included in the Lighting Equipment to allow for the Abutters' input to enable adjustments in the Lighting Equipment to the greatest extent practicable and consistent with good safety practices to reduce unnecessary projection of light on the Abutters' property, the neighborhood, and Edmonds Park.

c. Boston College, agrees to install the following landscaping improvements (the "Landscaping Improvements") together with the installation of the Lighting Equipment, which improvements are more particularly described and depicted in the Landscaping Plan:

- Replacement Fencing
- Accent Vegetation
- Screening Vegetation

Boston College shall provide the Abutters with an opportunity to participate in the selection of landscaping materials and fencing, and to provide input into the location of plantings. In addition, Boston College agrees to maintain (and replace as necessary) such Landscaping Improvements, and to maintain the area shown on the Landscaping Plan as the "Wooded Area."

d. Poles complying with the terms of this Agreement shall be deemed by the City of Newton to comply with all reasonably applicable dimensional zoning regulations. Newton, acting through its Inspectional Services Department, shall issue all necessary permits (the "Permits") for the construction and use of the Lighting Equipment, including, without limitation, a building permit, within five (5) business days of filing by

Boston College of all customarily required plans and specifications pertaining to the equipment, and provided such plans evidence compliance with building code requirements.

2. Night Use of the Soccer Field. Boston College agrees that the following limitations apply to any use of the Lighting Equipment after 6:00 p.m. ("Night Use") at the Soccer Field.

a. Night Use shall be limited to Varsity Contests and Pre-Game Practices, as specified herein. As used in this Memorandum, the term "Varsity Contests" shall refer to regular season and post-season Boston College men's and women's varsity soccer games; and the term "Pre-Game Practice" shall refer to regular season and post-season team practices held after 6:00 pm in anticipation of a Varsity Contest involving Night Use. "Regular Season" shall refer to the period in any year beginning mid-August and ending in early November. "Post Season" shall refer to the period occurring between early November and early December of any year. Boston College shall consult with the Abutters to review the schedule of Regular Season play upon establishment of applicable schedules pursuant to paragraph 7 below.

b. Night Use of the Soccer Field for regular season Varsity Contests shall not exceed ten (10) such contests, of which no more than two (2) may be scheduled for a Saturday, and none of which may occur on a Sunday. Night Use of the Soccer Field for regular season Pre-Game Practices shall not exceed ten (10) such practices and shall be scheduled for weekday nights only.

c. The Lighting Equipment shall be reduced to 70% illumination level ("Reduced Level") at the end of play for a reasonable period to allow spectators leave the area and for cleanup.

d. The Lighting Equipment shall be fully turned off following completion of any Varsity Contest or Pre-Game Practice (and a reasonable period to allow for cleanup and exit of spectators, if any), but in any event by no later than 9:30 p.m. for all Varsity Contests and by no later than 9:00 p.m. for all Pre-Game Practices, except to the extent the start of such Varsity Contests or Pre-Game practices are delayed for reasons of severe weather, or other circumstances beyond the reasonable control of Boston College or any opposing team. Notwithstanding the above, persistent failure, by Boston College to abide by the times set for extinguishing the Lighting Equipment shall be deemed a default of its obligations under this subparagraph, regardless of circumstances.

3. Operation of the Soccer Field for Varsity Contests. The following conditions shall apply to use of the Soccer Field for all Varsity Contests.

a. Boston College shall prohibit spectators from "tailgating" or consuming alcoholic beverages on the Soccer Field or in permitted parking areas. Boston College shall prohibit spectators from using megaphones, air horns or other noisemakers at

Varsity Contests and Pre-Game Practices. Boston College shall make diligent efforts to enforce all such prohibitions.

b. The Access and Parking Plan attached hereto as Exhibit C (the "Parking Plan") shall be implemented by Boston College for all Varsity Contests.

c. Temporary loudspeakers will be used at Varsity Contests to announce visiting and home teams and to play the National Anthem, but shall not be used after commencement of play. Speakers shall not be used at Pre-Game Practices.

#### 4. Other Uses of the Soccer Field.

a. The parties to this Agreement acknowledge that Boston College may use the Soccer Field beginning not sooner than September 2005 for regularly-scheduled season varsity practices ("Regular Practices") which practices shall be subject to the following conditions:

i.. Regular Practices shall be scheduled to end no later than 6:00 p.m. on weekdays, and no later than 4:00 p.m. on Saturdays.

ii. Regular Practices shall not take place on Sundays.

iii. During that period of the regular season when Eastern Standard Time is in effect, weekday Regular Practices may involve use of the Lighting Equipment, provided such use is fully terminated by no later than 6:00 p.m., and further provided that the lighting shall be at the "Reduced Level" during such Regular Practices.

b. Boston College may use the Soccer Field for other athletic uses outside of the Regular Season; provided however that (i) the Lighting Equipment shall not be used for other than Varsity Contests, Pre-Game Practices and Regular Practices as contemplated by this Agreement; and (ii) Boston College shall consult with the Abutters to inform them of proposed uses pursuant to section 7 below.

#### 5. Seating.

a. Boston College shall install removable spectator seating as shown on the Landscaping Plan. Except as provided below with respect to temporary seating, no expansion of seating shall be permitted without (i) reasonable evidence, including spectator counts, that additional seating is needed to accommodate customary levels of spectators; (ii) appropriate amendment to the Parking Plan as may be necessary to provide additional parking on the Boston College campus; and (iii) advance notice and consultation with the Abutters and the Newton Planning Department. No such expanded seating improvements shall (x) be located on any portion of the Soccer Field or surrounding land of Boston College that is more proximate to the Abutters or to Rochester and Westchester Roads than the seating shown on the Landscaping Plan; or (y) exceed ten rows in height.



b. The Parties agree that during the first twelve-month period following installation of the Lighting Equipment, Boston College may keep the seating in place. Boston College agrees to consult with the Abutters and the Newton Planning Department at the end of such period (and after any successive twelve-month period) to determine the extent of the visual impact of the seating on the neighborhood environment during the winter months and whether any of the following options are reasonably required to mitigate such impact during the winter months: (i) additional vegetative screening; (ii) relocation of the seating to other locations on the Soccer Field during the winter months; or (iii) seasonal removal of the seating. Notwithstanding anything to the contrary set out above in this paragraph, annual removal of the seating shall be considered by the parties only after options (i) and (ii) are first implemented for a full winter season.

c. Boston College may install temporary seating for any Varsity Contests in cases where it reasonably expects the number of spectators to exceed the seating to be installed pursuant to sub-paragraph a above, provided such seating shall be removed within a reasonable period of time (not to exceed 3 business days) following such Varsity Contest.

d. Boston College shall prohibit spectators from sitting on the top of the berm adjacent to the northwestern property boundary, but shall allow seating on the field-facing slope of the berm.

6. Lawsuit. Boston College and Newton agree to execute and file with the Land Court the Stipulation of Dismissal pertaining the lawsuit, attached hereto as Exhibit D, following issuance of the Permits referenced in subparagraph 1(d) above, and expiration of all applicable appeal periods without an appeal being filed, or if an appeal is made with respect to the issuance of the Permits, upon the final dismissal of such appeal or a final adjudication of such appeal upholding the issuance of the Permits. Newton and the Abutters will take no steps to oppose construction of the Lighting Equipment or use of the Lighting Equipment or the Soccer Field in conformity to the terms of this Agreement. The Abutters will not oppose Boston College's defense of any lawsuit or appeal by others pertaining to the construction or use of the Lighting Equipment, regardless of the legal theory articulated therein, and shall not, without limitation, provide testimony supporting any such lawsuit or appeal in the form of affidavits, depositions or testimony at trial.

7. Future Consultation. Boston College shall meet with the Abutters periodically (and not less than quarterly) to consult on all matters pertaining to this Agreement, including, without limitation, use of the Soccer Field outside of the Regular Season, future landscaping, adequacy of seating, storage of seating, and lighting adjustment.

8. Miscellaneous.

a. Consent to Use. Use of the Lighting Equipment complying with the terms and conditions of this Agreement shall be deemed to be conducted with the consent of the Abutters and Newton.

b. Binding Obligation. This Memorandum is intended as binding upon Boston College, Newton, the Abutters and their successors and assigns under the laws of the Commonwealth of Massachusetts. Nothing herein shall be construed as creating any property restriction limiting Boston College's right to develop or use its land for any other lawful purpose not involving athletic field lighting. The terms of this Agreement limiting Night Use of the Soccer Field and the terms pertaining to operation of the Soccer Field for Varsity Contests or other use shall be contractual obligations of Boston College and, except as specifically provided in subparagraph c below, shall be enforceable only by the City of Newton.

c. Mediation of Disputes. The Parties shall cooperate to assure that all disputes pertaining to this Agreement shall be resolved as expeditiously as possible. To this end, in the event there arises any such dispute, including, without limitation, a dispute between any or all of the Abutters, Newton and/or Boston College concerning the terms of this Agreement, the disputing parties agree to first attempt to resolve such dispute through discussions to take place not less frequently than once a week over a period of thirty (30) days from the date of a notice by one party to the other(s) of the matters in dispute. Boston College names Thomas Keady, Associate Vice President for Governmental Affairs, or his successor in office, as its representative in any such discussions. The City of Newton names Donnalyn B. Lynch Kahn, Assistant City Solicitor, or her successor in office, as its representative in any such discussion. In the event no resolution is reached within such thirty (30)-day period, the matter shall be submitted to James J. Lehane, Executive Assistant to the President, or his successor in office, on behalf of Boston College and Mayor David Cohen, or his successor in office, on behalf of the City of Newton (each, a "Designated Officer") to reach, or (in the case of a dispute involving any of the Abutters) propose a resolution, if possible, within an additional five (5) business days. If the Designated Officers are unable to resolve the dispute within such period, the dispute may be submitted to a court of competent jurisdiction by either Boston College or Newton. No legal action may be taken by either Boston College or Newton to enforce this Agreement (including, without limitation, cease and desist orders) without first submitting the dispute to the resolution procedures outlined above.

d. Notice. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier of the date received or the date of delivery, non-delivery or refusal indicated on the return receipt, if deposited with the United States Postal Service, registered mail return receipt and addressed, if in case of Boston College, to:

Trustees of Boston College  
140 Commonwealth Avenue  
Chestnut Hill, Massachusetts 02467  
Attention: Thomas Keady, Associate Vice President

with a copy to:

Trustees of Boston College  
140 Commonwealth Avenue  
Chestnut Hill, Massachusetts 02467  
Attention: Joseph M. Herlihy, General Counsel

And, if in the case of Newton, to:

Mayor David Cohen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Massachusetts 02459

with a copy to

City of Newton Law Department  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Massachusetts 02459  
Attention: Donnalya Kahn, Esq.

And, if in the case of the Abutters to:

Stephen F. Bart and Susan L. Phillips  
26 Rochester Road  
Newton, MA 02458

Ambrose Donovan and Lynn Yetra  
15 Rochester Road  
Newton, MA 02458

Susan and Gerry Lieber  
18 Rochester Road  
Newton, MA 02458

Charles and Blyth Lord  
21 Rochester Road  
Newton, MA 02458

e. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and shall take effect as an instrument under seal. All of the covenants and agreements contained herein shall be binding upon the

parties and their respective successors and assigns. In the case of each of the Abutters, their respective rights hereunder shall be several and shall be assignable only to their respective successors in title to the properties they own as appearing in the notice section. No Abutter shall be liable for the acts or omissions of any other Abutter hereunder.

[The balance of this page is left intentionally blank.]

This Memorandum of Understanding is executed as of the day first written above.

**Boston College:**

Trustees of Boston College

By: William P. Leahy  
Name: William P. Leahy, S.J.  
Title: President

**Newton:**

City of Newton

By: David B. Cohen  
David Cohen  
Mayor

**Abutters:**

Stephen F. Bart  
Stephen F. Bart  
26 Rochester Road

Ambrose Donovan  
Ambrose Donovan  
15 Rochester Road

Susan Lieber  
Susan Lieber  
18 Rochester Road

Charles Lord  
Charles Lord  
21 Rochester Road

Susan L. Phillips  
Susan L. Phillips  
26 Rochester Road

Lynn Yetta  
Lynn Yetta  
15 Rochester Road

Gerry Lieber  
Gerry Lieber  
18 Rochester Road

Blyth Lord  
Blyth Lord  
21 Rochester Road

**Exhibit List**

Exhibit A: Specifications  
Exhibit B: Landscaping Plan  
Exhibit C: Parking Plan  
Exhibit D: Stipulation of Dismissal

01/30/2013 WED 14:09 FAX 617 552 0961 BC GENERAL COUNSEL

018/023

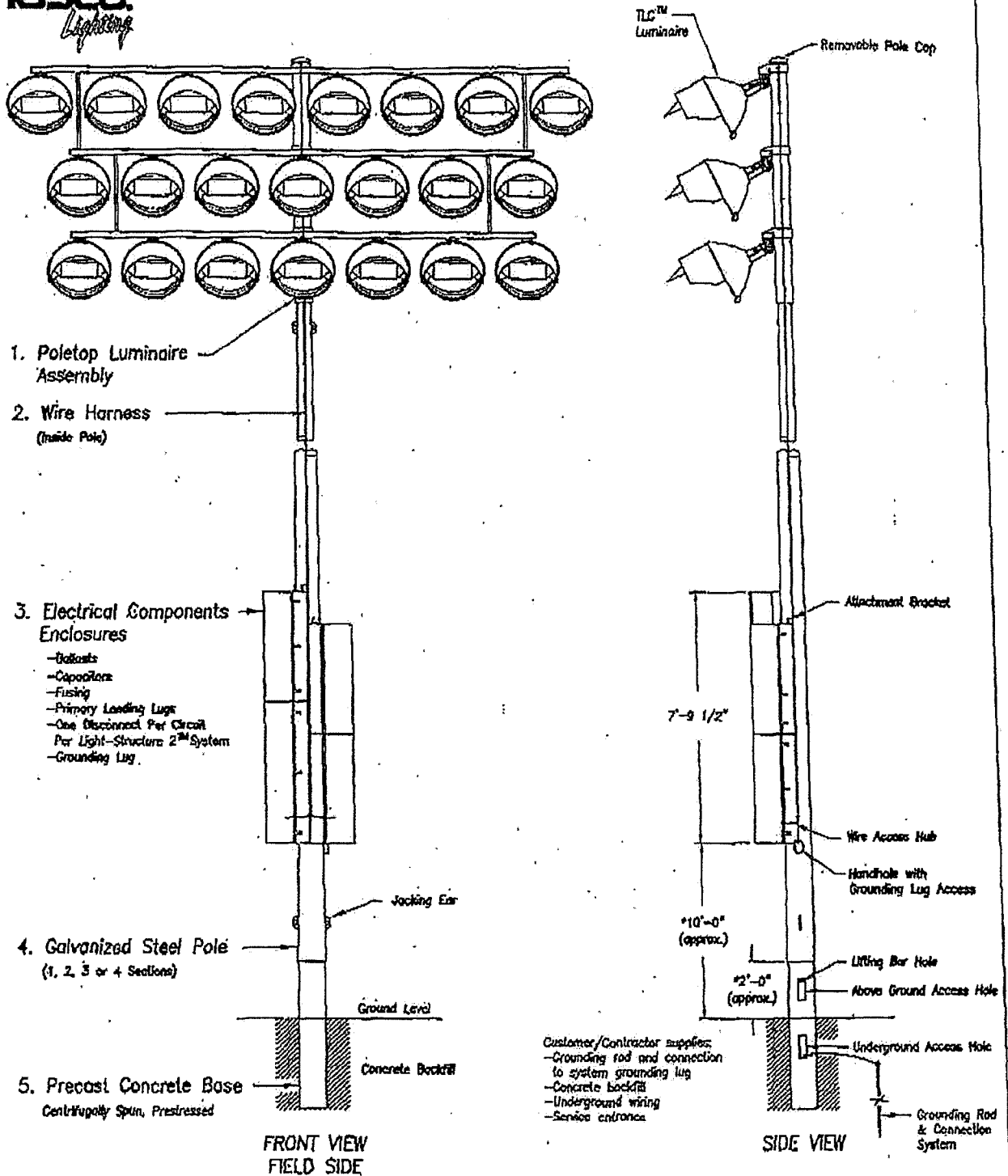
**Exhibit A**

**Specifications**

1. There will be 6 ea. Light poles at 70' in height
2. The 4 corner poles will have 22 ea. 1500 watt fixtures (See Attached)  
The 2 center field poles will have 16 ea. 1500 watt fixtures (See Attached)
3. Each fixture will have a 1500 watt Glare Control Z-lamp Metal Halide bulb
4. Each light fixture has vertical, horizontal aiming adjustment capability as well as a "TLC" Visor (See Attached Fixture Detail)



Typical Light-Structure 2™ System Detail - 22 Fixtures



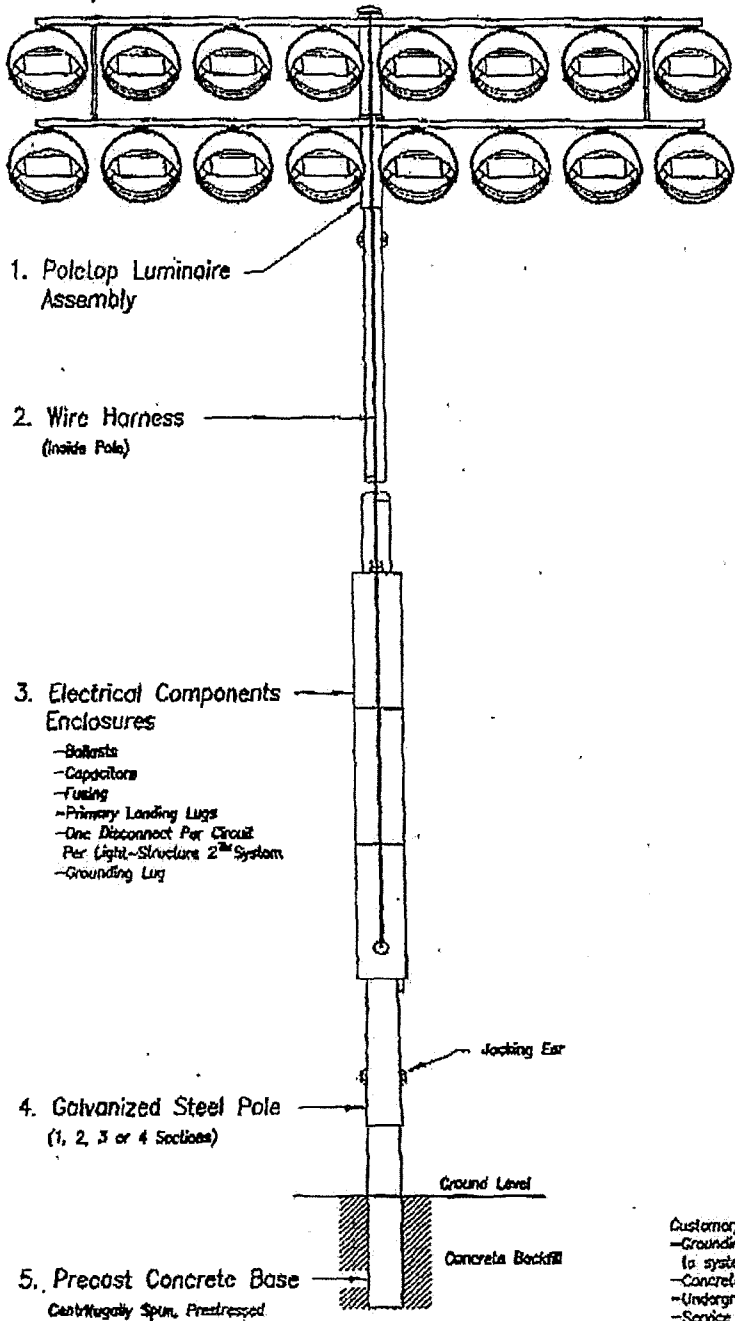
**Notes:**

1. This drawing is not to scale.
2. \* This dimension for reference only. Variances may occur depending on steel pole tolerances, concrete tolerances, galvanizing thickness, hole depth accuracy.
3. Musco provides a base installation bar, an installation level modified for taper, and installation wedges.
4. Provisions for auxiliary equipment such as speaker or security lighting can be incorporated.
5. Copyright 1991, 2002 Musco Lighting. Patents issued and pending.

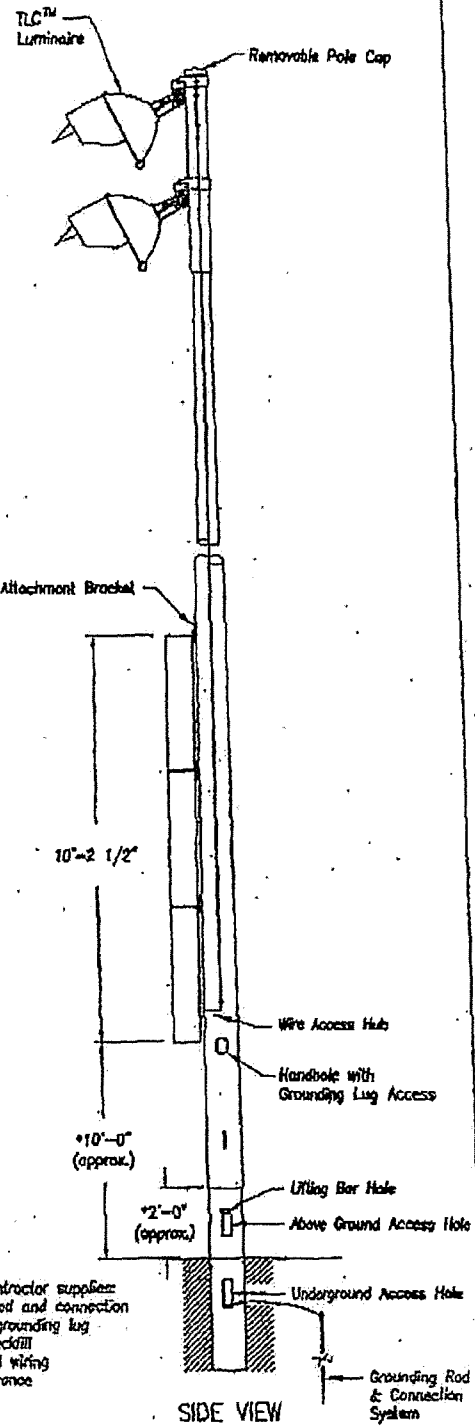




Typical Light-Structure 2™ System Detail - 16 Fixtures



FRONT VIEW  
FIELD SIDE



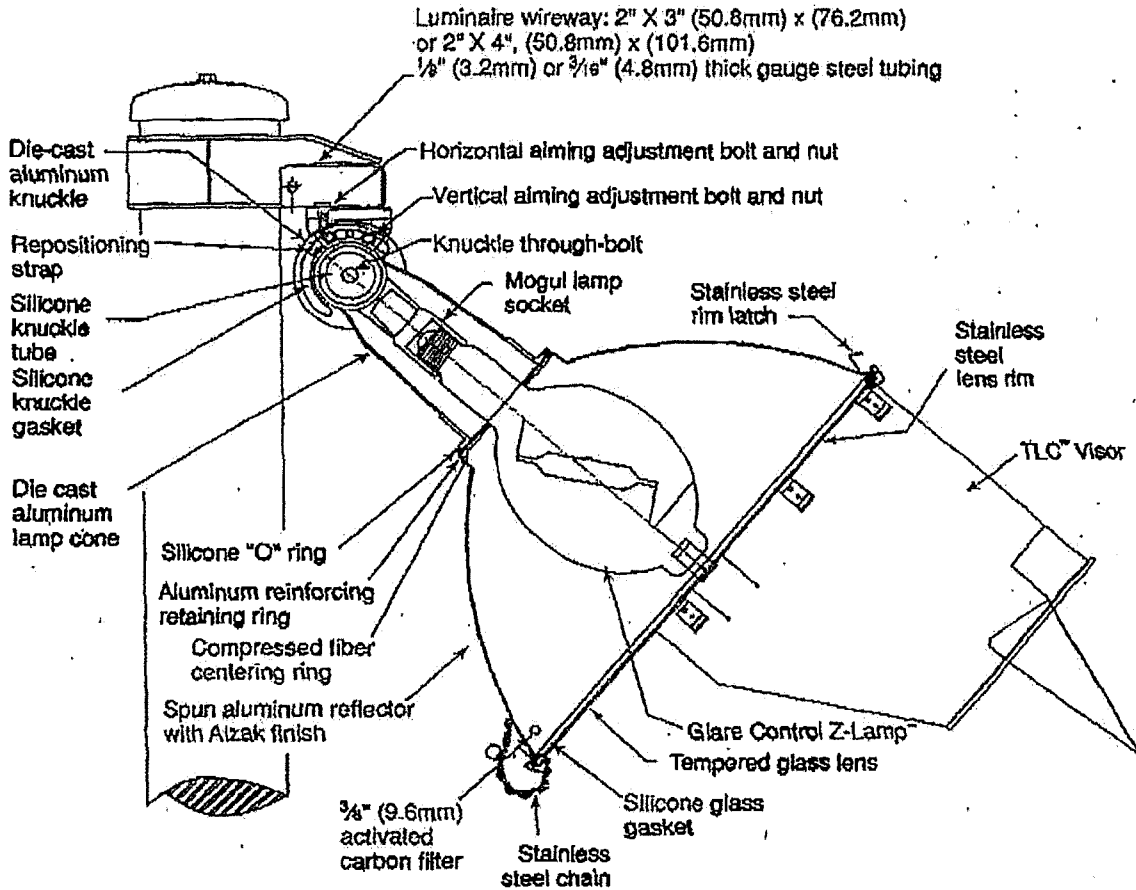
SIDE VIEW

Customer/Contractor supplies:  
 -Grounding rod and connection to system grounding lug  
 -Concrete backfill  
 -Underground wiring  
 -Service entrance

- Notes:
1. This drawing is not to scale.
  2. \* This dimension for reference only. Variances may occur depending on steel pole tolerances, concrete tolerances, galvanizing thickness, hole depth accuracy.
  3. Musco provides a base installation bar, an installation level modified for taper, and installation wedges.
  4. Provisions for auxiliary equipment such as speaker or security lighting can be incorporated.
  5. Copyright 1991, 2002 Musco Lighting. Patents issued and pending.



# Fixture Detail



© 2002 Musco Lighting

Musco products in this brochure are protected by one or more of the following U.S. patents: 4190861; 4374407; 4450607; 4723384; 4729077; 4810274; 4947303; 4974718; 5075828; 5134537; 5161803; 5211478; 5229081; 5377611; 5398478; 5422261; 5426577; 5600637; 5707148; 5794307; 5836721; 6340790; D337168; D353787; D353911; D411096. Canada Patents: 70479; 74906; 1114736; 1161380; 2009749; 2217872; D73755. Mexico Patent: 175663. Europe Patent: 440531. Other patents pending.

Not to Scale

CITY OF NEWTON and  
MARK GILROY,  
By their attorney,

Donnalyn B. Lynch Kahn – BBO #556609  
Assistant City Solicitor  
City of Newton Law Dept.  
1000 Commonwealth Ave.  
Newton Centre, MA 02459  
Tel. (617) 552-7050

Dated: \_\_\_\_\_, 2003

**EXHIBIT D  
STIPULATION OF DISMISSAL**

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss.

LAND COURT  
MISC. NO. 272017

<hr/>	
TRUSTEES OF BOSTON COLLEGE,	)
Plaintiff,	)
v.	)
CITY OF NEWTON and	)
MARK A. GILROY,	)
in his capacity as Commissioner of	)
Inspectional Services for the City of Newton,	)
Defendants.	)
<hr/>	

**STIPULATION OF DISMISSAL**

WHEREAS, this action involves disputes about application of Newton zoning provisions to certain light poles which Plaintiff seeks to build to illuminate its regulation soccer field (the "Light Poles"); and

WHEREAS, the parties have entered into a Settlement Agreement which resolves their differences with respect to the Light Poles, creates certain rights as specified therein, and contains certain reservations of rights; and

WHEREAS, by reason of the Settlement Agreement there is no need for a judgment on the merits with respect to the manner in which Newton zoning provisions may or may not affect the Light Poles.

NOW THEREFORE, the parties to the above-captioned action hereby stipulate and agree, pursuant to the provisions of Mass. R. Civ. P. 41(a)(1)(ii), that all claims in this action about application of Newton zoning provisions which may affect the Light Poles be dismissed. It being the intention that the parties' rights which respect to the Light Poles be governed by their Settlement Agreement, this action is dismissed with prejudice, without costs and waiving any and all rights of appeal.

TRUSTEES OF BOSTON COLLEGE,  
By their attorney,

---

Sander A. Rikiccn – BBO #420280  
John J. Griffin, Jr. – BBO #211380  
EDWARDS & ANGELL, LLP  
101 Federal Street  
Boston, Massachusetts 02110  
Ph: 617-439-4444

5/19/99

## MEMORANDUM OF UNDERSTANDING

1. The City of Newton, acting through its Conservation Commission, and the individuals listed below, being all members of a Massachusetts corporation known as The Friends of Cabot Woods, Incorporated, agree: (i) to withdraw the appeals docketed at Nos. 98-161 and 98-164 (the "Appeals") of the superseding order of conditions dated November 30, 1998 (the "Order") issued by the Massachusetts Department of Environmental Protection ("DEP") to the Trustees of Boston College ("BC") allowing BC to construct a regulation-sized soccer field (the "Regulation Field"), a practice field, and related improvements (the "Work") and (ii) to consent to approval by DEP of the work described below pursuant to condition 14 of the Order, all as may be necessary to permit completion of the Work in accordance with the applicable requirements of the Massachusetts Wetlands Protection Act, M.G.L. c.131, § 40 (the "Act") and implementing regulations.
  
2. The pathway between the BC parking area and the Regulation Field will be constructed of crushed stone. Boston College will direct soccer game patrons to park for games in the parking lot adjacent to the Quonset Hut, or other parking lots on the Newton Campus. This will be the only standard access to the Regulation Field. Sufficient campus personnel and/or signage will be employed to direct patrons to the parking lot and to direct patrons not to park in Colby Street, or in or along Rochester Road, and Westchester Road.  
  
The emergency vehicle pathway at the intersection of Colby Street, Rochester Road, and Westchester Road will be limited to emergency vehicles and infrequently used oversized equipment. Standard maintenance vehicles will use the regular entrance.  
  
If parking and traffic issues develop in the course of events, the Boston College/City Liaison Committee will discuss options for resolution. Nothing will restrict the right of the City of Newton to regulate traffic, parking and other safety issues in accordance with applicable law.
  
- 3A. BC will use a sufficient number of zones in its irrigation system to ensure that the water pressure in the neighborhood will not be negatively affected. BC will begin with the zones farthest from the abutting residences and be mindful of the noise. If the timing of irrigation becomes an issue, BC will meet with the Liaison Committee.

- 3B. Should BC install a well for irrigation purposes, BC will provide documentation that there are no negative effects on the wetlands in Edmands Park.

BC will continue using its Integrated Pest Management (IPM) approach regarding the application of chemicals to the soccer field and will submit its IPM plan for information to the Liaison Committee.

In the event of chemical pesticide application, BC will notify the Newton Conservation Commission (Environmental Planner), the Liaison Committee and the Cabot School (when in session) and post signage as far in advance as possible.

4. The initial construction phase of the Regulation Field does not include lighting. Prior to the installation of lighting, notice will be given to the Liaison Committee. Lighting will be placed in such a way as to minimize the impact on the neighborhood and Edmands Park to the greatest extent practicable consistent with good safety practices, and to comply with applicable legal requirements.

The construction by Boston College of the separate playing field beyond the Quonset Hut will include the installation of lighting. Lighting will be placed in such a way as to minimize the impact on the neighborhood and Edmands Park to the greatest extent practicable consistent with good safety practices and to comply with applicable legal requirements.

- 5 A. Boston College intends to place temporary grandstands on the site. Boston College will discuss this matter with the Liaison Committee.

- 5B. No permanent grandstands are proposed.

6. Bathroom facilities will be utilized in the Quonset Hut. In the event temporary facilities are needed, they will be located adjacent to the Quonset Hut on the BC parking lot side only.

7. Boston College will erect a black vinyl clad chain link fence 6 ft. high around the field area as per the March 12, 1999 plan. Boston College will erect a stockade fence adjacent to the Rochester Road abutters. Boston College will provide buffer plantings around the field on both sides of the fence in accordance with the plan. If after completion of the planned screenings and buffer along Rochester Road the residents still feel that screening is insufficient, Boston College will consider extending the stockade fence along Rochester Road to the corner of Westchester Road.

8. Boston College will maintain the existing alley of trees along the Colby Street pathway to the greatest extent possible. The evergreens adjacent to the Quonset Hut and the practice soccer field will be maintained when possible. Boston College will plant, as part of the

Work, three new, approximately 12' - 14' mature evergreens adjacent to the Quonset Hut to replace those recently cut.

9. Boston College will provide advance notice to the Liaison Committee of all soccer games scheduled on the Regulation Field.
10. Construction Management/mitigation plan (access, hours, complaint procedures):
  - Limit-of-work area will not be outside the area of finished construction to the greatest extent reasonably possible.
  - Boston College will post signs warning of construction vehicles using pathway adjacent to the field.
  - Boston College will provide name of construction superintendent. (Robert Leblanc, Boston College)
  - Boston College will provide a phone number of 24-hour emergency contact. (617-552-4444)
  - Boston College will provide construction schedule to Liaison Committee of types and timing of construction services.
  - Upon completion of construction, Boston College will fill ruts, regrade Colby Street and restore to its pre-construction condition as nearly as possible.
- 11A. In place of a permanent public address system, Boston College will agree to install a permanent soccer scoreboard with no sound component subject to applicable legal requirements.
- 11B. Boston College will ban alcohol use by game patrons. If crowd control becomes an issue, the matter will be referred to the Newton Chief of Police and/or the Liaison Committee.
12. Traffic Control:
  - As stated in the paragraph above, Boston College will utilize campus personnel and/or signage to direct all game patrons to park in the adjacent campus parking lot and direct them not to park in Colby Street, or in or along Rochester Road and Westchester Road.
  - Boston College will block off Colby Street/Westchester Road intersection on weekend games for an hour before, during, and after scheduled weekend games.

In the event traffic or related issues arise, the Liaison Committee will discuss options and/or the issue may be referred to the Newton Police Chief.

13. There will be a Boston College/Newton Liaison Committee as referenced above for the purpose of information and communication regarding the Regulation Field and practice field use and future modification. It shall consist of a designated member and alternate, when the member cannot attend, of the following groups or organizations:

- Boston College
- Newton Commissioner of Parks and Recreation
- Rochester Road neighbors
- Westchester Road neighbors
- Friends of Cabot Woods

The Mayor or a representative of this office shall be an ex-officio member.

14. The field shall be 350 by 225 ft. as shown on a plan dated March 12, 1999 and located 7 1/2 ft. closer to the Rochester Road property line than on the 10/22/98 preferred plan. This March 12, 1999 plan was approved by the Massachusetts Department of Environmental Protection pursuant to condition 14 of the superseding order by letter dated March 24, 1999.
15. Boston College shall have its consultant Geller Associates prepare a conceptual master plan for the restoration of Edmands Park, in consultation with the Newton Parks and Recreation Department and appropriate parties, including the groups represented on the Liaison Committee.
16. Boston College will contribute two separate \$10,000 donations to the City of Newton when matched by other sources (city or other entity) to be used for the future benefit of Edmands Park. Other cooperative endeavors, such as Boston College student G.I.S. mapping, will be explored where appropriate.
17. The intent of this agreement is to establish the terms and conditions under which BC may proceed with the Work allowed by the Order in compliance with the Act, and to establish an understanding between the parties to assure that the use and operation of the soccer fields comprising the Work remains reasonably compatible with the enjoyment of Edmands Park and the needs of the adjacent neighborhood. This Memorandum of Understanding is intended to be a binding agreement between the parties enforceable under the laws of the Commonwealth of Massachusetts, to the full extent set forth in this paragraph. Nothing herein shall be construed as creating any property right or restriction limiting Boston College's right to develop its land for any lawful purposes in addition to or as an alternative to recreational fields. Instead, the parties agree that:



(a) items 7, 8, 10 and 14 above shall be treated as contractual conditions pertaining to BC's construction of the Regulation Field, and shall be enforceable as such by the City of Newton.

(b) items 15 and 16 above are enforceable contractual obligations of BC given in consideration of the withdrawal of the Appeals and full and final authorization of the Work under the Order to the extent subject to the Act;

(c) items 3A, 5B, 6, and 11A, above are a statement of the current plans and expected operations of BC governing use of the Regulation Field for NCAA soccer games which will not be changed for a period of three years from the date hereof, and thereafter will not be modified without first giving written notice to the Liaison Committee described above and providing a forum in which the proposed changes are discussed with the Liaison Committee; and

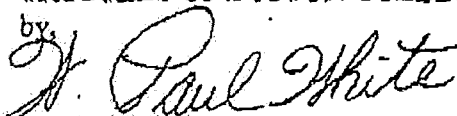
(d) items 3B, 2, 4, 5A, 9 11B, 12 and 13 will not be changed or modified so long as the land subject to the Work is used as soccer fields without the prior approval of the Office of the Mayor, which approval will not be unreasonably withheld or delayed following a request by the College setting forth the changes in circumstances or other adequate reasons giving rise to the request .

To the extent reasonable, each party shall provide advance written notice to the other parties of any issues, differences, or alleged non-compliance with the terms and intent of this Memorandum of Understanding, and attempt to resolve these matters through open communication and discussions. In signing this agreement, the parties hereto are not waiving their rights under any applicable statutes, ordinances or regulations, except as enumerated in Paragraph 1 regarding dismissal of the Appeals and approval of the Work.

EXECUTED AS AN INSTRUMENT UNDER SEAL AS OF MAY 19, 1999.

TRUSTEES OF BOSTON COLLEGE

by,



W. Paul White  
Associate Vice President  
State and Community Relations

NEWTON CONSERVATION COMMISSION

by its attorney,



Catherine L. Farrell  
Assistant City Solicitor

CITY OF NEWTON

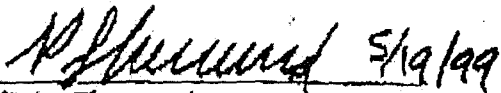
by,



David Cohen  
Mayor

THE FRIENDS OF CABOT WOODS

by,



Peter Sherwood  
President

**Exhibit D**

[Attached following this page.]

Exhibit D



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

James Freas  
Acting Director

---

**INTER-OFFICE CORRESPONDENCE**

**DATE:** May 11, 2015

**TO:** John Lojek, Commissioner of Inspectional Services  
David Norton, Deputy Commissioner of Inspectional Services

**FROM:** James Freas, Acting Director of the Department of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Daniel Sexton, Senior Planner

**SUBJECT:** **Administrative Site Plan Review – Sec. 30-5(a)(2)**  
**The Fessenden School**  
**250 Waltham Street**

**CC:** Mayor Setti D. Warren  
Ward 3 Alderman Ted Hess-Mahan  
Ward 3 Alderman James Cote  
Ward 3 Alderman Barbara Blousal-Glaser  
Law Department

---

In accordance with Section 30-5(a)(2) of the Newton Zoning Ordinance (NZO), which requires an administrative site plan review for non-profit educational organizations, the Planning Department, in consultation with other City departments, has reviewed the proposed plans for the improvements at The Fessenden School (applicant) 250 Waltham Street (site), submitted on March 13, 2015. The applicant, a non-profit educational organization, is proposing four improvement projects on the site, consisting of the renovation of three existing



north parking lot will increase the available parking capacity for this lot from 20 to 38 stalls, with many of the stalls intended for 'visitor parking'. The expansion of the south parking lot will increase the parking capacity of this lot from 53 to 88 stalls. Additionally, a new accessory structure to be used as a garage, with enough capacity for approximately two vehicles, is proposed adjacent to the north parking lot.

Associated with this project, the applicant is proposing improvements to the existing pedestrian circulation facilities and drop-off area. The existing drop-off area will be extended by approximately 92 feet to increase vehicle standing capacity. The pedestrian circulation enhancements consist of installing new pavement markings to identify pedestrian crossings, detectable warning strips on crosswalk aprons, and improved lighting around the crosswalks. Further, the applicant is proposing to widen the northern driveway exit on Waltham Street to improve vehicle turning movements for north and south bound vehicular traffic.

**Project C – Pre-K and Kindergarten Playground Renovation:** upgrade the existing pre-K and kindergarten playgrounds and provide additional recreational programming opportunities as well as to make other improvements. The playground upgrades include, but are not limited to, a mesh net climbing structure, woodland hut, balance beam, wooden bridge, and other program enhancements.

**Project D – Carriage House Addition:** The applicant is proposing the addition above an existing one-story portion of the "Carriage House". The addition, approximately 550 square feet, will allow for the creation of additional space for the school. The footprint and visual impact of the structure will be minimized.

#### Technical Considerations

In accordance with §30-5 of the NZO, the plans are to be reviewed against the dimensional standards laid out in §30-15, Table 2 for Religious Institutions in an SR3 district, and for compliance with the parking requirements in §30-19. The Zoning Review Memorandum (ATTACHMENT C) provides an analysis of the proposal with regard to zoning. Based on this review, the applicant is seeking an administrative site plan review for a private non-profit education use and administrative zoning relief under M.G.L. Chapter 40A Section 3/Dover Amendment for the following:

- §30-19(h)(4)(b), to allow a driveway exit greater than 25 feet wide;
- §30-19(h)(2)(b), to allow parking stalls less than 19 feet in length; and
- §30-19(j)(1)(a), to waive the minimum one (1) foot candle intensity for lighting in a parking facility.

In order to allow the field light indicated in 'Project A', the applicant is also seeking relief from the following Revised Ordinances of the City under:

- Article IV, Section 20-23 through 20-28, to allow light trespass.

Additionally, the Director of Planning and Development may consider the application in light of the *Site Plan Review Criteria* listed in §30-5(a)(2)(c).

I. COMPLIANCE WITH §30-15 (DIMENSIONAL REQUIREMENTS)



The applicant submitted plans indicating that the proposed improvements projects are in compliance with required setbacks, building height, number of stories, open space and lot coverage. The Planning Department concurs with this assessment, and has no issues with the proposed projects in terms of §30-15.

II. COMPLIANCE WITH §30-19 (PARKING)

The applicant has stated that the proposed improvements will increase enrollment or number of faculty for the school. As such, there is a need for additional parking requirement under §30-19 for the school. The applicant has stated that expanded parking facilities are needed to accommodate the increase in students and faculty that commute to the school on a daily basis. Further, additional parking capacity and circulation improvements will help prevent congestion in the surrounding neighborhood, minimize hazardous interactions between vehicles, and to accommodate the increase parking demand of the school.

The design and dimensional controls for parking facilities with minimum standards such as stall and driveway dimensions, landscape islands, lighting fixtures, and circulation established in §30-19(h) through (j). The proposed layout for the parking facilities and circulation patterns meets most, but not all, the design standards. According to the project plans, a number of the proposed parking stalls are substandard in terms of length, lighting fixtures do not provide a 1-foot candle of light coverage over portions of the parking lots, and the reconfigured driveway exit on Waltham Street has a width which exceeds the maximum allowable width. As such, the applicant is requesting a Dover waiver to allow parking stalls less than 19 feet in length, lighting below 1-foot candle, and a driveway exit exceeding 25 feet in width. The Planning Department is not particularly concerned with the requested waivers as they do not pose a safety threat, and will help to lessen the impact of the site on the surrounding neighborhood.

III. SITE PLAN REVIEW CRITERIA

As per §30-5(a)(2)(c) of the NZO, the Director of Planning and Development may consider this project in light of the following criteria:

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to the adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible.

Department also notes that the vegetative buffer will not be less than 75 feet, and will contain a mix conifer and deciduous trees.

Based on the photometric and site section plans submitted by the applicant for the field lighting, these lighting fixtures do comply with the City's Light Trespass Ordinance. While the City's athletic fields across Albemarle Road have very tall, possibly +60 foot tall lighting system, the school's ~~proposed fixtures are out of character with the surrounding residential neighborhood and may negatively impact abutting properties or vehicular traffic on Albemarle Road. As such, the Planning Department does not support the granting of a Dover waiver for the proposed athletic field lighting.~~ The Planning Department suggests that the applicant redesign the lighting system so the pole heights are reduced by 20 to 30 feet, which would be consistent with fixtures at other educational institutions in the City, and that the lighting system be programmed so that no light spills beyond the school's property line. The Planning Department also suggests the applicant explore substituting the proposed parking lot light poles in the south parking lot for more antique light fixtures, which would help reduce the visual impact of the parking lot and provide a more consistent look to the campus. The applicant should also consider using times for certain light fixture in certain areas, so lights aren't on all night.

5. Avoidance of Topographical Changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas:

The applicant is proposing the removal of some existing vegetation, including trees, and to re-grade portions of the site in order to accommodate the proposed projects. Specifically, the improvement projects will result in the following changes to the site:

- Project A – Four trees totaling 44 caliper inches are to be removed, but will be replaced with a total of 104 caliper inches of new trees. The installation of the new synthetic turf will require the removal of existing topsoil at the Varsity Field and Coffin Field. Some of the removed topsoil from the above referenced fields work will be used on-site at the renovated Hart Field and a new landscape berm behind the proposed bleachers at the Varsity Field.
- Project B – Four trees totaling 76 caliper inches are to be removed, and will be replaced with a total of 90 caliper inches of new trees.
- Project C – One 12 caliper inch Flowering Dogwood, which is in poor condition, is proposed to be removed, and will be replaced with tree meeting the City's requirements.
- Project D - No removal of soil or trees will be required for this project.

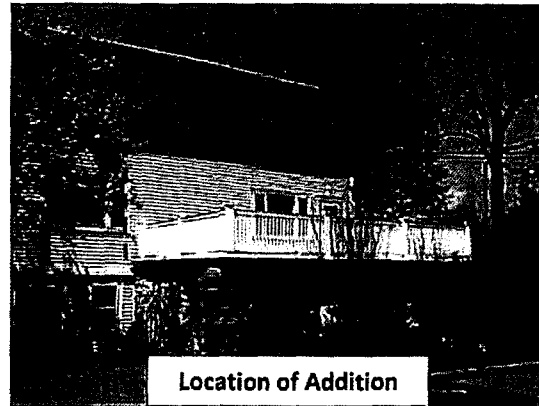
Based on the project's plans, it appears that the replacement of trees will meet the caliper-inch required by the City's Tree Preservation Ordinance. The proposed removal and replacement of trees on the site will still require the applicant to obtain a tree removal permit before a building permit can be issued. Where appropriate, the applicant should

consider installing conifer trees adjacent to abutting residential properties. While the improvement project will result in changes to the landscape of the site, the applicant is proposing to reuse topsoil on-site where possible. The Planning Department also believes that the proposed re-grading will not significantly change the overall topography of the site or its relationship to neighboring properties. The Associate City Engineer reviewed the grading plan for the purposes of its impact on drainage and did not raise any concerns. The Planning Department suggests incorporating best management practices for the protection of trees into the construction management plan.

6. Location of utility service lines underground wherever possible. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines.

The applicant is proposing to construct a modest addition, consisting of approximately 550 square feet, to the existing 'Carriage House' on the site. According to the project's plans, the addition will be constructed above an existing one-story portion of the 'Carriage House', and will not increase the footprint of the current structure. The addition will have exterior cladding to match existing. While the addition will allow for the creation of three new administrative offices for the school, the applicant has indicated that newly created offices will be used by existing faculty and will not result in any increases to the school's faculty.

The Planning Department has no concerns with the proposed addition to the existing structure on the site. The Planning Department further believes that the mass of the proposed addition will be similar to the existing building, and will not visually impact the surrounding neighborhood, as the structure is internal to the school's campus. As such, the Planning Department believes that the applicant has made an effort to design the building addition to reduce the impact on the abutting properties.



While they are not considered structures or buildings under the NZO, the applicant's proposed athletic field lighting (described in subsection 4 above) is proposed at a scale that is out of character with the surrounding neighborhood. As such, the Planning Department does not support the granting of a Dover waiver for the proposed athletic field lighting. The Planning Department has recommended that the applicant redesign the lighting system so the pole heights are reduced by 20 to 30 feet and that the lighting system be programmed so that no light spills beyond the school's property line.



7. Avoidance of the removal or disruption of historic resources on or off site. Historical resources as used herein includes designated historical structures or sites, historical architectural elements or archaeological sites.

The site is not on the National Register of Historic Places, which restricts any modifications to existing buildings. The Planning Department also notes that there are no conservation or preservation restrictions on the property limiting changes to the existing open spaces.

**III. CONCLUSIONS AND RECOMMENDATIONS**

The proposed improvement projects and changes to the site plan are generally in compliance with the NZO, with modest exceptions regarding the proposed length of certain parking stalls, lighting for parking lots, and the width of the exit driveway on Waltham Street. The Planning Department believes that the location and massing of the expanded structure and layout of the parking areas meet the criteria under §30-5(a)(2)(c). The Planning Department also notes that the proposed site lighting, including the athletic field lighting, and the landscape planting schedule do appear to comply with the City's light and tree ordinances. Further, the Associate Engineer reviewed the proposed drainage and utility plans and did not raise any major concerns.

The applicant has stated that they will not increase enrollment or the number of staff on the site as a result of this project, and therefore, will not increase the overall parking demand of the existing use. The applicant has agreed to provide a construction management plan as part of the building permit application. The Planning Department encourages the applicant to have an open on-going dialogue with the surrounding neighborhood before, during, and after construction to be a good neighbor to the surrounding neighborhood.

The Planning Department's main concern relates to the proposed exterior lighting fixtures. The Planning Department recommends that the applicant redesign the athletic field lighting system so the pole heights are reduced by 20 to 30 feet and that this system be programmed so that no light spills beyond the school's property line. The Planning Department also suggests the applicant explore substituting the proposed parking lot light poles in the south parking lot for more antique light fixtures and consider putting some of these lighting fixtures on timers.

The Planning Department has the following recommendations.

- Comply with all conditions identified in the Engineering Memorandums, dated April 15, 2015 and April 17, 2014;
- Submit a construction management plan as part of the building permit application, which will be reviewed by the City's Engineering Division of Public Works, Planning Department, and Inspectional Services Department;
- Work with the Planning Department and Tree Warden to explore ways to further mitigate the impact of the improvement projects on existing trees throughout the site; and



Setti D. Warren  
Mayor

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**ZONING REVIEW**  
**Administrative Site Plan Review**

Date: April 29, 2015

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Mike Grossman, Fessenden School  
James Freas, Acting Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Site Plan Review to add three offices to the second story of the "Carriage House", to renovate three athletic fields, to renovate and expand two parking and drop-off areas, and to renovate an existing playground**

Applicant: The Fessenden School	
Site: 250 Waltham Street	SBL: 31028 0079B, 31028 0079, 31028 0079A, 31028 0077, 31028 0012, 31028 0010, 31028 0011, 31028 0013, 31028 0004A, 31028 0009, 31028 0008,
Zoning: SR3	Lot Area: 514,000 square feet
Current use: Non-profit school	Proposed use: No change

**BACKGROUND:**

The Fessenden School is a private all-boys day and boarding school serving pre-K through grade 9 in West Newton in the Single Residence 3 district. The school was founded in 1903 and currently enrolls 513 students with 95 faculty members. The campus consists of 41 acres of land improved with multiple buildings, parking facilities, and athletics fields.

The School is proposing several construction projects:

Project A: The school proposes to renovate and convert two existing natural grass fields to infilled synthetic turf, as well as to renovate an existing field as a natural grass field.

Project B: The school intends to renovate and expand two parking areas on the West side of the campus by 53 stalls, and adjust the vehicular pick-up/drop-off area and exit to improve circulation.

Project C: The school proposes to renovate an existing pre-K and K playground.

Project D: The applicant proposes to add three offices to the second story of the "Carriage House", within the existing footprint, allowing facilities staff to consolidate their team in one central location.

The Fessenden School does not intend an increase to the student or faculty count with the proposed construction projects.

The following review is based on plans and materials submitted to date as noted below.

- Administrative Site Plan Review Application, prepared by Mike Gro... 3/13/2015
- Tax exemption form
- Cut Sheet Examples, prepared by Stantec, dated 3/13/2015
- Site and Construction plans, prepared by Stantec, dated 3/13/2015
- Carriage House construction documents and plans, prepared by Ste 2/24/2015

#### **ADMINISTRATIVE DETERMINATIONS:**

The Fessenden School is subject to the administrative site plan review p 5(a)(2) of the Newton Zoning Ordinance. This procedure governs the re MGL Chapter 40A, Section 3, also known as the "Dover Amendment".

#### **Project A – Athletic Fields**

The school intends to renovate three existing athletic fields. Two fields will be renovated and converted from natural to synthetic turf. The third field will be renovated and remain natural turf. There are no zoning issues relative to the field renovations.

To the extent that the pole lights used to illuminate the fields do not meet the requirements of Article IV. Light Trespass Sections 20-23 through 20-28 of The Revised Ordinances, a waiver is required.

#### **Project B – Parking and Vehicular Drive Renovation**

The school proposes to expand two existing parking lots on the west side of the campus, as well as to widen a vehicular pick-up and drop-off area and an exit to Waltham Street to improve circulation. A total of 53 parking stalls are proposed to be added by this project. 18 spaces will be added to the smaller parking area to the north, for a total of 38 spaces in the area, and 35 spaces will be added to the south lot, for a total of 88 stalls in this corner. A new garage structure large enough for approximately two vehicles is proposed for the north parking lot.

**Relief Required:**


1. The proposed exit widens to approximately 35 feet where it meets Waltham Street. Section 30-19(h)(4)b requires a maximum width of entrance and exit drives to be 25 feet. A "Dover waiver" is required to allow a 35 foot wide exit drive.
  
2. Sections 30-19(h)(2)a and b) require parking stalls have a minimum width of 9 feet and a minimum length of 19 feet. The proposed parking stalls are 18 feet in length. If the stalls head into a curb where bumpers can overhang, no relief is required per Section 30-19(h)(2)d). However, if the additional space is not available, a "Dover waiver" is required to waive the dimensional requirement for the parking stall length.
  
3. Section 30-19(j)(1)a) requires that all parking facilities used at night provide security lighting maintaining at least one foot candle. To the extent that the photometric plans show spots within the lots with less than one foot candle, a "Dover waiver" is required to waive the lighting requirement of the Ordinance.

**Project C – Playground Project**

The school proposes a renovation of the existing pre-K and Kindergarten playground. The renovation appears to consist mostly of surfacing and landscaping, with no new structures or parking proposed. No zoning relief is required.

**Project D – Carriage House Addition**

Fessenden proposes to add a second floor above an existing one-story wing of the "Carriage House". There will be no change to the existing footprint. The addition will not result in an increase of staff, the intent of the addition is to consolidate the Operations staff team into one location. The proposed addition does not require any zoning relief.

Administrative Site Plan Review		
Ordinance		Action Required
§30-5(a)(3) §30-23	Administrative Site Plan Review for a private non-profit educational use	§30-23
§30-19(h)(4)b)	To allow an exit drive greater than 25 feet wide	Dover waiver
§30-19(h)(2)b)	To allow parking stalls less than 19 feet long	Dover waiver
§30-19(j)(1)a)	To waive the minimum 1 foot candle intensity for lighting in a parking facility	Dover waiver
Article IV, Section 20-23 through 20-28	 <u>Light Trespass Ordinance</u>	Waiver from the Commissioner of Inspectional Services

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January 21, 2021

**BY EMAIL**

Ms. Adrianna Henriquez Olmsted  
Zoning Board of Appeals  
1000 Commonwealth Avenue  
Newton, MA 02459-1449

Re: #03-83 and #17-96 2Life Coleman Limited Partnership Request for Change Determination

Dear Ms. Olmsted,

In reviewing the agenda for the Zoning Board of Appeals' meeting on Wednesday, January 27, 2021, I noticed that the project address is listed as 601-627 Winchester Street. We provided this address in our correspondence dated January 7, 2021 requesting the change determination. The correct address is 677 Winchester Street. Would you kindly update the agenda to reflect the correct address?

Please feel free to contact me if you have any questions or require further information.

Sincerely,

*Katherine Braucher Adams*

Katherine Braucher Adams