

#8

Statement Submitted
by

Eugene Taylor, Ph.D.
98 Clifton St.
Cambridge, Mass.

in Favor of the Buffer Zone Petition on the W. R. Grace Site
10/28/96

Madame Mayor, City Councilors, Neighbors, and representatives of W. R. Grace. I would like to speak in favor of the petition to establish a 400 foot buffer zone, and to strongly urge the City Council to pass this motion for the following three reasons.

- 1) The buffer zone will effectively prevent the development of a toxic waste dump for private commercial purposes at the expense of public health and safety.
- 2) The working men and woman of North Cambridge have come to you as a last resort to ask for protection from the indifferent decisions of big business that directly threaten the lives of their children and that will lead to the deterioration of their neighborhood.
- 3) ~~Make~~ ^{should be made} this buffer zone the centerpiece of an overall plan for the North Cambridge Alewife area commensurate with a total urban environmental policy of the future, not the past.

Regarding the first point, we have heard that this is one of three large toxic waste dumps in a twenty-five mile area, two of which are on the toxic superfund list and all involving W. R. Grace. We must avoid at all costs another Woburn, but this time in North Cambridge. Meanwhile, we have been told at previous meetings that 200 truckloads of contaminated soil from this site were dumped in a lot in Winchester. When asked at one meeting what W. R. Grace planned to do with additional toxins on the site, they said they would encase them in concrete and just leave them there. In addition, we were told that Russell Field, the football field where the children now play, has never been tested for toxic and cancer causing chemicals. We were told that the gridlock at Alewife cannot sustain so much as one more additional car and what was not discussed was the dramatic increase in pollution beyond its already high levels. We were told that the scientific experts did not really know about the flow of contaminated ground water onto Clifton St. basements. We were told that Harvey and Clifton Streets cannot sustain the illegal parking and getaway traffic, let alone the construction and delivery trucks that this

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project in any form would permanently create both night and day. For six years we have already had to endure the building of the T and the renovation of the bridge. Now, we have to contend with the danger of cancer causing air and water borne contaminants, more pile drivers at 7 am each day, and unrestrained commercial traffic in a mixed residential area.

My second point is more serious, however. We were told, for instance, that there is already an arrangement behind the scenes between the City of Cambridge and W R Grace to permit development of the site no matter what the neighbors' objections or concerns. Further, to underscore public distrust, despite these hearings in City Council today, at this very minute new banks of telephone lines are already being laid into the area at the end of Harvey Street going on to the Grace property, and driveway entrances for big trucks have recently been cut in the city sidewalks to prepare for construction of a hotel on the contaminated site directly across from the Rindge Towers. No educated person can look at these developments, have listened to the clever presentation of totally inadequate scientific data, or hear the weak and watered down recommendation of the Planning Board and believe that City Government is really there to protect working families, if a 'no' is the result of your deliberations. A vote for the buffer zone is more than just for permanent protection of the neighborhood. It is a vote to restore public confidence in city government.

My third point, however, should be the deciding factor. The Planning Board has admitted that there is no overall scheme to regulate effects of helter-skelter development now planned by someone else other than themselves for both Russell Field and the W. R. Grace site. Meanwhile, W. R. Grace, has shown that they would put at maximum density offices, hotels, stores, a 24 hr supermarket, and space for 800 cars, if they could, strictly for the profit motive.

As a viable alternative, at past meetings the neighbors have proposed that the site be cleaned up and made into park space. That the buffer zone is equivalent to a taking and not simply a zoning restriction, or that turning the entire acreage over to the city would permit any kind of municipal development at a later date, are interpretations that should not prevent Grace from responding to the moral principle behind their neighbor's petition. Why could n't these problems be solved if Grace cleaned up the property, retained ownership, but developed the total piece as park space in exchange for city and state tax abatements? More to the point, where is the plan and who is courageous enough to formulate it that permits each party to get to a 'yes' in this matter? I urge you to commit yourselves to an overall master plan of the area that includes the voters' very real and urgent concerns, not excludes them. Please vote yes for this buffer zone.

Consent Communication #8

Communication was received from Eugene Taylor, Ph. D., 98 Clifton Street, transmitting his support of the Buffer Zone Petition on the W.R. Grace site.

In City Council October 28, 1996

*Referred to the
Petition*

City of Cambridge

MASSACHUSETTS

In City Council 10/28, 1996

*Unfinished Bus #14 Bumpfeld Russell Petition
to Amend the Zoning Ordinances As Amended*

YEA	NAY	ABSENT	PRESENT	
✓				V.M. Kathleen L. Born
✓				Ms. Henrietta Davis
✓				Mr. Francis H. Duehay
✓				Mr. Anthony Galluccio
✓				Mr. Kenneth E. Reeves
✓				Mr. Michael A. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
	✓			Ms. Katherine Triantafillou
✓				Mayor Sheila T. Russell

7 2 0 0

FD in sup
RF 0-1

#8

TO: City Council Members
City Clerk's Office
795 Massachusetts Avenue
Cambridge, MA 02139
RE: Support of the 400 Foot Open Space Buffer Zone Petition for the W. R. Grace Site in North Cambridge.

DATE: October 28, 1996.

Dear City Council Members:

The North Cambridge Community's phone calls, letters, public testimony, and reports, will not protect the North Cambridge neighborhoods unless the City Council votes YES on the Open Space Buffer Zone Petition for the W. R. Grace Site in North Cambridge. Additionally, we are in full agreement with the Planning Board's statement in its October 10, 1996 report to the City Council that "the expeditious submission of a comprehensive rezoning proposal to the City Council" is in order for this area. (p.4)

The Planning Board's decision on the Community's Open Space Buffer Zone Petition was unfortunately non-responsive to the neighborhood's desire to preserve more natural **flood storage**, address issues of site **contamination**, **scale** of development, **wetlands** and **habitat**, **traffic**, hydrological changes due to **MBTA construction**, and etc. Instead of commenting directly upon the petition submitted, the Planning Board presented an insubstantial substitute, in sketch format, at an October 10, 1996 meeting. Devoid of details relative to the Community's stated concerns, this sketch had *literally* no community input, no legal review, and it has yet to be formally explained to the public.

Rather than recommend the neighborhood petition, the Planning Board voted to substitute a 25 foot landscaped setback. This substitute plan does not even prohibit vehicle access to the Grace Site from Whittemore Ave., Clifton St., and Harvey St.; *and it allows the construction of high density commercial or industrial development 25 feet from both the Clifton St. and Whittemore Ave. neighborhoods.*

The Recent Legal Review from the law firm of Hovey, Urbelis, Fieldsteel & Bailin relative to the Petition and dated October 17, 1996 falls far short in its understanding of the many critical issues whose adverse impacts are mitigated by the Open Space Buffer Zone Petition. (See also the Report submitted by the Alewife Study Group dated October 1, 1996 in support of the Petition.)

* With regard to site **contamination**, the legal review states that "on the evidence gathered to date, it does not appear that the proposed open space area is of primary concern with regard to contamination." (p. 10) The reviewing attorneys have apparently either not read or not comprehended the reams of documentation submitted to the Planning Board relative to site contamination which are contrary to this opinion.

* With regard to **traffic** issues, the legal review has paid little heed to the abutting residential neighborhood's desire to prevent thousands of cars from entering or exiting the site on a daily basis through those neighborhoods. Vehicular access and egress to the site are expressly restricted by the Petition.

* With regard to **MBTA construction**, the legal opinion has apparently not even considered, at a minimum, the hydrological changes to the area or the impact on the flood plain subsequent to the MBTA tunnel construction which occurred in the late 1970's & early 1980's. It should be restated that the MBTA tunnel runs *directly under* that portion of the proposed Open Space Buffer Zone bordering the Harvey St. & Clifton St. neighborhoods.

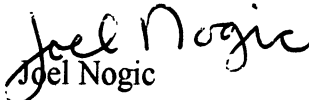
* With regard to natural **flood storage**, the legal review correctly states, "**That municipalities have authority to enact flood plain zoning bylaws is not to be questioned.**" (p.6) However, the reviewing attorney's lack of understanding of flooding and flood plain issues for the Alewife area in general, and the proposed Open Space Buffer Zone in particular, become readily apparent in the statement that, "Based on our review of the information provided, it appears that only a small area, if any, of the 400 foot proposed open space buffer area is within the 100 year flood plain." (p. 6) In the past week, neighbors abutting the proposed Open Space Buffer Zone have taken hundreds of photographs documenting the flooding and flood damage which occurred during the recent heavy rain storm. We have attached one of those photos which shows virtually the entire proposed Open Space Buffer Zone in the Harvey St. & Clifton St. area under several feet of water.

Whether the recent heavy rain storm is considered a 30, 40, 50, or 100 year storm, enactment of the neighborhood's Petition will help to keep this type of flooding & flood damage from becoming an annual event. We urge the City Council to reject the Planning Board's substitute, and to vote YES on the neighborhood's 400 foot Open Space Buffer Zone Petition.



Lisa Birk
Co-Chair, Alewife Study Group
20 Columbus Avenue
Cambridge, MA 02140
354-3295

Sincerely yours,

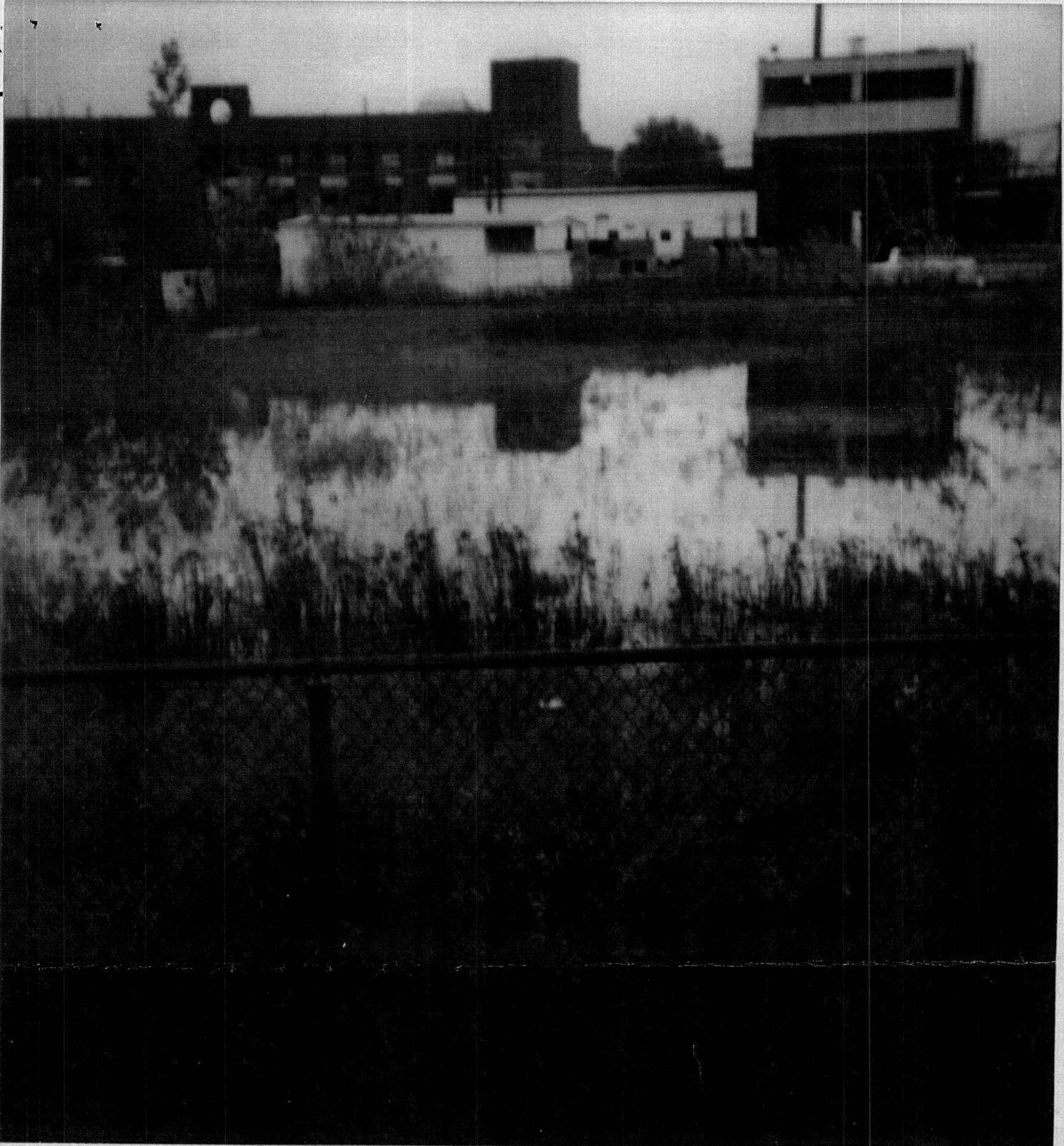


Joel Nogie
Co-Chair, Alewife Study Group
94 Clifton Street
Cambridge, MA 02140
547-6463



Peter Cignetti
5 Theriault Court
Cambridge, MA
491-6314

8



Oct. 21, 1996 - W.R. Grace site / Harvey St. end.

(NOTE: This area is in the proposed 400' Open Space Buffer Zone.)

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

Signature	PRINTED NAME	ADDRESS	PHONE
<i>Maura Quinn</i>	Maura Quinn	53 Madison Ave.	547-2281
<i>Russell Richmond</i>	RUSSELL RICHMOND	118 CLIFTON	876-8727
<i>Victor Flusinski</i>	VICTOR FLUSINSKI	101 CLIFTON ST.	876-0824
<i>Babara Owen</i>	Babara Owen	57 Madison Ave	354-3939
<i>Marsha Hunter</i>	Marsha Hunter	2 Theriault Ct.	
<i>Peter V. Cignetti III</i>	PETER V. CIGNETTI III	5 THERIAULT CT.	491-6314
<i>Florence Stanley</i>	FLORENCE STANLEY	112 JACKSON ST	
<i>Marion C. Hederman</i>	Marion C. Hederman	110 Jackson St	
<i>Paola Ranzhetti</i>	Paola Ranzhetti	116 Jackson St Cambridge	
<i>Grace Gull</i>	GRACE GULL	116 Jackson St Cambridge	
<i>Neil Michals</i>	NEIL MICHALS	106 JACKSON ST.	547-0316
<i>Cheryl M Webb</i>	Cheryl M Webb	64 Clifton St	491-6004
<i>Martina Cleveland</i>	Martina Cleveland	118 Clifton St.	876-8927
<i>Jennifer J. Webb</i>	Jennifer J. Webb	64 Clifton St.	491-3370
<i>Dolores Webb</i>	Dolores Webb	64 Clifton St	491-5333
<i>Kim Webb</i>	Kim Webb	64 Clifton St	491-3370
<i>Chris Twombly</i>	Chris Twombly	60 Clifton St	876-0405
<i>Gary Twombly</i>	Gary Twombly	60 Clifton	876-0405
<i>William A. Nadeau</i>	Wm. A. NADEAU	63 Clifton St	876-0619
<i>Florence Gibbons</i>	Florence Gibbons	56 Magnolia St	864-4089
<i>Margaret K. Dahle</i>	Margaret K. Dahle	37 Magnolia St Cambridge, Me	868-5702
<i>Neera K. Dahl</i>	Neera K. Dahl	131 Whittemore Ave	576-7612
<i>Thomas A. Dahl</i>	Thomas A. Dahl	131 Whittemore Ave	576-7612

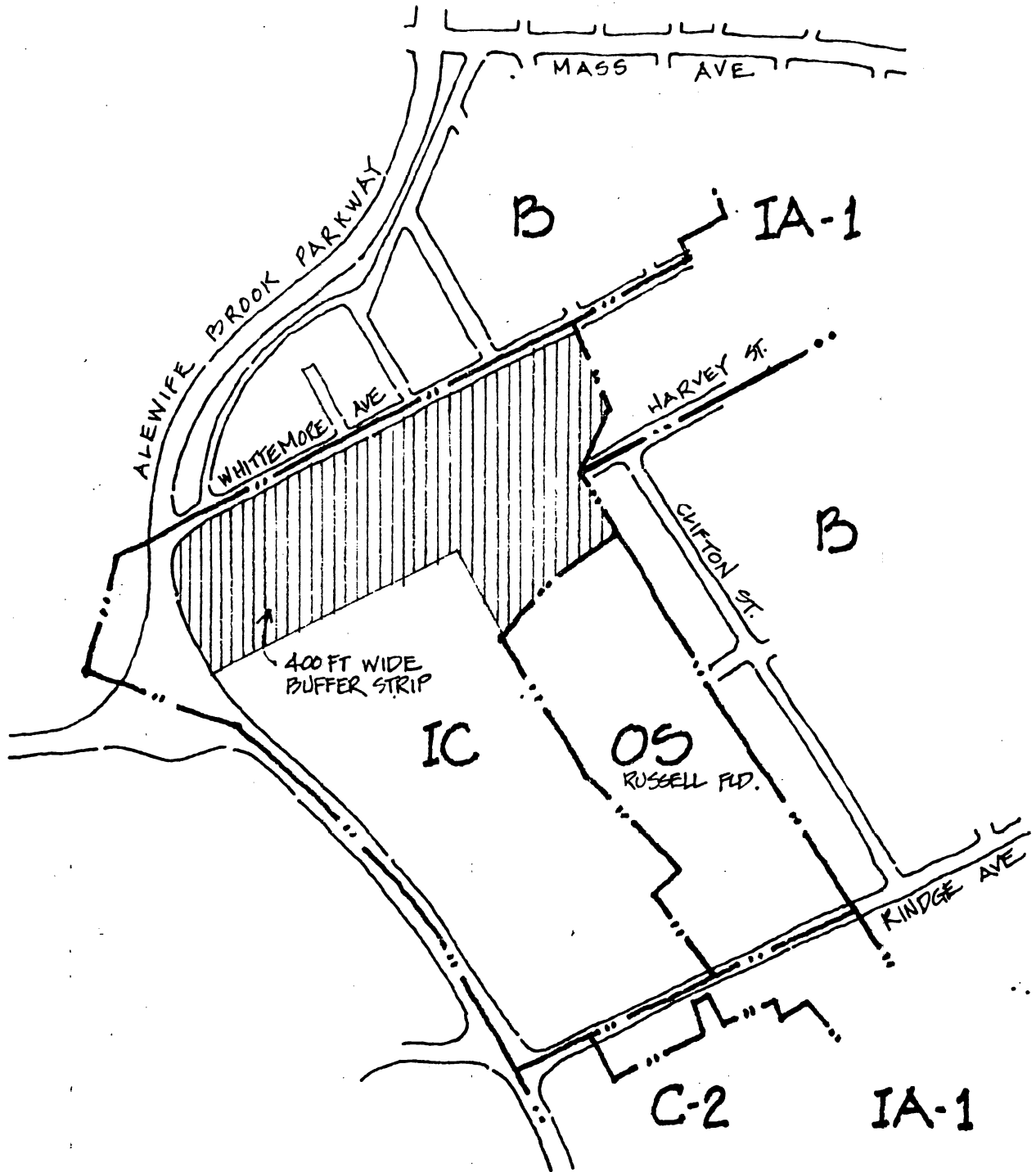
RECEIVED BY THE CLERK OF CITY COUNCIL
JUN - 5 AM 9:04
CITY OF CAMBRIDGE

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

 buffer area
(open space rules)

 zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

PETITION OF

Petition filed with the City Clerk Quinlan - Bromfield June 5, 1996
North Cambridge - Newwife Area.
(all hearings to be completed 65 days from In City Council date)

20 days - June

31 days - July

14 days - August

65 days = All hearings to be held by August 14th

In City Council June 10, 1996

Referred to the Planning Board for report June 10, 1996

Planning Board Hearing _____

(CITY COUNCIL must act within 90 days of the ORDINANCE COMMITTEE hearing which would be October 30, 1996 and Oct .)

30 days August

30 days September

30 days October

90 days - October 30, 1996

City Council hearing published Cambridge Chronicle on July 18, 1996
and July 14, 1996

Hearing before the Ordinance Committee August 1, 1996

Reported to the City Council Sept. 30, 1996

Passed to a second reading on Sept. 30, 1996

published in Chronicle on Oct 3, 1996

Planning Board report received on Oct 21, 1996

Ready for ordination on Oct. 14, 1996

Passed to be ordained on October 28, 1996

published in October 31, 1996 on Cambridge Chronicle

COMPLETION DATE October 30, 1996

October 30, 1996 sent to DCA, Les Barber, Inspectional Services, Attorney General

*** ACTIVITY REPORT ***

TRANSMISSION OK

TX/RX NO.	6425
CONNECTION TEL	84337929
CONNECTION ID	CLASS EDITORIAL
START TIME	10/29 10:00
USAGE TIME	01'15
PAGES	3
RESULT	OK



OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4307

tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

FAX TRANSMITTAL SHEET

DATE: October 29, 1996

TO: Christian Bordick

FAX #: 433 - 7929

PHONE #: _____

OF PAGES: 3

FROM: Manlybeth Cosgrave
349-4256

ADDITIONAL COMMENT:

Please call to confirm
for October 31, 1996 Chronicle



City of Cambridge

In the Year One Thousand, Nine Hundred NINETY-SIX

AN ORDINANCE

In Amendment to the "Zoning Ordinances of the City of Cambridge."

Be it ordained by the City Council of the City of Cambridge as follows:

That the Zoning Ordinances of the City of Cambridge is hereby amended as follows:

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:
- "4.29 Special Use Limitations in Industry C Districts.**
- For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts." This section shall expire six months after the date of enactment.
- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:
- "54. Subject to the provisions of Section 4.29"**
- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:
- "(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35." This footnote shall expire six months after the date of enactment.**

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip." **This section shall expire six months after the date of enactment.**

In City Council October 28, 1996.

Passed to be ordained as amended by a yea and nay vote: Yeas 7; Nays 2; Absent 0.

Robert W. Healy, City Manager.

ATTEST:- D. Margaret Drury, City Clerk

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment	Comment
<p>WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and</p>	<p><i>This briefly lays out the rationale for amending IC and PUD-IC rules.</i></p>
<p>WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and</p>	
<p>WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and</p>	
<p>WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;</p>	
<p>NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:</p>	<p><i>The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...</i></p>
<p>A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:</p> <p>"4.29 Special Use Limitations in Industry C Districts.</p> <p>For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."</p>	<p><i>As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.</i></p>

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

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"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

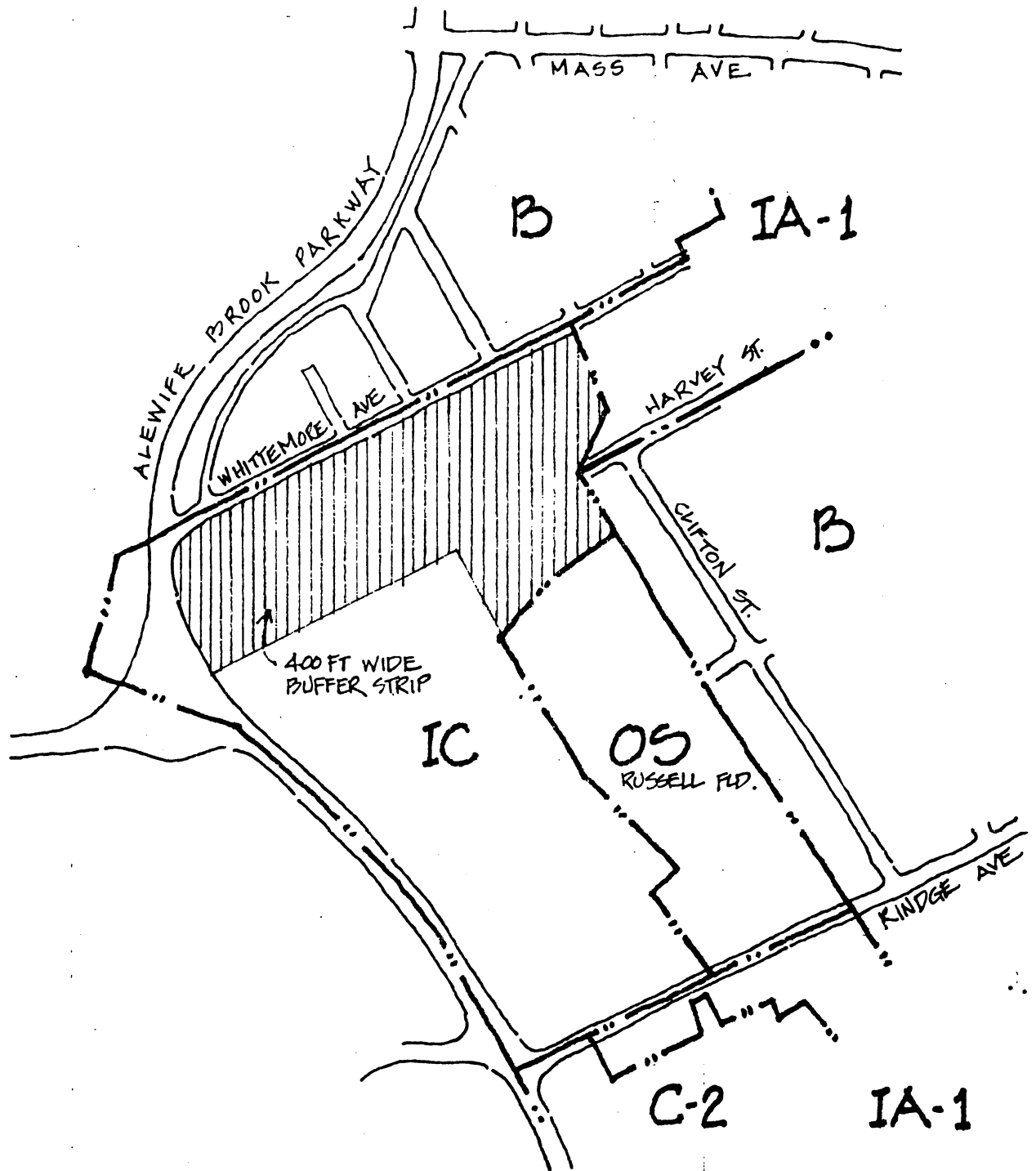
This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.


PROPOSED OPEN SPACE PROTECTION BUFFER


May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

 buffer area (open space rules)

 zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

PUBLIC NOTICE

RELATIVE TO ZONING

City of Cambridge

RECEIVED BY
OFFICE OF CITY CLERK

96 JUL 11 PM 4:29

MASSACHUSETTS

CAMBRIDGE MA.

Office of the City Clerk

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council, will hold a public hearing on Thursday, August 1, 1996 at 5:30 P. M. in the Sullivan Chamber, City Hall, Cambridge, Massachusetts on a Zoning Petition by Maureen Quinlan, Russell Bromfield, et al, as set forth in full below.

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:
- "4.29 Special Use Limitations in Industry C Districts.**
- For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."
- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:
- "54. Subject to the provisions of Section 4.29"**
- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:
- "(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."**

First Floor Board

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor, Francis H. Duehay,
Chairman.

RECEIVED BY
OFFICE OF CITY CLERK
96 JUL 11 PM 4:30
CAMBRIDGE MA.

First Floor Board

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

Signature	PRINTED NAME	ADDRESS	PHONE
<u>Maura Quinn</u>	<u>Maura Quinn</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>William Russell</u>	<u>Russell R. Russell</u>	<u>118 Clifton</u>	<u>876-8727</u>
<u>Victor Plosinski</u>	<u>VICTOR PLOSINSKI</u>	<u>104 Clifton St.</u>	<u>876-0824</u>
<u>Barbara Crow</u>	<u>Barbara Crow</u>	<u>57 Madison Ave</u>	<u>354-3939</u>
<u>Marsha Hunter</u>	<u>Marsha Hunter</u>	<u>2 Theriault Ct.</u>	<u>491-6314</u>
<u>Peter V. Cignetti III</u>	<u>PETER V. CIGNETTI III</u>	<u>5 THERIAULT CT.</u>	<u>491-6314</u>
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<u>Marion C. Hejerman</u>	<u>Marion C. Hejerman</u>	<u>110 Jackson St</u>	
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<u>Grace Gubins</u>	<u>GRACE GUBINS</u>	<u>116 Jackson St Cambridge</u>	
<u>Ursula Michals</u>	<u>URSULA MICHALS</u>	<u>106 JACKSON ST</u>	<u>547-0316</u>
<u>Cheryl M Webb</u>	<u>Cheryl M Webb</u>	<u>64 Clifton St</u>	<u>491-6004</u>
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<u>Dolores Webb</u>	<u>Dolores Webb</u>	<u>64 Clifton St</u>	<u>491-5333</u>
<u>Kim Webb</u>	<u>Kim Webb</u>	<u>64 Clifton St</u>	<u>491-3370</u>
<u>Chris Twombly</u>	<u>Chris Twombly</u>	<u>60 Clifton St</u>	<u>876-0405</u>
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<u>Wm A. Nadeau</u>	<u>Wm. NADEAU</u>	<u>63 Clifton St</u>	<u>876-0619</u>
<u>Florence Gibbons</u>	<u>Florence Gibbons</u>	<u>56 Magna St</u>	<u>564-4089</u>
<u>Margaret K. Dahl</u>	<u>Margaret K. Dahl</u>	<u>37 Magna St Cambridge, Me</u>	<u>868-5702</u>
<u>Neera K. Dahl</u>	<u>Neera K Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>
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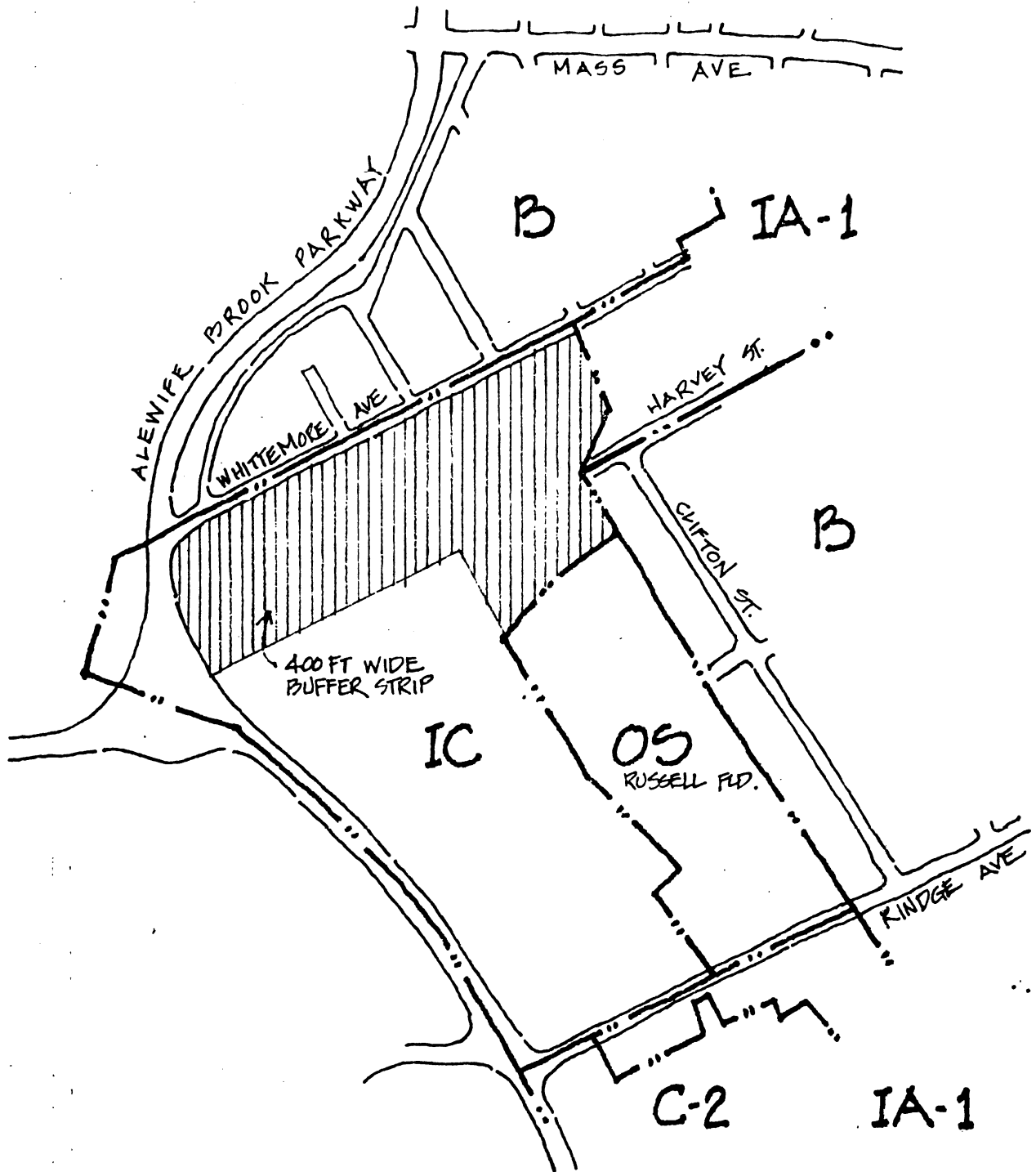
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 1100 STATE ST
 CAMBRIDGE MA 02142

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B** residential district
- C2** residential district
- IC** industrial district
- IA-1** industrial district
- OS** open space district

 buffer area
(open space rules)

 zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

**IC-PUD-IC
Amendment
Petition**

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Signature	PRINTED NAME	ADDRESS	PHONE
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<u>Victor Florosinski</u>	<u>VICTOR FLOSINSKI</u>	<u>101 CLIFTON ST.</u>	<u>876-0824</u>
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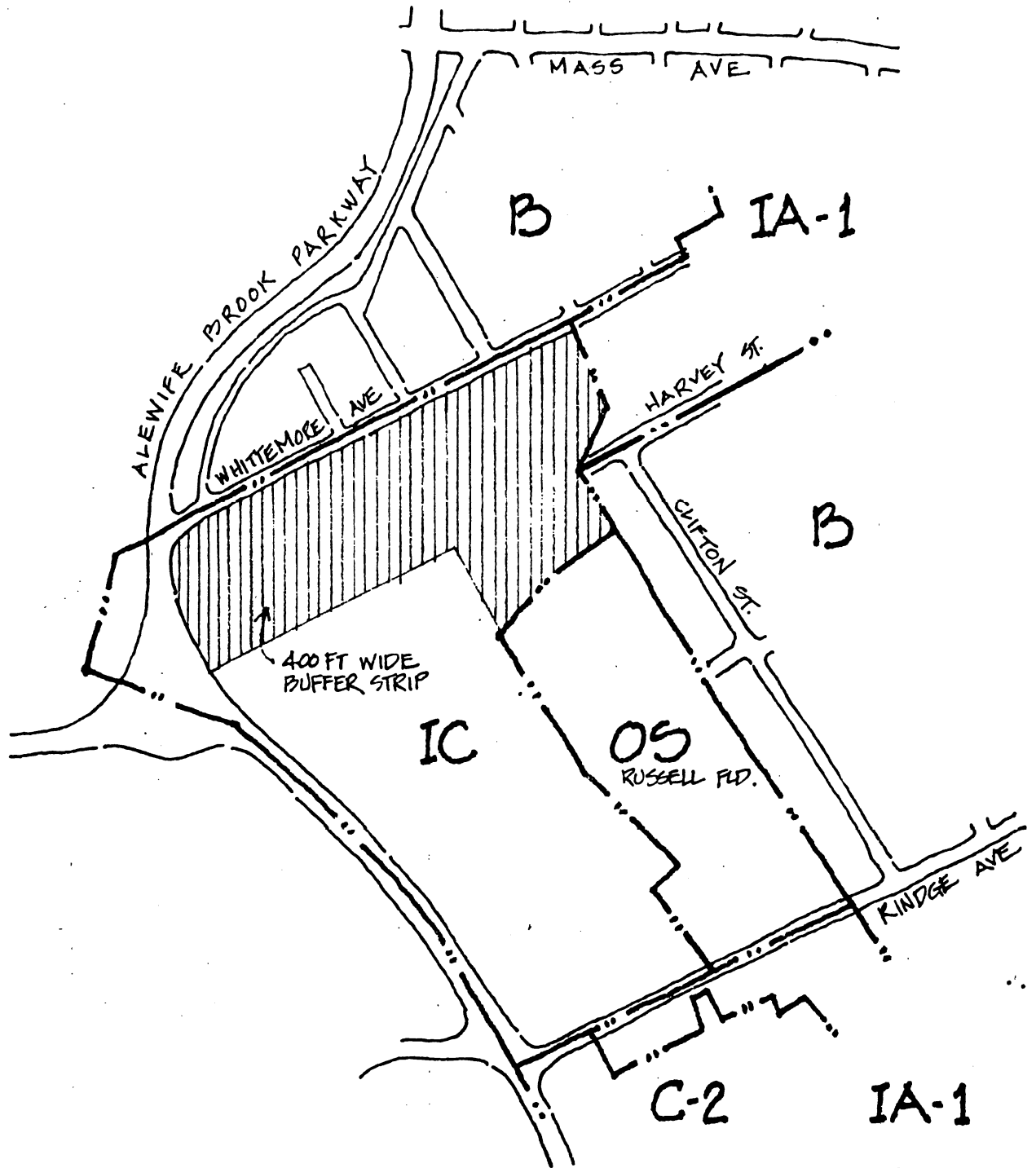
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CITY OF CAMBRIDGE

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

 buffer area (open space rules)

 zoning district boundary

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IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

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"4.29 Special Use Limitations in Industry C Districts.

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As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

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- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

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Amendment
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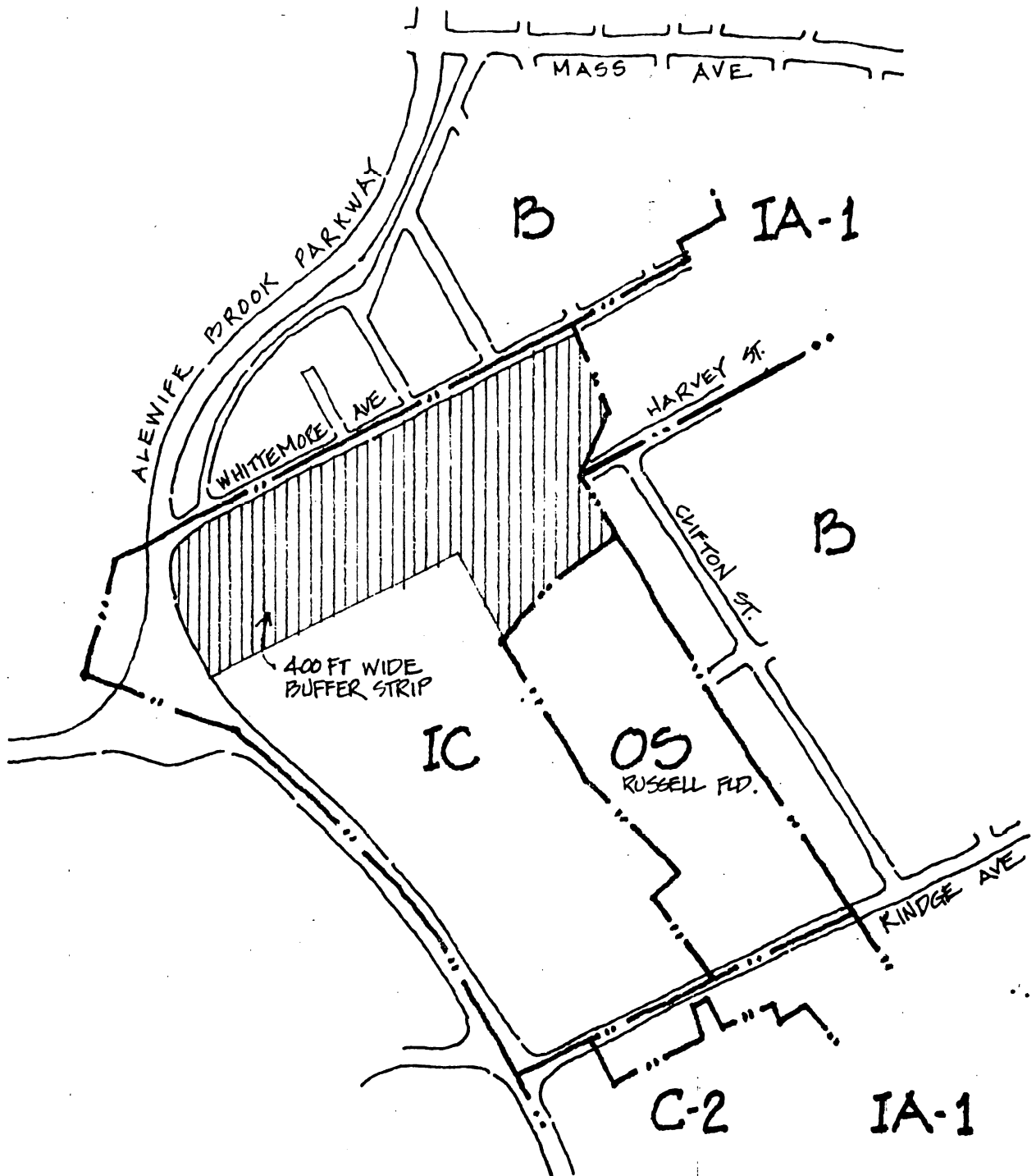
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May 1996



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 buffer area (open space rules)

 zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment	Comment
<p>WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and</p>	<p><i>This briefly lays out the rationale for amending IC and PUD-IC rules.</i></p>
<p>WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and</p>	
<p>WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and</p>	
<p>WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;</p>	
<p>NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:</p>	<p><i>The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...</i></p>
<p>A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:</p> <p>"4.29 Special Use Limitations in Industry C Districts.</p> <p>For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."</p>	<p><i>As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.</i></p>

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

Signature	PRINTED NAME	ADDRESS	PHONE
<u>Maura Quinn</u>	<u>Maura Quinn</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>Russell Richmond</u>	<u>RUSSELL RICHMOND</u>	<u>118 CLIFTON</u>	<u>876-8727</u>
<u>Victor Florsinski</u>	<u>VICTOR FLORSINSKI</u>	<u>101 CLIFTON ST.</u>	<u>876-0824</u>
<u>Barbara Owen</u>	<u>Barbara Owen</u>	<u>57 Madison Ave</u>	<u>354-3939</u>
<u>Marsha Hunter</u>	<u>Marsha Hunter</u>	<u>2 Theriault Ct.</u>	
<u>Peter V. Cignetti III</u>	<u>PETER V. CIGNETTI III</u>	<u>5 THERIAULT CT.</u>	<u>491-6314</u>
<u>Florence Stanley</u>	<u>FLORENCE STANLEY</u>	<u>112 JACKSON ST</u>	
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<u>Grace Gwili</u>	<u>GRACE GWILI</u>	<u>111 Jackson St</u>	
<u>Vera Michalek</u>	<u>NEAR MICHALEK</u>	<u>106 JACKSON ST</u>	<u>547-0316</u>
<u>Cheryl M Webb</u>	<u>Cheryl M Webb</u>	<u>64 Clifton St</u>	<u>491-6004</u>
<u>Martina Cleveland</u>	<u>Martina Cleveland</u>	<u>118 Clifton St.</u>	<u>876-8927</u>
<u>Jennifer J. Webb</u>	<u>Jennifer J. Webb</u>	<u>64 Clifton St.</u>	<u>491-3370</u>
<u>Dolores Webb</u>	<u>Dolores Webb</u>	<u>64 Clifton St</u>	<u>491-5333</u>
<u>Kim Webb</u>	<u>Kim Webb</u>	<u>64 Clifton St</u>	<u>491-3370</u>
<u>Chris Twombly</u>	<u>Chris Twombly</u>	<u>60 Clifton St</u>	<u>876-0405</u>
<u>Gary Twombly</u>	<u>Gary Twombly</u>	<u>60 Clifton</u>	<u>876-0405</u>
<u>Wm A. Nadeau</u>	<u>Wm. NADEAU</u>	<u>63 Clifton St</u>	<u>876-0619</u>
<u>Flora Mc Gibbons</u>	<u>Flora Mc Gibbons</u>	<u>56 Margaret St</u>	<u>864-4089</u>
<u>Margaret K. Dahl</u>	<u>Margaret K. Dahl</u>	<u>37 Margaret St Cambridge, Me</u>	<u>868-5702</u>
<u>Neera K. Dahl</u>	<u>Neera K. Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>
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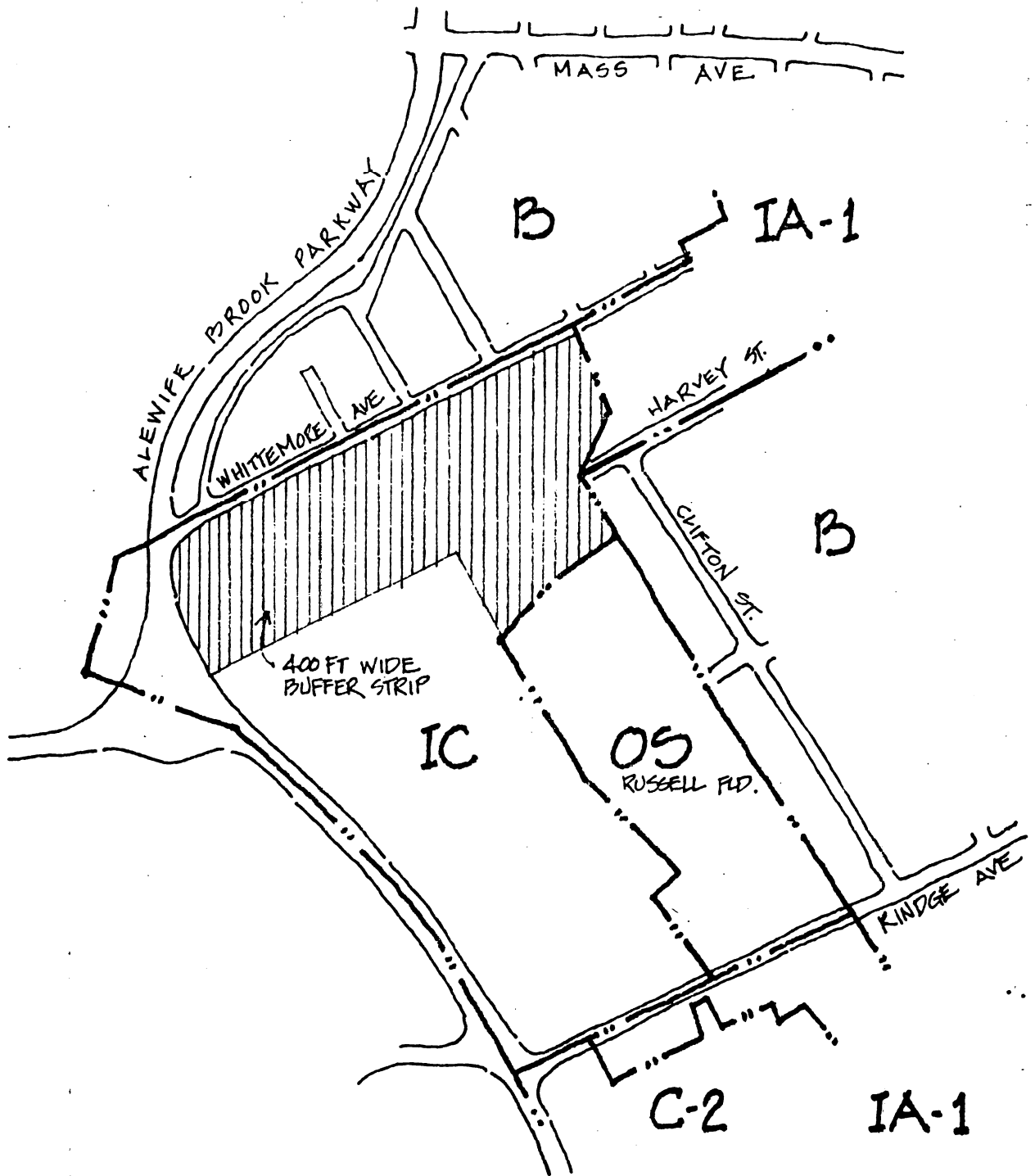
RECEIVED BY THE CITY CLERK
JUN - 5 AM '94

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

 buffer area (open space rules)

 zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

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<u>Maureen Quinlan</u>	<u>Maureen Quinlan</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>Russell R. Ramirez</u>	<u>Russell R. Ramirez</u>	<u>118 Clifton</u>	<u>876-8727</u>
<u>Victor Plosinski</u>	<u>VICTOR PLOSINSKI</u>	<u>101 CLIFTON ST.</u>	<u>876-0824</u>
<u>Barbara Owen</u>	<u>Barbara Owen</u>	<u>57 Madison Ave</u>	<u>354-3939</u>
<u>Marsha Hunter</u>	<u>Marsha Hunter</u>	<u>2 Theriault Ct.</u>	<u>491-6314</u>
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<u>Florence Stanley</u>	<u>FLORENCE STANLEY</u>	<u>112 JACKSON ST</u>	<u>547-0316</u>
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<u>Maureen Rancetti</u>	<u>Maureen Rancetti</u>	<u>116 Jackson St Cambridge</u>	<u>547-0316</u>
<u>Grace Gull</u>	<u>GRACE GULL</u>	<u>1 North Cambridge St</u>	<u>547-0316</u>
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<u>Margaret H. Spiller</u>	<u>Margaret H. Spiller</u>	<u>37 Magua St Cambridge, Me</u>	<u>868-5721</u>
<u>Neera K. Dahl</u>	<u>Neera K Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>
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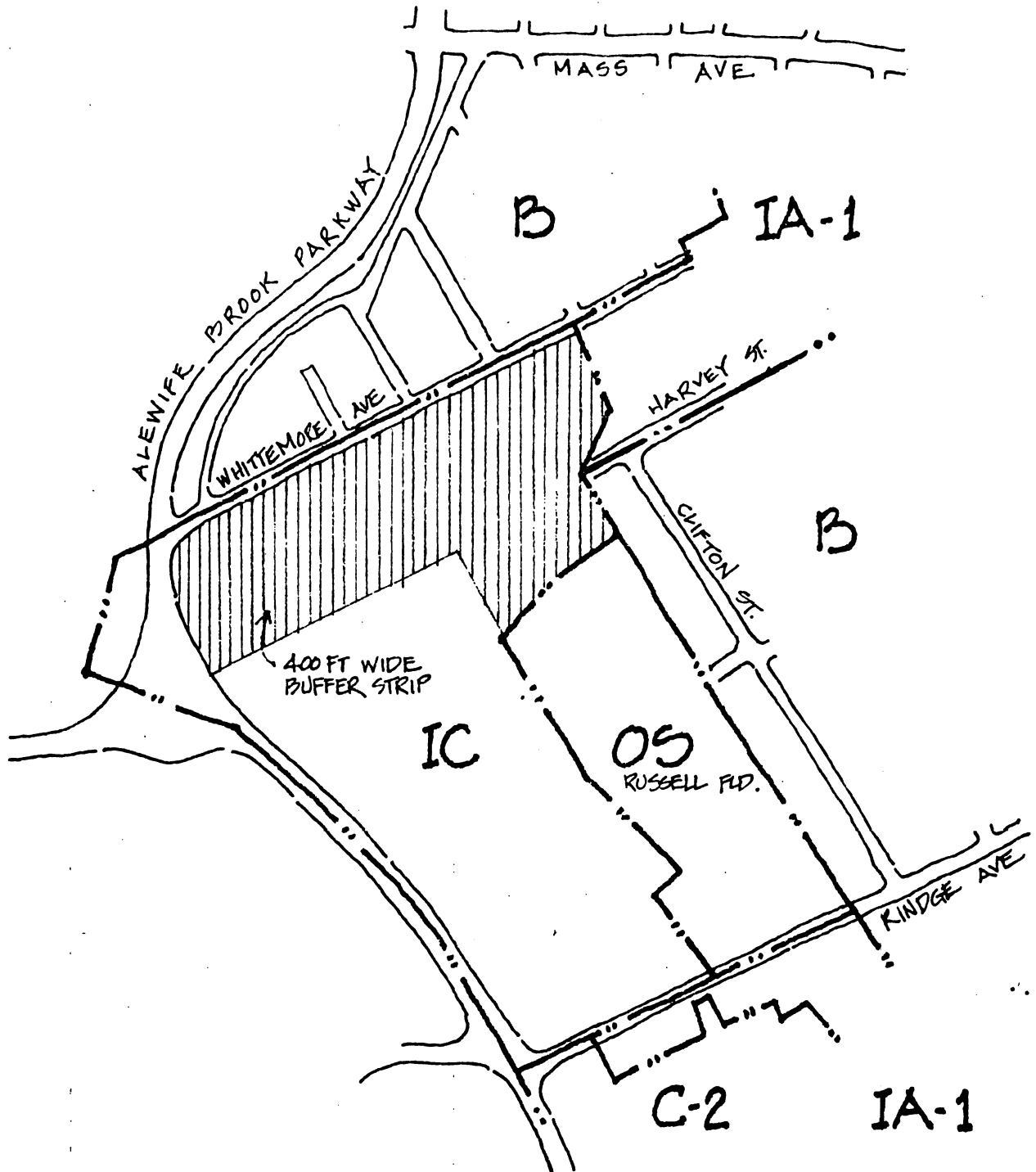
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I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

 buffer area (open space rules)

 zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

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- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

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"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

**IC-PUD-IC
Amendment
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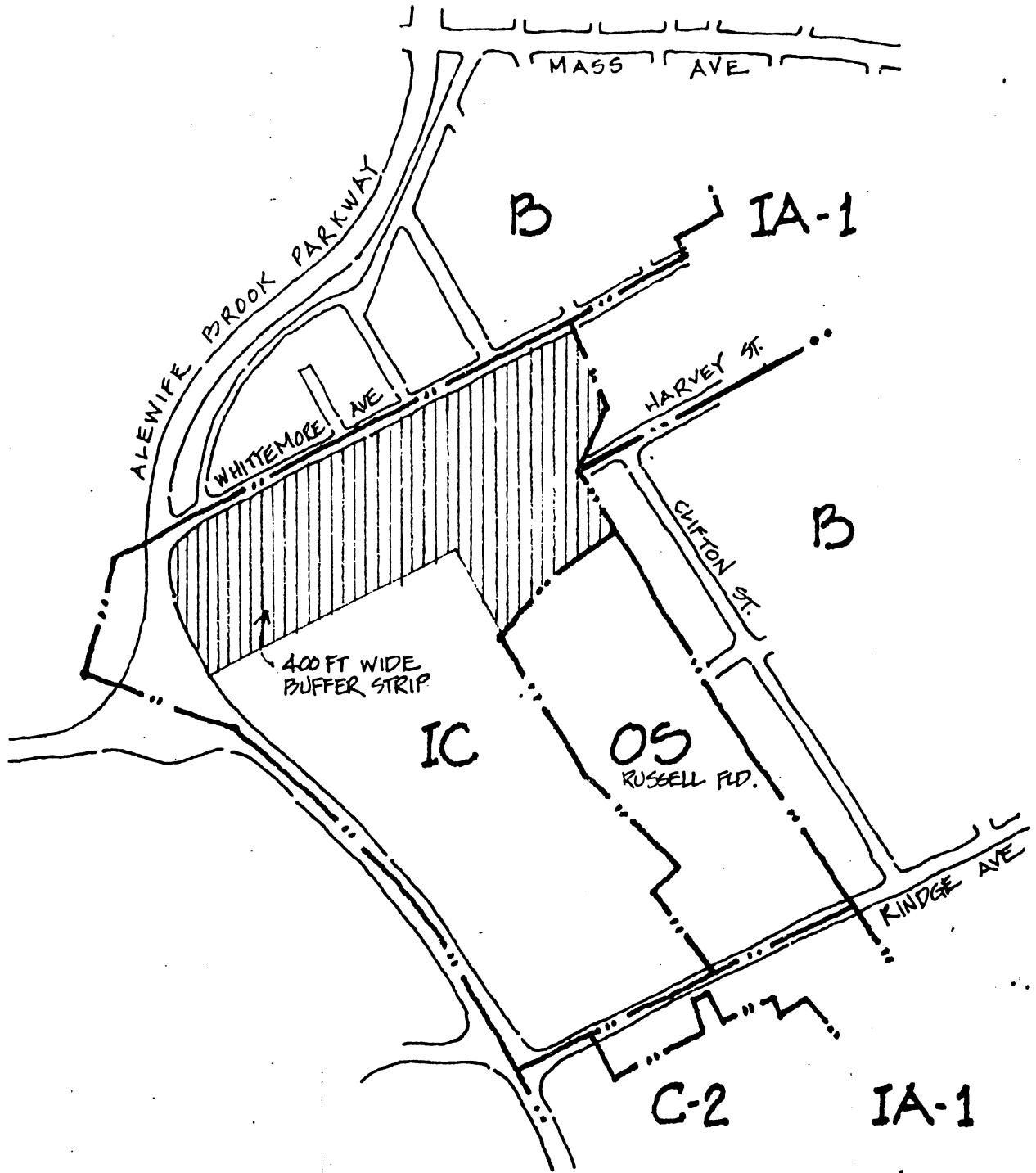
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I, the above signed, am a registered voter in the City of Cambridge.

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PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



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In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

Signature	PRINTED NAME	ADDRESS	PHONE
<u>Maureen Quinlan</u>	<u>Maureen Quinlan</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>Russell Richmond</u>	<u>RUSSELL RICHMOND</u>	<u>118 CLIFTON</u>	<u>876-8727</u>
<u>Victor Plosinski</u>	<u>VICTOR PLOSINSKI</u>	<u>101 CLIFTON ST.</u>	<u>876-0824</u>
<u>Barbara Crow</u>	<u>Barbara Crow</u>	<u>57 Madison Ave</u>	<u>354-3939</u>
<u>Marsha Hunter</u>	<u>Marsha Hunter</u>	<u>2 Theriault Ct.</u>	
<u>Peter V. Cignetti III</u>	<u>PETER V. CIGNETTI, III</u>	<u>5 THERIAULT CT.</u>	<u>491-6314</u>
<u>Florence Stanley</u>	<u>FLORENCE STANLEY</u>	<u>112 JACKSON ST</u>	
<u>Marion C. Heiderman</u>	<u>Marion C. Heiderman</u>	<u>110 Jackson St</u>	
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<u>Grace Gubins</u>	<u>GRACE GUBINS</u>	<u>116 Jackson St Cambridge</u>	
<u>Neal Michael</u>	<u>NEAL MICHAELS</u>	<u>106 JACKSON ST</u>	<u>547-0316</u>
<u>Cheryl M Webb</u>	<u>Cheryl M Webb</u>	<u>64 Clifton St</u>	<u>491-6004</u>
<u>Martine Cleveland</u>	<u>Martine Cleveland</u>	<u>118 Clifton St.</u>	<u>876-8927</u>
<u>Jennifer J. Webb</u>	<u>Jennifer J. Webb</u>	<u>64 Clifton St.</u>	<u>491-3370</u>
<u>Dolores Webb</u>	<u>Dolores Webb</u>	<u>64 Clifton St</u>	<u>491-5333</u>
<u>Kim Webb</u>	<u>Kim Webb</u>	<u>64 Clifton St</u>	<u>491-3370</u>
<u>Chris Twombly</u>	<u>Chris Twombly</u>	<u>60 Clifton St</u>	<u>876-0405</u>
<u>Gary Twombly</u>	<u>Gary Twombly</u>	<u>60 Clifton</u>	<u>876-0405</u>
<u>W. A. Nadeau</u>	<u>W. A. NADEAU</u>	<u>63 Clifton St</u>	<u>876-0619</u>
<u>Florence Gibbons</u>	<u>Florence Gibbons</u>	<u>56 Magnolia St</u>	<u>864-4089</u>
<u>Margaret H. Gubins</u>	<u>Margaret H. Gubins</u>	<u>37 Magnolia St Cambridge, Me</u>	<u>868-5702</u>
<u>Neera K. Dahl</u>	<u>Neera K Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>
<u>Thomas A. Dahl</u>	<u>Thomas A Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>

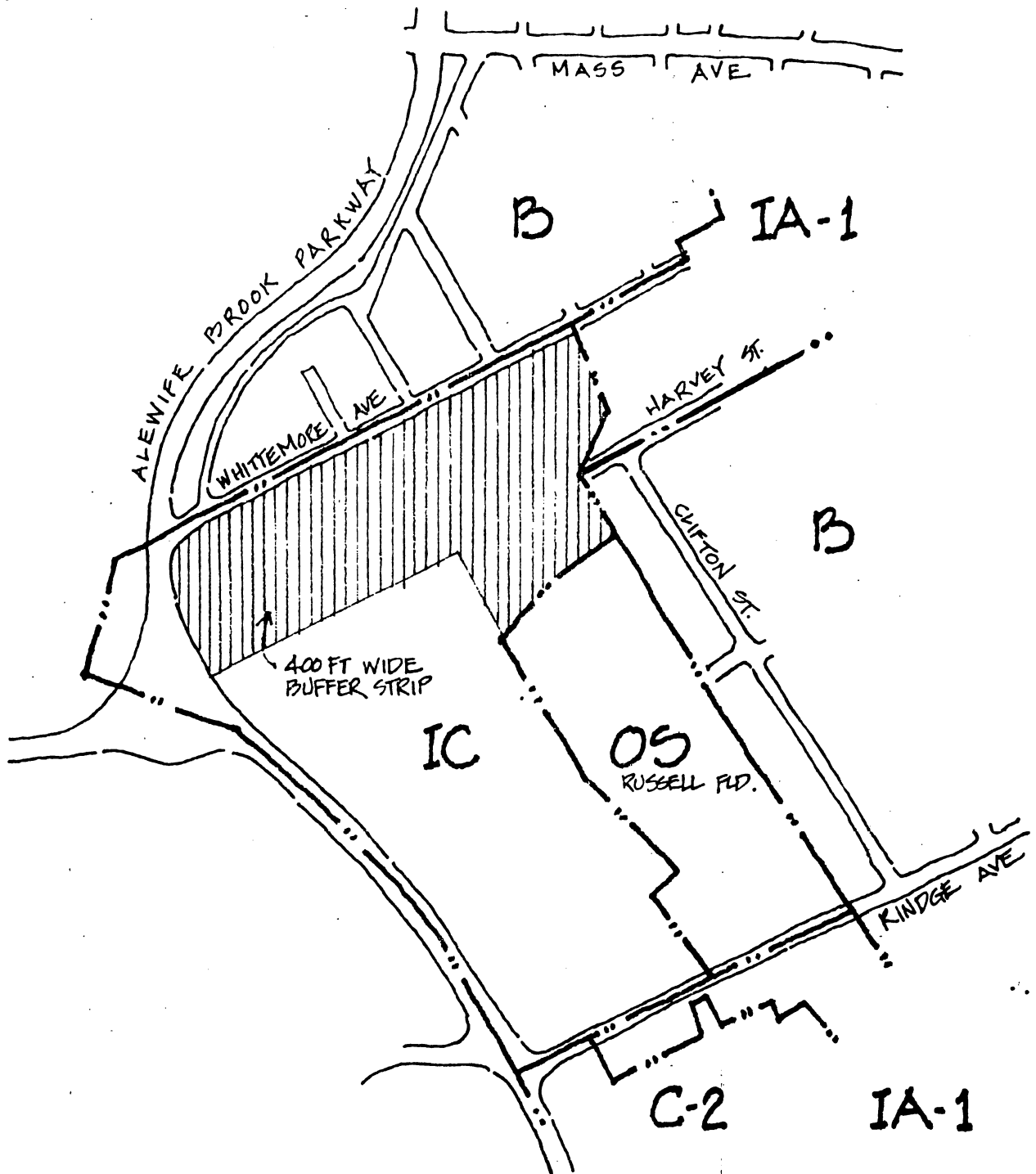
RECEIVED BY THE CITY CLERK
JUN - 5 AM 9:14
MEMORIAL MARCH

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER


May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

 buffer area (open space rules)

 zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

Signature	PRINTED NAME	ADDRESS	PHONE
<u>Maureen Quinlan</u>	<u>Maureen Quinlan</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>✓ Russell R. Romero</u>	<u>Russell R. Romero</u>	<u>118 Clifton</u>	<u>876-8727</u>
<u>✓ Victor Plosinski</u>	<u>VICTOR PLOSINSKI</u>	<u>104 CLIFTON ST.</u>	<u>876-0824</u>
<u>Barbara Crow</u>	<u>Barbara Crow</u>	<u>57 Madison Ave</u>	<u>354-3939</u>
<u>Marsha Hunter</u>	<u>Marsha Hunter</u>	<u>2 Theriault Ct.</u>	
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<u>✓ Vicki Michalek</u>	<u>NEAL MICHAELS</u>	<u>106 JACKSON ST</u>	<u>547-0316</u>
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<u>✓ M. A. Nadeau</u>	<u>M. A. NADEAU</u>	<u>63 Clifton St</u>	<u>876-0619</u>
<u>Flora Mc Gibbons</u>	<u>Flora Mc Gibbons</u>	<u>56 Magnolia St</u>	<u>564-4089</u>
<u>Margaret K. Dahle</u>	<u>Margaret K. Dahle</u>	<u>37 Magnolia St Cambridge, Me</u>	<u>868-5722</u>
<u>Neera K. Dahl</u>	<u>Neera K. Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>
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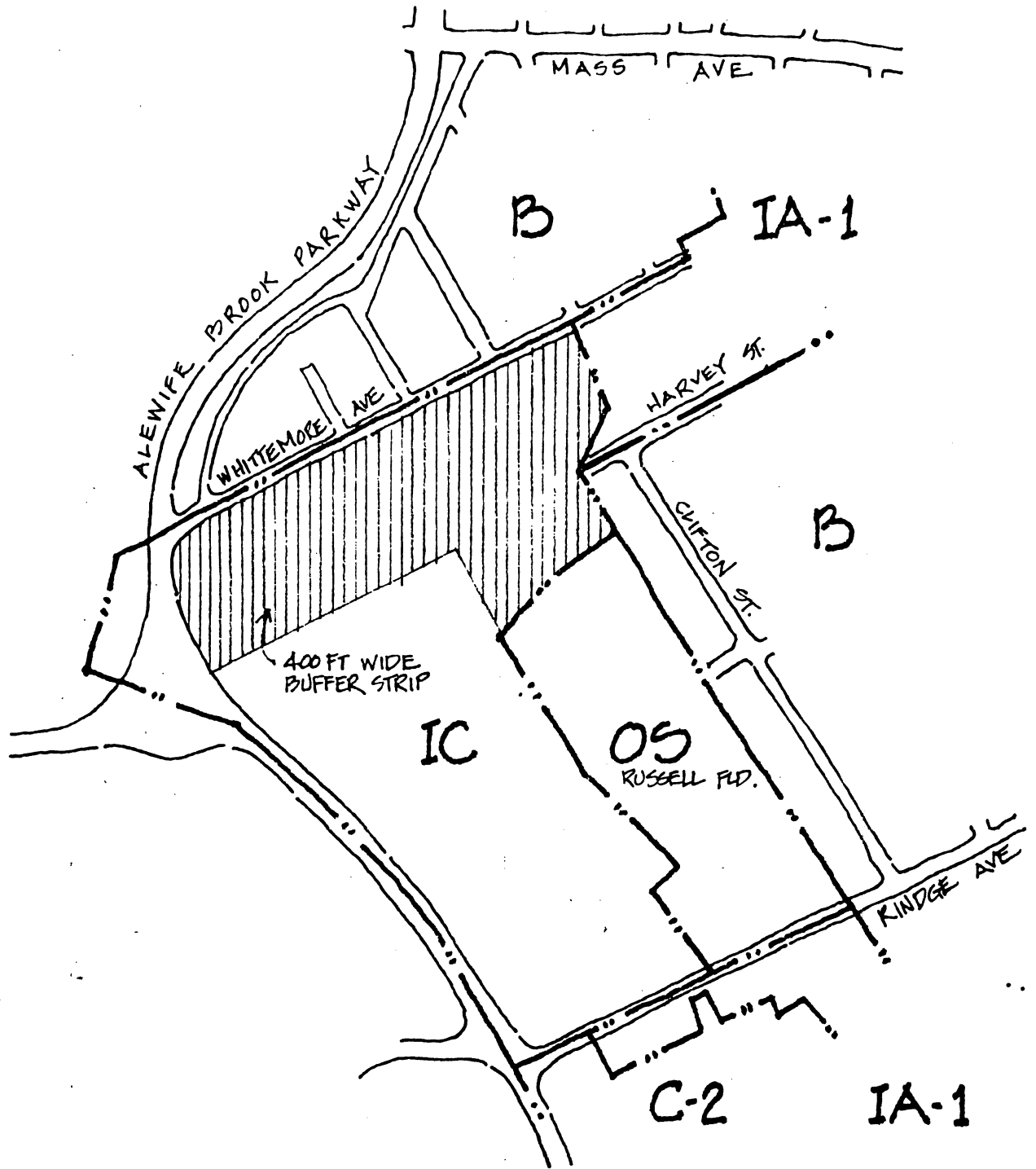
RECEIVED BY
CITY CLERK
JUN - 5 AM 9:14
MEMORIAL PARK

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter

PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

buffer area (open space rules)

zoning district boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

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The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

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- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

**IC-PUD-IC
Amendment
Petition**

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Signature	PRINTED NAME	ADDRESS	PHONE
<u>Margaret Quinn</u>	<u>Margaret Quinn</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>Russell Reed</u>	<u>Russell Reed</u>	<u>118 Clifton</u>	<u>876-8727</u>
<u>Victor Plosinski</u>	<u>VICTOR PLOSINSKI</u>	<u>101 CLIFTON ST.</u>	<u>876-0824</u>
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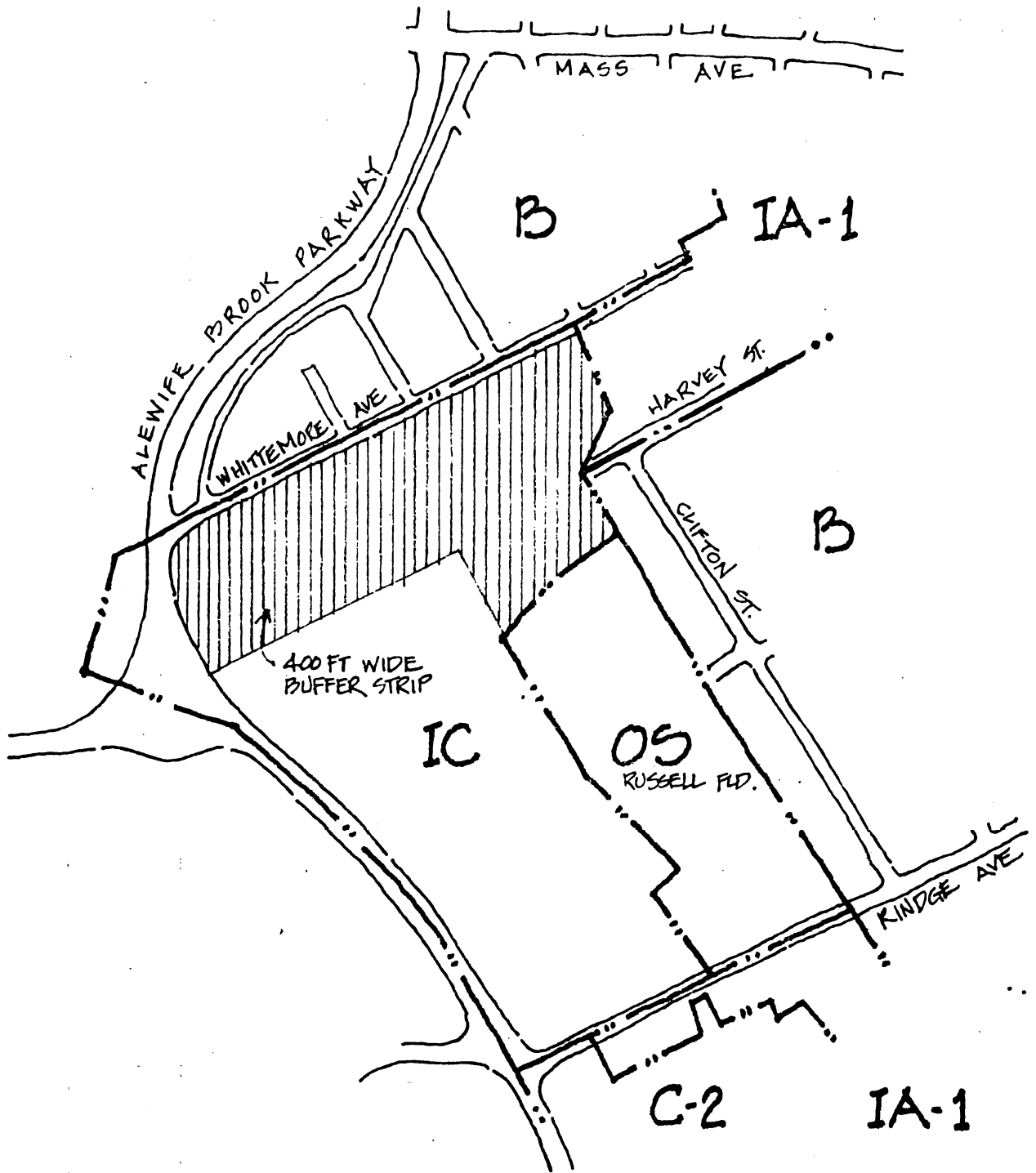
RECEIVED BY THE CITY CLERK JUN - 5 AM 9:44

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



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IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

"54. Subject to the provisions of Section 4.29"

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35."

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

Signature	PRINTED NAME	ADDRESS	PHONE
<u>Maura Quinn</u>	<u>Maura Quinn</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>Russell Romano</u>	<u>Russell Romano</u>	<u>118 Clifton</u>	<u>876-8927</u>
<u>Victor Plesinski</u>	<u>VICTOR PLESINSKI</u>	<u>101 Clifton St.</u>	<u>876-0824</u>
<u>Babara Owen</u>	<u>Babara Owen</u>	<u>57 Madison Ave</u>	<u>354-3939</u>
<u>Marsha Hunter</u>	<u>Marsha Hunter</u>	<u>2 Theriault Ct.</u>	<u>491-6314</u>
<u>Peter V. Cignetti III</u>	<u>PETER V. CIGNETTI III</u>	<u>5 THERIAULT CT.</u>	<u>491-6314</u>
<u>Florence Stanley</u>	<u>FLORENCE STANLEY</u>	<u>112 JACKSON ST</u>	
<u>Marion C. Heiderman</u>	<u>Marion C. Heiderman</u>	<u>110 Jackson St</u>	
<u>Ronnie Rancetti</u>	<u>Ronnie Rancetti</u>	<u>116 Jackson St Cambridge</u>	
<u>Grace Gwili</u>	<u>GRACE GWILI</u>	<u>116 Jackson St Cambridge</u>	
<u>Near Michael</u>	<u>NEAR MICHAELS</u>	<u>106 JACKSON ST.</u>	<u>547-0316</u>
<u>Cheryl M Webb</u>	<u>Cheryl M Webb</u>	<u>64 Clifton St</u>	<u>491-6004</u>
<u>Martha F Cleveland</u>	<u>Martha F Cleveland</u>	<u>118 Clifton St.</u>	<u>876-8927</u>
<u>Jennifer J Webb</u>	<u>Jennifer J Webb</u>	<u>64 Clifton St.</u>	<u>491-3370</u>
<u>Dolores Webb</u>	<u>Dolores Webb</u>	<u>64 Clifton St</u>	<u>491-5333</u>
<u>Kim Webb</u>	<u>KIM Webb</u>	<u>64 Clifton St</u>	<u>491-3370</u>
<u>Chris Twombly</u>	<u>Chris Twombly</u>	<u>60 Clifton St</u>	<u>876-0405</u>
<u>Gary Twombly</u>	<u>Gary Twombly</u>	<u>60 Clifton</u>	<u>876-0405</u>
<u>William A. Nadeau</u>	<u>WIL. NADEAU</u>	<u>63 Clifton St</u>	<u>876-0619</u>
<u>Florence Gibbs</u>	<u>Florence Gibbs</u>	<u>56 Magna St</u>	<u>564-4089</u>
<u>Margaret K. Dahl</u>	<u>Margaret K. Dahl</u>	<u>37 Magna St Cambridge, Me</u>	<u>868-5721</u>
<u>Neera K. Dahl</u>	<u>Neera K Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>
<u>Thomas A Dahl</u>	<u>Thomas A Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>

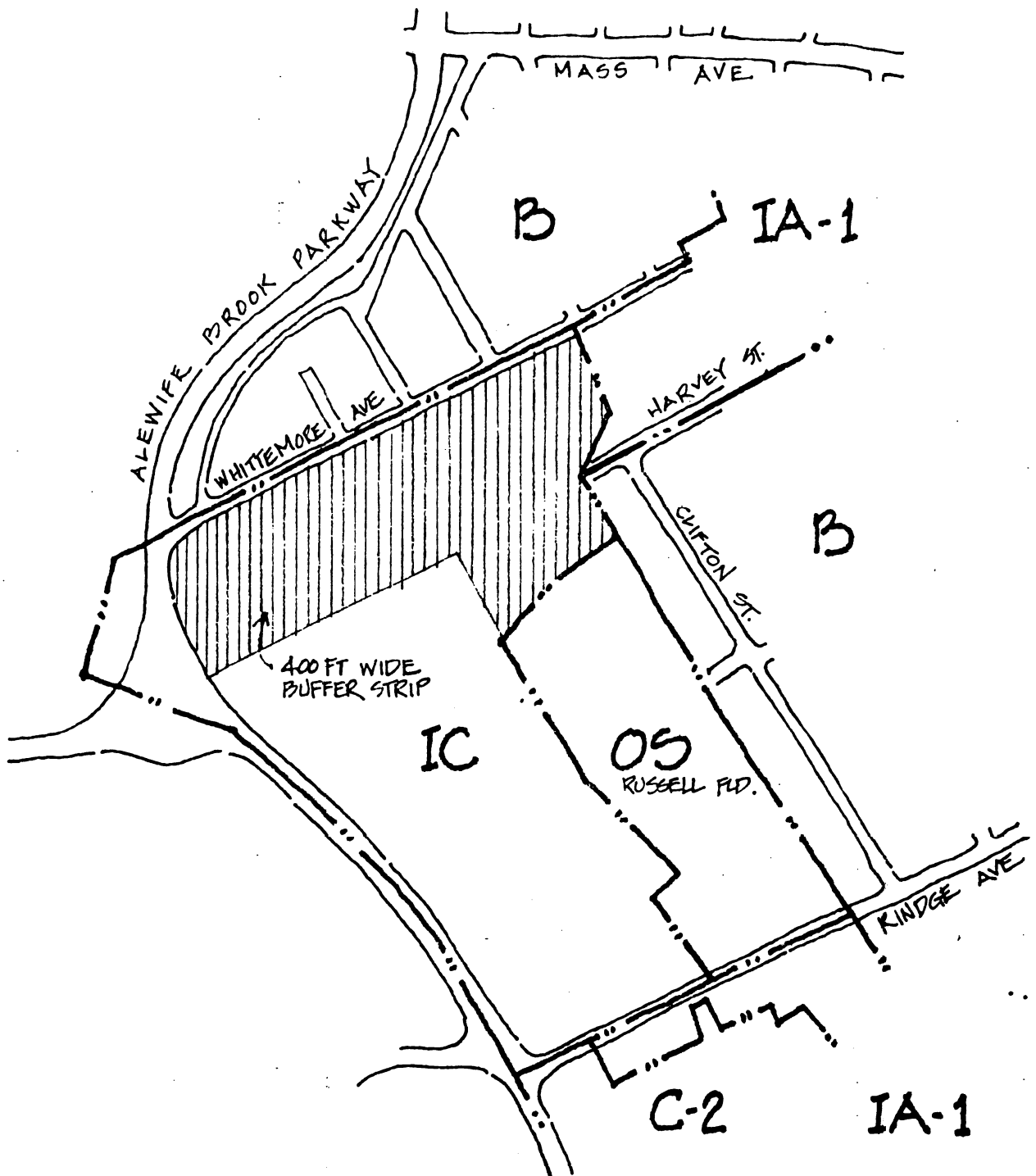
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OFFICE OF CITY CLERK
JUN - 5 AM 9:15
CITY OF CAMBRIDGE

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B residential district
- C2 residential district
- IC industrial district
- IA-1 industrial district
- OS open space district

 buffer area
(open space rules)

 zoning district
boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction against the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.

HOVEY, URBELIS, FIELDSTEEL & BAILIN

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PLEASE SEND
CORRESPONDENCE TO
BOSTON ADDRESS

August 9, 1996

Robert W. Healy
City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Bromfield/Volpe Petition

Dear Mr. Healy:

As you know, Susan Schlesinger, Assistant City Manager for Community Development, requested, on behalf of the Planning Board, a legal review of the Bromfield/Volpe Petition ("the Petition") which would amend the IC and PUD-IC rules to create a 400 foot wide "open space" buffer strip and preclude use of the strip, inter alia, for access to the commercial development beyond the 400 foot buffer.

ISSUES PRESENTED

We have been asked to examine the Petition in relation to two issues: (1) Is the Petition a valid exercise of zoning power or does it constitute reverse spot zoning? (2) If the Petition is a valid exercise of zoning power, would it effect a taking?¹

FACTUAL BACKGROUND

History on Alewife Center Project

We understand that a Planned Unit Development ("PUD") special permit was issued to Reynolds, Vickery, Messina and Griefen ("RVMG") and W.R. Grace & Co. ("Grace") in September of 1987 for the development of the Alewife Center Office Campus Project ("the

¹ We assume for purposes of this memorandum that Alewife Center PUD special permit is entitled to zoning freeze protection but, as the construction schedule requires modification, the project may nevertheless become subject to the proposed Petition.

Project”), comprised basically of six office buildings with some retail, a hotel and common areas. The building at One Alewife Center was commenced in the Fall of 1987 and was completed in 1988. The PUD special permit recognized that the Project would be developed over an 8 to 10 year period. The owner had obtained a height variance from the Zoning Board of Appeals in November of 1986 and a flood plain special permit from the Planning Board in November of 1987 for One Alewife Center. According to the owner, due to problems with the State (including curb cuts and unsettled taking plans), there were delays in completing any other parts of the Project. In light of these problems, a minor amendment modifying the construction schedule was granted in August of 1989. The real estate is owned by a wholly owned subsidiary of Grace. Spaulding & Slye apparently purchased RVMG’s interest in the Project. Grace recently sought again to modify the schedule on April 10, 1996, as a minor amendment. We understand that the Planning Board deemed such amendments at this time to require the filing of a major amendment and a full public hearing. Grace has not as yet applied for same.

After publications by the City of Cambridge Community Development Department of a report identifying areas and neighborhoods of the City poorly served by full service supermarkets, Grace proposed a new project at Alewife Center including a supermarket and other retail establishments. The neighborhood and others objected to the traffic and other impacts of such a project.

We understand from Les Barber that the Petition impacts only the Grace Alewife site and a small house lot owned by Catherine Kennedy.² We also understand that, although the site has access off Alewife Parkway, the lack of access from Whittemore Avenue might negatively impact development on the site. We also understand that as of the Planning Board’s action in 1989, that Board did not require any buffer area other than the setback for the site. Although the site has recently been the subject of extensive analysis from an environmental and traffic perspective by the Grace Committee, we have been advised that the site has not been the subject of any zoning study or zoning analysis since at least 1989, that there were no zoning studies undertaken to

² Given the dimensions of the lot, the four hundred foot open space buffer zone would consume the Kennedy lot if the owner sought to convert the residential use to commercial use. Obviously, residential use would remain grandfathered for zoning purposes. We also understand that technically MDC land lies within the area affected by the proposed zoning amendment, but it is unlikely that the MDC will seek to use its property for other than public purposes.

justify the need for a 400 foot open space buffer at the time on this site, and that the City has no other open space buffer requirements which compare to the magnitude of that proposed for this site. (We do note that there was an Alewife study process which considered a wide range of planning and zoning issues for all commercial areas in Alewife but did not include the Grace site.)

The Petition

The Petition sets forth the following as justifications for the zoning amendment to IC-PUD-IC rules:

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

WHEREAS the zoning protections offered by zoning districts industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

As the Petition itself explains: "The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below..."

The Petition specifically proposes the following zoning amendments:

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As the Petition itself explains, this section provides that “any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used [sic] as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.”

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading “Ind C” in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

“54. Subject to the provisions of Section 4.29”

As the Petition itself explains, this section “cross-references from the Table back to the new buffer strip Section 4.29 described in A above.”

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line “IC”. Additionally, in Section 5.34, add a new footnote (e) to read as follows:

“(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35.”

As the Petition explains “this cross-reference ensures that the few structures and uses which are allowed in an Open Space District -- e.g. a municipal library -- are built to comply with dimensional restrictions applicable in the Open Space District.”

And, finally:

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

“13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not

otherwise permitted in the Open Space District are expressly prohibited from this buffer strip.”

As the Petition explains: “This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.”

LEGAL RESEARCH

Spot Zoning Analysis

Does the proposed zoning amendment, subjecting Grace’s property (“the site”) to a four-hundred foot open space requirement, violate the basic requirements of uniformity and generality of zoning legislation by creating special detrimental treatment for the site as compared with other properties and, therefore, constitute unlawful spot zoning? In other words, has the locus been singled out for adverse treatment vis-a-vis substantially similar parcels?

In our opinion, the proposed amendment in this case appears to create a unique and detrimental regulation for the site.³ The record on the Petition does not, in our opinion, currently identify adequate justification or zoning objectives served thereby. As the cases discussed below evidence, this is precisely what may constitute improper spot zoning: “Singling out a parcel of land for special treatment as compared to other parcels in the same zoning area.” Canteen Corp. v. Pittsfield, 4 Mass.App.Ct. 289, 293 (1976).

“Spot zoning” cases depend very particularly on what in fact the municipality has tried to do as against the background of G.L. c. 40A, Section 4, which provides that any zoning ordinance or by-law shall be uniform within districts. The requirement of uniformity has long been a part of our zoning statutes and case law. See, e.g., Shapiro v. Cambridge, 340 Mass. 652, 659 (1960). In spot zoning cases, the result depends rather on both the generality of the principle in question and on the facts of the particular case. Even the existence of a comprehensive plan and laudable objectives will not justify a violation of the legal requirement of uniformity. Aronson v. Sharon, 346 Mass. 598 (1964).

³ Unlike the Rowe and Lohnes petitions which seek to realign zoning boundaries, this petition imposes unique detrimental regulations on the Grace and Kennedy sites. Like those petitions, however, the courts will look closely at whether the regulations serve justifiable and legitimate planning objections.

In a recent “spot zoning” case, National Amusements, Inc. v. City of Boston, 29 Mass.App.Ct. 305 (1995), the Court held that:

Although all rational presumptions favor the validity of an amendment by a municipality of its zoning code, we decide that the amendment of the Boston Zoning Code presented for review arbitrarily singled out the land of the plaintiff National Amusements, Inc. (“National”), for disparate treatment from similar land in the same zoning area.

The Court noted that National’s property, a vacant 13.8 acre tract, had been originally zoned for industrial use and had sometime prior to 1964 been changed to general business. Id. at 307.

After the plaintiff began the process of applying for building permits to construct a shopping center, the City began seeking to “down zone” the property. This was ultimately accomplished in February of 1987 when the property was down zoned to Residential 8 (multifamily).

The Court in National Amusements set out the pertinent standard applicable to zoning by-laws changes. The Court explained:

There must be a showing of some substantial relation between the zoning code amendment and the general objectives of the enabling act. [Citations omitted.] Paramount among those objectives is the promotion of the public welfare. [Citations omitted.] Every presumption, as we noted at the outset of the opinion, is to be made in favor of the zoning amendment. [Citations omitted.] If the reasonableness of a zoning regulation is fairly debatable, the judgment of the local legislative body (here the zoning commission of Boston) should be sustained and the reviewing court should not substitute its own judgment. [Citations omitted.] Nevertheless, a zoning ordinance or by-law will be held invalid if it is unreasonable or arbitrary, or substantially unrelated to the public health, safety, convenience, morals or welfare. [Citations omitted.] Id. at 309-310.

In reaching its conclusion that the rezoning was unlawful, the Court noted:

What is striking about the record is the absence of analysis of land use planning considerations by municipal authority before the decision to change the zoning was taken. Among the considerations to be taken into account are the physical characteristics of the land, its location, size, and the nature of adjoining uses. Barney & Carey Co. v. Milton, 324 Mass. 440, 449 (1949). There were, before the fact of the rezoning, no market studies. Id. at 310.

The Court concluded:

Rather, what appears to have occurred is that, in response to the WRNC [i.e., West Roxbury Neighborhood Council], the decision to change the zone was made, following which a few fig leaves of rationalization were decorously draped by the BRA around the submission to the zoning commission. Id. at 311.

The National Amusements Court, in concurring with the Land Court's finding of invalid rezoning, explained:

In view of the lack of land use study and the illogic of the ostensible reasons for the rezoning, it is not to be wondered at that the Land Court judge found those reasons to be pretexts, that "the primary motive of the rezoning was to protect small business in the general West Roxbury neighborhood," and that the "surroundings are environmentally unsound for residences." Id. at 312.

To the City's argument that the Land Court improperly focused on the motives for the zoning change, the Court responded:

The point that the judge correctly made, however, is that under our cases zone changes which have no roots in planning objectives but which have no better purpose than to torpedo a specific development on a specific parcel are considered arbitrary and unreasonable. The vice is the singling out of a particular parcel for different treatment from that of the surrounding area, producing, without rational planning objectives, zoning classifications that fail to treat like properties in a uniform manner. [Citations omitted.] Id. at 312.

Takings Analysis: The Federal Courts

Analysis of so-called regulatory takings must begin with the general principle that the rights of owners to use and enjoy property are subject to reasonable regulation designed to promote general welfare. Penn Central Trans. Co. v. City of New York, 438 U.S. 104, 123-128 (1978); Franklin v. Spadofora, 388 Mass. 764, 773 (1983).

With respect to regulatory takings, "[t]he general rule at least is that while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking." Pennsylvania Coal Co. v. Mason, 260 U.S. 393, 415 (1922). "Answering this question [of whether a regulation "goes too far"] involves regulatory takings analysis which is peculiarly fact dependent, involving 'essentially ad hoc, factual inquiries.'" Yankee Atomic Electric Co. v. Secretary of the Commonwealth, 403 Mass. 203, 209 (1988), quoting Penn Central, *supra*, 438 U.S. at 124.

In Penn Central, *supra*, the owner of Grand Central Station, which building was designated as a landmark, sought permission from the New York City Landmarks Commission to build a fifty story office tower on the roof. When that permission was denied, the plaintiff brought suit, claiming a regulatory taking. The Supreme Court, in holding that there was no taking, looked to three factors: the economic impact of the regulation, the extent to which the regulation interferes with specific reasonable investment-backed expectations of the owner, and the character of the government's action.

Because the regulation permitted Penn Central to obtain a reasonable return on its investment, 438 U.S. at 136, the Court found there to be no taking.

In Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470, 485 (1987), the plaintiffs challenged, as an unconstitutional taking, the Pennsylvania Subsidence Act which required that fifty percent of the coal beneath certain structures be left in the ground to provide surface support. In finding no taking, the Court, found that the plaintiff suffered only a small diminution in value and thus that the statute did not deprive the owners of economically viable use of their property. See also Agins v. City of Tiburon, 447 U.S. 255, 260 (1980) (zoning ordinance which restricted parcel to maximum use of five single-family residences not a taking, since owner could still make economically viable use of land).⁴

In Lucas v. South Carolina Coastal Council, 505 U.S. ____, 120 LE2d 798, 112 S.C. 2886 (1992), the plaintiff had purchased "two lots, both of which were zoned for single-family residential construction and...there were no restrictions imposed upon such use of the property by either the State of South Carolina, the County of Charlestown, or the Town of the Isle of Palms." 120 L.Ed. 2d at 808-809, quoting App. to Pet. for Cert. 36. After the plaintiff's purchase of the lots, the State of South Carolina adopted the Beachfront Management Act. That Act "decreed a permanent ban on construction insofar as Lucas's lots were concerned..." Id. at 809. The trial court, concluded that the prohibitions of the Act "deprive[d] Lucas of any reasonable economic use of the lots...eliminated the unrestricted right of use, and render[ed] them valueless." Id., quoting App. to Pet. for Cert. 37. The trial court then concluded that a compensable taking had occurred and the South Carolina appellate courts affirmed.

The Supreme Court in Lucas explained, that, while "we have generally eschewed any 'set formula' for determining how far is too far, preferring to "engage[e] in. . . essentially ad hoc, factual inquiries," Penn Central Transportation Co. v. New York City, 438 US 104, 124, 57 L Ed 2d 631, 98 S Ct 2646 (1978) (quoting Goldblatt v. Hempstead, 369 US 590, 594, 8 L Ed 2d 130, 82 S Ct 987

⁴ Obviously, the use regulation proposed here does not invite the application of the rule in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), that a "permanent physical occupation" of property is a per se taking. Not only did the Court in Loretto carefully limit its per se rule to permanent physical occupations of property, but it expressly reaffirmed its decision in Penn Central, supra, 438 U.S. at 104, that use restrictions were to be analyzed differently. Loretto, supra, 458 U.S. at 426-27. The Court in Loretto explained that its "holding ... [is] very narrow" and did not "question the ... substantial authority upholding the State's broad power to impose appropriate restrictions upon an owner's use of his property." Id. at 441 (emphasis in original).

(1962)", *id.* at 812 "[w]e have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first encompasses regulations that compel the property owner to suffer a physical "invasion" of his property. . . . The second situation in which we have found categorical treatment appropriate is where regulation denies all economically beneficial or productive use of land." *Id.* at 812-813.⁵ The *Lucas* Court noted that:

It is correct that many of our prior opinions have suggested that "harmful or noxious uses" of property may be proscribed by government regulation without the requirement of compensation. For a number of reasons, however, we think the South Carolina Supreme Court was too quick to conclude that that principle decides the present case. *Id.* at 817.

The Court explained that:

"Harmful or noxious use" analysis was, in other words, simply the progenitor of our more contemporary statements that "land-use regulation does not effect a taking if it "substantially advance[s] legitimate state interests"..." *Nollan*, *supra*, at 834, 97 L Ed 2d 677, 107 S Ct 3141 (quoting *Agins v. Tiburon*, 447 US, at 260, 65 L Ed 2d 106, 100 S Ct 2138); see also *Penn Central Transportation Co.*, *supra*, at 127, 57 L Ed 2d 631, 98 S Ct 2646; *Euclid v. Ambler Realty Co.*, 272 US 365, 387-388, 71 L Ed 303, 47 S Ct 114, 54 ALR 1016 (1926) *Id.* at 818.

The Court went on to hold that total regulatory takings need not be compensated if the prohibited uses of property were not "previously permissible under relevant property and nuisance principles." *Id.* at 821. In other words: "Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with." *Id.* at 820. Thus,

A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts -- by adjacent landowners (or other uniquely affected persons) under the State's law of private nuisance, or by the State under its

⁵

The Court noted:

Regrettably, the rhetorical force of our "deprivation of all economically feasible use" rule is greater than its precision, since the rule does not make clear the "property interest" against which the loss of value is to be measured. When, for example, a regulation requires a developer to leave 90% of a rural tract in its natural state, it is unclear whether we would analyze the situation as one in which the owner has been deprived of all economically beneficial use of the burdened portion of the tract, or as one in which the owner has suffered a mere diminution in value of the tract as a whole. *Id.* at n.7.

complementary power to abate nuisances that affect the public generally, or otherwise. *Id.* at 821.

The Court in *Lucas* remanded the case to the South Carolina courts to determine whether there were any common-law or nuisance principles under South Carolina law that "would have prevented the erection of any habitable or productive improvements on petitioner's land" *Id.* at 822. The Court emphasized:

to win its case South Carolina must do more than proffer the legislature's declaration that the uses Lucas desires are inconsistent with the public interest, or the conclusory assertion that they violate a common-law maxim such as *sic utere tuo ut alienum non laedas*. As we have said, a "State, by ipse dixit, may not transform private property into public property without compensation" *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 US 155, 164, 66 L Ed 2d 358, 101 S Ct 446 (1980) Instead, as it would be required to do if it sought to restrain Lucas in a common-law action for public nuisance, South Carolina must identify background principles of nuisance and property law that prohibit the uses he now intends in the circumstances in which the property is presently found. Only on this showing can the State fairly claim that, in proscribing all such beneficial uses, the Beachfront Management Act is taking nothing. *Id.* at 823. *Id.* at 822-823.

In *Dolan v. City of Tigard*, 512 U.S. ____, 129 L.Ed.2d 304, 114 S.Ct. ____ (1994), the Supreme Court invalidated a municipality's attempt to condition the issuance of a building permit for the expansion of a store and paving of a parking lot upon the dedication to the city by the owner of a bicycle path and greenway/flood plain area (comprising approximately 10% of the property)⁶ The Court announced a three-part test to determine the validity of regulations governing property: (1) Does the regulation or permit condition promote a legitimate public purpose or state interest? (2) Is there a reasonable relationship - "essential nexus" -- between the legitimate state interest and the permit condition or regulation? (3) If such nexus exists, has the municipality demonstrated the required degree of connection -- a "rough proportionality" -- between the exactions and the projected impact of the development? 129 L Ed. 2d at 317.

The facts of *Dolan* are relatively simple. "Petitioner applied to the city for a permit to redevelop the site. Her proposed plans called for nearly doubling the size of the store to 17,600

⁶ The Court reiterated at the outset of its reasoning that: "A land use regulation does not effect a taking if it 'substantially advance[s] legitimate state interests' and does not 'den[y] an owner economically viable use of his land.' *Agins v. Tiburon*, 447 US 255, 260 (1980)." *Id.* at 316. The Court noted that: "There can be no argument that the permit conditions would deprive petitioner of 'economically beneficial us[e]' of her property as she currently operates a retail store on the lot. Petitioner assuredly is able to derive some economic use from her property." *Id.* at 316 n. 6 (emphasis in original).

square feet, and paving a 39-space parking lot.” *Id.* at 313. Pursuant to state requirements mandating comprehensive land use management, the city developed and adopted its Community Development Code (“CDC”), which required owners to comply with a 15% open space and landscaping requirement, which limits total site coverage, including all structures and paved parking, to 85% of the parcel. The city, in order to deal with congestion, also adopted a plan requiring dedication of a pedestrian/bicycle pathway. Finally, the city adopted a Master Drainage Plan (Drainage Plan) to deal with flooding created by increasing impervious surfaces.

The Court quickly determined that the city’s permit conditions served legitimate public purposes and that a nexus existed between these purposes and the conditions sought to be imposed. The Court then turned to the question of “whether the degree of the exactions demanded by the city’s permit conditions bear the required relationship to the projected impact of petitioner’s proposed development.” *Id.* The Court then looked to the city’s explanations for imposing the conditions it did:

The city required that petitioner dedicate “to the city as Greenway all portions of the site that fall within the existing 100-years floodplain [of Fanno Creek]...and all property 15 feet above [the floodplain] boundary.” In addition, the city demanded that the retail store be designed so as not to intrude into the greenway area. The city relies on the Commission’s rather tentative findings that increased stormwater flow from petitioner’s property “can only add to the public need to manage the [floodplain] for drainage purposes” to support its conclusion that the “requirement of dedication of the floodplain area on the site is related to the applicant’s plan to intensify development on the site.” City of Tigard Planning Commission Final Order No. 91-09 PC, App. to Pet. for Cert. G37.

The city made the following specific findings relevant to the pedestrian/bicycle pathway:

“In addition, the proposed expanded use of this site is anticipated to generate additional vehicular traffic thereby increasing congestion on nearby collector and arterial streets. Creation of a convenient, safe pedestrian/bicycle pathway system as an alternative means of transportation could offset some of the traffic demand on these nearby streets and lessen the increase in traffic congestion.” *Id.*, at 24. *Id.* at 318-319.

The Court determined that “these findings [were not] constitutionally sufficient to justify the conditions imposed by the city on petitioner’s building permit.” *Id.* at 319. The Court noted that: “Despite any semantical differences, general agreement exists among the courts “that the

dedication should have some reasonable relationship to the needs created by the [development].”

Id. at 320 (citation omitted). The Court concluded:

We think the “reasonable relationship” test adopted by a majority of the state courts is closer to the federal constitutional norm than either of those previously discussed. But we do not adopt it as such, partly because the term “reasonable relationship” seems confusingly similar to the term “rational basis” which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment. We think a term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development. Id. at 321. (emphasis added)

Massachusetts Appellate Court Analysis of the Takings Clause

In Steinberg v. Cambridge, 413 Mass. 736, 741 (1992), the Supreme Judicial Court, applying Fifth Amendment constitutional analysis, noted that there are “two categories of governmental regulatory action that constitute compensable takings without regard to other considerations, such as the public interest sought to be advanced.” The first is where a challenged regulation authorizes, directs or otherwise involves a physical intrusion onto private property. Id. The second is where a challenged regulation denies all economically beneficial or productive use of the plaintiff’s interest in the property. Id. The Court then notes:

If the governmental regulation neither results in a physical invasion of the property nor deprives a landowner of all economically beneficial use of land, there may nevertheless be a regulatory taking based, in part, on the regulation’s economic impact on the property as a whole and the extent to which the regulation has interfered with a property owner’s distinct investment-based expectations. Id. at 742.

The Court in Steinberg also rejected the plaintiff’s alternative takings argument that “a taking occurs when a land-use regulation ‘does not substantially advance legitimate state interests’.” Agins v. Tiburon, 447 U.S. 255, 260 (1980).”, id. at 744, finding that “the challenged [and previously invalidated] ordinance [mandating that an owner owning more than one rent controlled condominium unit within a building was required to sell all of his interests] substantially advanced the purpose of rent control.” Id. at 746.

Following the Lucas decision, the Supreme Court of the United States remanded the case of Lopes v. Peabody to the Massachusetts courts. As the Supreme Judicial Court on remand noted:

In its Lucas opinion, the Supreme Court held that a landowner was entitled to compensation for a taking when a zoning regulation effectively prohibited all economically beneficial use of the land, unless the prohibition could be independently justified under principles of South Carolina nuisance or property law. Lopes, supra, 417 Mass. 299, 300 (1994).

In Lopes, the plaintiff challenged the wetlands conservancy district established by the City and “[t]he parties stipulated that Lopes ‘is unable to use his land as a result of the revision of the Zoning Ordinance.’ The judge viewed Lopes’s use of the land to be a mixed question of law and fact. There was no evidence to permit a comparison of the fair market value of the property with and without the restrictions in effect.” Id. at 301. The Supreme Judicial Court, in remanding the case to the Land Court for new hearing and further consideration in light of the Lucas decision, explained:

The Lucas opinion appears to have changed, or at least refocused, the applicable standards for determining whether, for Federal constitutional purposes, there has been a regulatory taking of property. An essential fact question is whether application of the ordinance has caused the Lopes land to have no economically beneficial use. If the land has no economically beneficial use, a term that the Supreme Court has not yet defined, the ordinance may be upheld only if it substantially advances legitimate State interests and its application to the Lopes land reflects established principles of State property and nuisance law. Id. at 304-305.

The Supreme Judicial Court suggested:

The Land Court judge may elect first to consider the question whether Lopes has proved that the zoning restriction, particularly the 88.5 foot minimum elevation, does not substantially advance legitimate State interests as applied to his lot. See Lucas, supra at 2893-2894; Agins v. Tiburon, 447 U.S. 255, 260 (1980). There is no doubt that flood control and the prevention of pollution of surface and ground water (and great ponds) are legitimate State interests. Lopes is entitled to try to prove that these legitimate State interests are not served by the 88.5 foot contour in any substantial way that a lower contour would not serve. The Land Court judge considered conflicting expert views on the soundness of the imposition of the 88.5 foot contour. She suggested that that line preserved a margin of safety, and that its selection was a peculiarly political decision. The Lucas case directs that the test must be made on a case by case basis as to the particular land involved. After the Lucas opinion, generally expressed political judgments concerning the desirability of a zoning regulation will do little to resolve the question

whether a regulation substantially advances State interests. See Lucas, supra at 2896-2899. Id. at 305-306.

Alternatively, the Court suggested:

The Land Court judge, on the other hand, may wish first to decide whether the regulation deprived the land of all economically beneficial use. Of course, the land must be otherwise useable, economically and legally, for Lopes to demonstrate that the zoning regulation is unlawful. In other words, Lopes would have to show that his land, free of the regulation, has some economically beneficial use and that it has none when subject to the zoning regulation.

If the judge concludes that the zoning regulation deprives the parcel of all economically beneficial use, the Lucas opinion advises us that there is a categorical regulatory taking, unless under the land use law of the Commonwealth the proposed use would be a nuisance or otherwise impermissible. Id. at 306.

In Leonard v. Brimfield, 423 Mass. 152 (1996), the Supreme Judicial Court held that the town's enforcement of its flood plain restriction did not result in a compensable taking under the United States Constitution even though it diminished the value of her land. The Court noted that:

When a regulatory taking involves neither a physical invasion nor a complete deprivation of use, as in the case here, Federal law has established several interrelated factors which are to be considered in determining whether a compensable taking has occurred: "(1) 'the economic impact of the regulation on the claimant'; (2) 'the extent to which the regulation has interfered with distinct investment-backed expectations'; and (3) 'the character of the governmental action.'" Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 225 (1986), quoting Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 124 (1978). Id. at 154.

As to investment-backed expectations, the Court held:

A property owner's investment-backed expectations must be reasonable and predicated on existing conditions. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005 (1984). It must be more than a "unilateral expectation or an abstract need." Id. quoting Webbs Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161 (1980). The plaintiff's argument fails because she could not have had a reasonable, investment-backed expectation that she would have been permitted to subdivide the flood plain property. Id. at 155.

As to the economic impact of the flood plain restriction, the Court concluded:

Even if we ignore the fact that the zoning restriction was in place prior to the plaintiff's purchase of the property, the evidence was insufficient to show that the economic impact was severe. The plaintiff's economic loss argument is based on her inability to build houses on approximately ten acres of her sixteen-acre parcel. This has not frustrated her

purpose to build her own home on the parcel which she has done. There is no dispute that the complete sixteen acres is suitable for agricultural, horticultural, and recreational purposes. The land was used for agricultural purposes prior to her purchase and can continue to be used as such. As stated by the United States Supreme Court: "Zoning laws are, of course, the classic example [of land use regulations] which have been viewed as permissible governmental action even when prohibiting the most beneficial use of the property" (citations omitted). Penn Cent. Transp. Co. v. New York City, *supra* at 125.

As to the character of the governmental action, the Court reasoned:

The final factor that may be considered is the character of the governmental action. "A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government." *Id.* at 124. Here, there was no physical invasion of the plaintiff's property alleged apart from the water channeling claims. Those claims are barred by the release given in connection with her prior litigation. Her takings claim is based on the zoning restriction and special permit process which is not a physical invasion by the government. *Id.*

CONCLUSION

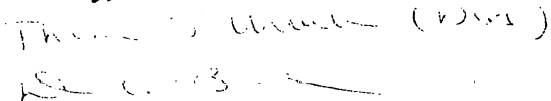
(1) In our opinion, because the Petition is applicable only to Grace's property, because it was not preceded by any zoning study or analysis indicating the need for or justifying a 400 foot open space buffer, because the proposed buffer can only be used for what are commonly referred to as public purposes, because the proposed buffer effectively precludes access to the property from the public way abutting residential properties, because the Petition may have been advanced in order to defeat a proposed retail project on the site, it is likely that our courts would find the Petition to constitute reverse spot zoning.

(2) In our opinion, although the protection of adjoining residential areas from the increased traffic, use and other negative impacts of commercial developments clearly constitute legitimate state interests, it is questionable whether the condition of a 400 foot open space buffer through which no commercial traffic can pass and which can only be used as of right for public purposes affords the essential nexus with that legitimate state interest. Even if the essential nexus existed, it is questionable whether the courts would conclude that the required degree of connection between the exactions of the Petition and the proported impact of the development existed. Thus, in our opinion, in the absence of evidence regarding the necessity and justification for such a substantial open space buffer and the total ban on access through Whittemore Avenue,

the courts might find the requirements to constitute a taking. In our opinion, a very serious question exists as to whether the requirement of the proposed open space buffer would meet the rough proportionality test mandated by Dolan; there must be an individualized determination that the required condition is related both in nature and extent to the impact of the proposed development. While the Petition does not require the out-in-out dedication of the open space buffer to the City and while it simply regulates the use of that area, the use permitted is so limited as to permit only public or municipal uses as of right (e.g. municipal library).⁷ “[R]egulations that leave the owner of land without economically beneficial or productive options for its use -- typically, as here, by requiring land to be left substantially in its natural state -- carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm.” Lucas, supra, 128 L. Ed. 2d at 814.

If additional justifications or rationale for the Petition come to light during the public hearings, we will be happy to reevaluate these conclusions in light of same. At any rate, please feel free to call us if you have any further questions or wish to discuss the above.

Sincerely,



Thomas J. Urbelis and
Devra G. Bailin

DGB/dmk

⁷ We do note that commercial recreation and theater or hall for public gatherings are uses permitted by special permit in the open space district.



City of Cambridge

Calendar Item #14

IN CITY COUNCIL

October 28, 1996

COUNCILLOR SULLIVAN

WHEREAS: The Planning Board in its recommendation to the City Council indicated that due to general planning concerns relating to the entire IC District and the coterminous PUD District, the Planning Board will initiate a study leading to a comprehensive revision of the zoning regulations affecting all of the IC District and the coterminous PUD District as expeditiously as possible; and

WHEREAS: The City Council finds that the 400 foot buffer zone is necessary to provide the protections sought by the neighborhood as expressed at the public hearings before the City Council at least until the zoning study is completed; now therefore be it

ORDERED: That the Quinlan Bromfield petition should be amended by adding the following:

E. Sections A and D of this petition shall be followed by a footnote reading as follows:

This section shall expire six months after the date of enactment.

F. Section C shall be amended by adding the following sentence:

This footnote shall expire six months after the date of enactment.

In City Council October 28, 1996

Adopted by a ye and nay vote:-

Yeas 7; Nays 2; Absent 0.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
City Clerk

Councillor Sullivan

~~WMA~~

WHEREAS, the Planning Board in its recommendation to the City Council indicated that due to general planning concerns relating to the entire IC District and the coterminous PUD District, the Planning Board will initiate a study leading to a comprehensive revision of the zoning regulations affecting all of the IC District and the coterminous PUD District as expeditiously as possible, and

WHEREAS, the City Council finds that the 400 foot buffer zone is necessary to provide the protections sought by the neighborhood as expressed at the public hearings before the City Council at least until the zoning study is completed, now therefore be it

ORDERED, that the Quinlan/Bromfield petition should be amended by adding the following:

E. Sections A and D of this petition shall be followed by a footnote reading as follows:

This section shall expire six months after the date of enactment.

F. Section C shall be amended by adding the following sentence:

This footnote shall expire six months after the date of enactment.

IC-PUD-IC Amendment Petition

5/13/96 • Page 1 of 2

Text of Proposed IC-PUD-IC Zoning Amendment

Comment

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

This briefly lays out the rationale for amending IC and PUD-IC rules.

WHEREAS the zoning protections offered by zoning districts Industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

NOW THEREFORE, we the Undersigned respectfully petition the Honorable, the City Council of the City of Cambridge, to amend the Cambridge Zoning Ordinance as follows:

The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below...

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As stated, any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.

→ Insert footnote E

IC-PUD-IC Amendment Petition

5/13/96 • Page 2 of 2

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading "Ind C" in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

"54. Subject to the provisions of Section 4.29"

This cross-references from the Table back to the new buffer strip Section 4.29 described in A above.

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line "IC". Additionally, in Section 5.34, add a new footnote (e) to read as follows:

"(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35." *Add sentence F*

This cross-reference ensures that the few structures and uses which are allowed in an Open Space District — e.g., a municipal library — are built to comply with dimensional restrictions applicable in the Open Space District.

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

"13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not otherwise permitted in the Open Space District are expressly prohibited from this buffer strip."

This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.

insert footnote E

**IC-PUD-IC
Amendment
Petition**

We the undersigned respectfully petition the honorable, the City Council of the City of Cambridge, to help protect the residential neighborhoods of North Cambridge from inappropriate commercial development by adopting amendments to the Zoning Ordinance in conformance with the petition attached hereto.

Signature	PRINTED NAME	ADDRESS	PHONE
<u>Maura Quinn</u>	<u>Maura Quinn</u>	<u>53 Madison Ave.</u>	<u>547-2281</u>
<u>Russell Richmond</u>	<u>RUSSELL RICHMOND</u>	<u>118 CLIFTON</u>	<u>876-5727</u>
<u>Victor Flesinski</u>	<u>VICTOR FLESINSKI</u>	<u>101 CLIFTON CT.</u>	<u>876-0824</u>
<u>Barbara Crow</u>	<u>Barbara Crow</u>	<u>57 Madison Ave</u>	<u>354-3939</u>
<u>Marsha Hunter</u>	<u>Marsha Hunter</u>	<u>2 Theriault Ct.</u>	<u>491-6314</u>
<u>Peter V. Cignetti III</u>	<u>PETER V. CIGNETTI III</u>	<u>5 THERIAULT CT.</u>	<u>491-6314</u>
<u>Florence Stanley</u>	<u>FLORENCE STANLEY</u>	<u>112 JACKSON ST</u>	
<u>Marion C. Heiderman</u>	<u>Marion C. Heiderman</u>	<u>110 Jackson St</u>	
<u>Paoline Rancicchi</u>	<u>Paoline Rancicchi</u>	<u>116 Jackson St Cambridge</u>	
<u>Grace Gmbir</u>	<u>GRACE GMBIR</u>	<u>116 Jackson St</u>	
<u>Neil Michals</u>	<u>NEIL MICHALS</u>	<u>106 JACKSON ST</u>	<u>547-0316</u>
<u>Cheryl M Webb</u>	<u>Cheryl M Webb</u>	<u>64 Clifton St</u>	<u>491-6004</u>
<u>Martha E Cleveland</u>	<u>Martha E Cleveland</u>	<u>118 Clifton St.</u>	<u>876-8927</u>
<u>Jennifer J. Webb</u>	<u>Jennifer J. Webb</u>	<u>64 Clifton St.</u>	<u>491-3370</u>
<u>Dolores Webb</u>	<u>Dolores Webb</u>	<u>64 Clifton St</u>	<u>491-5333</u>
<u>Kim Webb</u>	<u>KIM Webb</u>	<u>64 Clifton St</u>	<u>491-3370</u>
<u>Chris Twombly</u>	<u>Chris Twombly</u>	<u>60 Clifton St</u>	<u>876-0405</u>
<u>Gary Twombly</u>	<u>Gary Twombly</u>	<u>60 Clifton</u>	<u>876-0405</u>
<u>William A. Nadeau</u>	<u>W. NADEAU</u>	<u>63 Clifton St</u>	<u>876-0611</u>
<u>Flora Gifford</u>	<u>Flora Gifford</u>	<u>56 Margaret St</u>	<u>864-4000</u>
<u>Margaret Gifford</u>	<u>Margaret Gifford</u>	<u>37 Margaret St Cambridge, Me</u>	<u>868-5702</u>
<u>Neera K. Dahl</u>	<u>Neera K Dahl</u>	<u>131 Whittemore Ave</u>	<u>576-7612</u>
<u>Thomas A Dahl</u>	<u>Thomas A Dahl</u>	<u>131 whittemore Ave</u>	<u>576-7612</u>

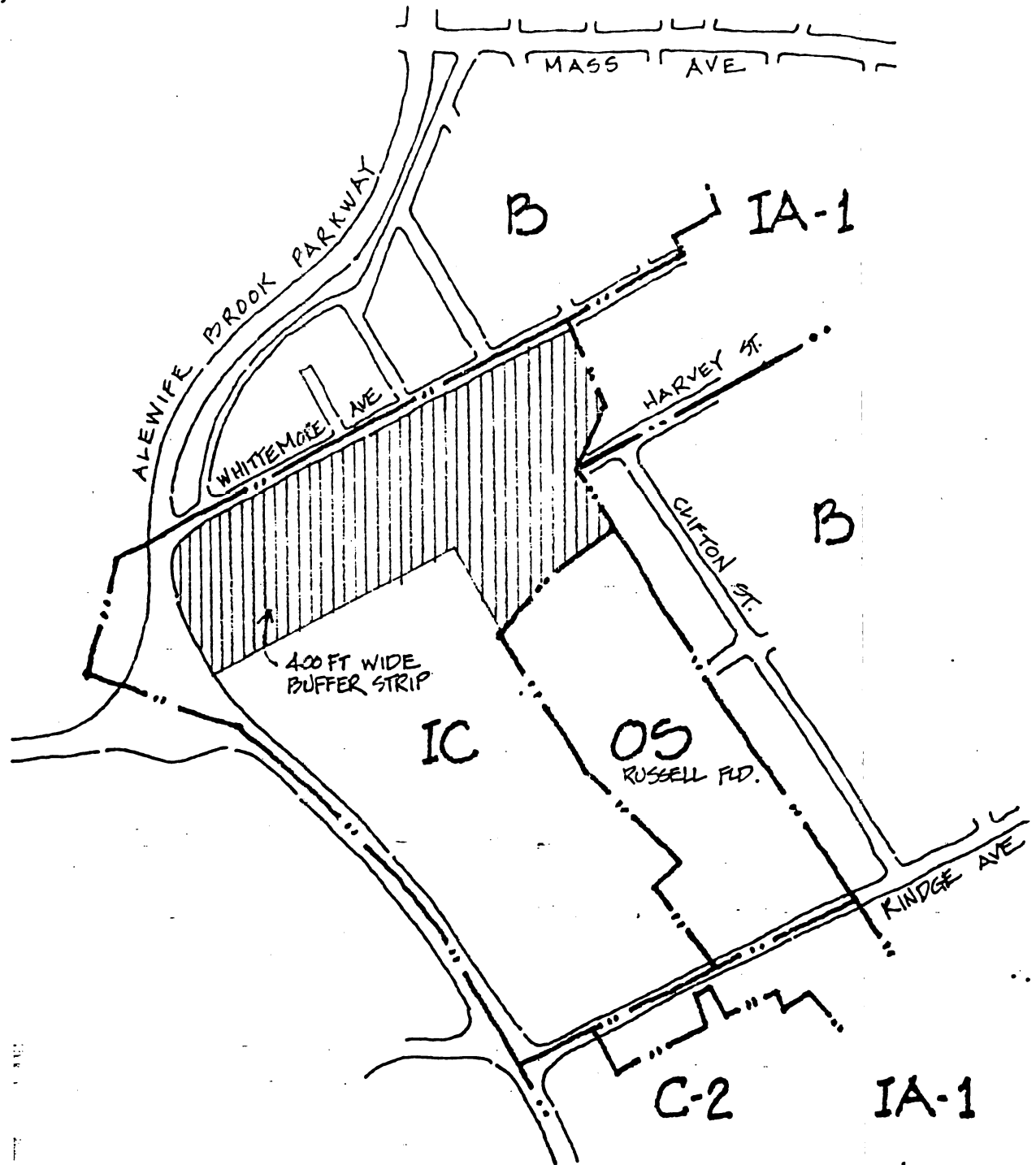
RECEIVED BY CITY CLERK
MAY 5 1994

I, the above signed, am a registered voter in the City of Cambridge.

V - Registered Voter


PROPOSED OPEN SPACE PROTECTION BUFFER

May 1996



Key

- B** residential district
- C2** residential district
- IC** industrial district
- IA-1** industrial district
- OS** open space district

 buffer area
(open space rules)

 zoning district
boundary

In the area marked "IC", the developer can choose to build to the standards of either Industrial C zoning, or "PUD-IC" zoning (where "PUD" means a "Planned Unit Development" reviewed by the Planning Board). Neither IC nor PUD-IC rules do a good job of protecting the neighborhood from tall buildings, power equipment and towers, loading docks, storage and trash containers, and other commercial or industrial elements which could get pushed close to the lot boundary and people's houses.

No current development proposal threatens to place nuisance use or construction again the neighborhood, but the zoning rules should be changed to guarantee that no future proposals take advantage of weakness in the law. The 400 ft wide buffer strip proposed by this petition is about the same width as Russell Field. Within the buffer, the only uses and construction allowed would be limited to those allowed in Open Space districts. Furthermore, the buffer strip could not be used for parking, loading, access or driveways servicing commercial properties located to the front of the lot.



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

SUSAN B. SCHLESINGER,
Assistant City Manager for
Community Development

August 1, 1996

To: Cambridge City Council
Cambridge Planning Board

From: Lester Barber, Community Development Department

RE: Existing Transition Provisions in the Cambridge Zoning Ordinance

The Quinlan/Bromfield rezoning petition proposes to require a buffer between development in the Industry C zoning district, and the IC-Planned Unit Development district that is coterminous with it, and the adjacent residential neighborhood. That buffer would consist of the imposition of the use and dimensional requirements of the Open Space zoning district on that portion of the IC district and its PUD that lies within 400 feet of a residential zoning district line. With an FAR of 0.25, height of 35 feet, and a very limited range of permitted uses (municipal buildings, parks, religious structures, public meeting halls, and commercial recreation facilities, among others) this transition area would be very restrictive. The IC and PUD districts currently permit a wide range of office, R&D, and industrial uses with permitted building heights between 45 and 85 feet and building densities between 1.0 and 2.0 FAR.

There is no comparable transition requirement currently in the Ordinance; nor is there a uniform approach in the Ordinance to providing buffers between districts of varying intensity or use. Rather, as the following examples illustrate, there are a variety of approaches taken in the Ordinance and on the Zoning Map to ease the transition between differently developed areas, all generally more modest in scope than the proposed Quinlan/Bromfield buffer would be.

Height Transitions

This is a fairly common technique employed in the Ordinance.

1. **Office 2 District:** a 35 foot height limit is imposed (reduced from the 85 feet allowed in the district) for any development within **125 feet** of a residential district line.
2. **Industry B-2 District:** a 35 foot height limit is imposed (reduced from the 85 feet allowed in the district) for any development within **100 feet** of a residential structure or residential district line.

3. **Business C District:** a 35 foot height limit is imposed (reduced from the 55 feet allowed in the district) within **50 feet** of a residential district line.

4. **Business B-1/Business B-2 Districts:** special sky exposure planes limit the height of buildings (reduced from the 90 feet allowed) as they approach Massachusetts Avenue, Green Street, or a residential zone line. The same technique is also used in the Harvard, Central and Parkway Overlay Districts and Special District 1 in East Cambridge to limit the height of buildings facing public streets or abutting residential districts. In the **BB-1** district buildings are limited to 40 feet in height within **45 feet** of Green Street.

Yard (Setback) Transitions

The zoning ordinance has a general provision, Section 5.50, that mandates limited transitions between residential and non residential districts. Elsewhere in the Ordinance, special setback transitions may be required. In a number of these special yard provisions, the character of the setback is specifically detailed, e.g. requiring landscaping or other treatment to provide an extra degree of protection. Generally in the Ordinance, a building may be required to be setback from a lot line a specific distance, but the use and character of that resulting yard is only minimally regulated.

1. **Section 5.50:** this general section requires that a building in a non residential zoning district have the front yard setback required in the adjacent residential zone for a distance of **50 feet** from the residential district line. A minimum side yard of 10 feet is required where a building in a non residential district abuts a lot, some or all of which is located in a residential district. It is frequently the case that non residential zones have no front or side yard requirements, or requirements that may be less than those established in an adjacent residential district.

2. **Business B-1/Business B-2 Districts:** a **20 foot** side and rear yard is required where a lot abuts a residential district (no yard is otherwise imposed except as may be required in the general Section 5.50). That yard must be landscaped in a prescribed way and may not contain any structure located either above or below ground.

3. **Parkway Overlay District:** A **25 foot**, landscaped front yard is required (where 0 to 10 feet might typically be required) along all parkways in Alewife.

4. **Special District 1** (a retail/industrial district in East Cambridge): A **20 foot** , landscaped yard is required from any Residence C-1 zoning district line.

5. **Residence C-2A District:** The front and side yard requirements of the adjacent residential district are required for a building located within **125 feet** of the zoning district line.

Use Transitions

This technique is not employed frequently in the Ordinance within a zoning district although it is not uncommon to rezoning an area to a specific district designation that by virtue of its

dimensional and use characteristics will provide a transition from an area of one character to an area with a different character (see below).

1. **The Business B-1 District:** That portion of a lot fronting on Green Street, for a depth of **45 feet**, is limited to residential and open space uses although the district itself permits a wide range of retail and office uses.

Zoning District Employed as a Transition

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1. **Kirkland Place Overlay District:** For a distance of **130 feet**, the Overlay district imposes the dimensional requirements of the Residence A-2 district (35' height, 0.5 FAR for any construction above grade, etc.) on a Residence C-3 district (no height limit, 3.0 FAR). However, all uses permitted in the Residence C-3 district, including institutional uses, continue to be permitted in the Overlay District.



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

SUSAN B. SCHLESINGER,
Assistant City Manager for
Community Development

August 1, 1996

To: Cambridge City Council
Cambridge Planning Board

From: Lester Barber, Community Development Department

RE: Existing Transition Provisions in the Cambridge Zoning Ordinance

The Quinlan/Bromfield rezoning petition proposes to require a buffer between development in the Industry C zoning district, and the IC-Planned Unit Development district that is coterminous with it, and the adjacent residential neighborhood. That buffer would consist of the imposition of the use and dimensional requirements of the Open Space zoning district on that portion of the IC district and its PUD that lies within 400 feet of a residential zoning district line. With an FAR of 0.25, height of 35 feet, and a very limited range of permitted uses (municipal buildings, parks, religious structures, public meeting halls, and commercial recreation facilities, among others) this transition area would be very restrictive. The IC and PUD districts currently permit a wide range of office, R&D, and industrial uses with permitted building heights between 45 and 85 feet and building densities between 1.0 and 2.0 FAR.

There is no comparable transition requirement currently in the Ordinance; nor is there a uniform approach in the Ordinance to providing buffers between districts of varying intensity or use. Rather, as the following examples illustrate, there are a variety of approaches taken in the Ordinance and on the Zoning Map to ease the transition between differently developed areas, all generally more modest in scope than the proposed Quinlan/Bromfield buffer would be.

Height Transitions

This is a fairly common technique employed in the Ordinance.

1. **Office 2 District:** a 35 foot height limit is imposed (reduced from the 85 feet allowed in the district) for any development within **125 feet** of a residential district line.
2. **Industry B-2 District:** a 35 foot height limit is imposed (reduced from the 85 feet allowed in the district) for any development within **100 feet** of a residential structure or residential district line.

City Hall Annex
57 Inman Street
Cambridge, MA 02139
617 349-4600
Fax: 617 349-4669

3. **Business C District:** a 35 foot height limit is imposed (reduced from the 55 feet allowed in the district) within **50 feet** of a residential district line.

4. **Business B-1/Business B-2 Districts:** special sky exposure planes limit the height of buildings (reduced from the 90 feet allowed) as they approach Massachusetts Avenue, Green Street, or a residential zone line. The same technique is also used in the Harvard, Central and Parkway Overlay Districts and Special District 1 in East Cambridge to limit the height of buildings facing public streets or abutting residential districts. In the **BB-1 district** buildings are limited to 40 feet in height within **45 feet** of Green Street.

Yard (Setback) Transitions

The zoning ordinance has a general provision, Section 5.50, that mandates limited transitions between residential and non residential districts. Elsewhere in the Ordinance, special setback transitions may be required. In a number of these special yard provisions, the character of the setback is specifically detailed, e.g. requiring landscaping or other treatment to provide an extra degree of protection. Generally in the Ordinance, a building may be required to be setback from a lot line a specific distance, but the use and character of that resulting yard is only minimally regulated.

1. **Section 5.50:** this general section requires that a building in a non residential zoning district have the front yard setback required in the adjacent residential zone for a distance of **50 feet** from the residential district line. A minimum side yard of 10 feet is required where a building in a non residential district abuts a lot, some or all of which is located in a residential district. It is frequently the case that non residential zones have no front or side yard requirements, or requirements that may be less than those established in an adjacent residential district.

2. **Business B-1/Business B-2 Districts:** a **20 foot** side and rear yard is required where a lot abuts a residential district (no yard is otherwise imposed except as may be required in the general Section 5.50). That yard must be landscaped in a prescribed way and may not contain any structure located either above or below ground.

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CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

SUSAN B. SCHLESINGER,
Assistant City Manager for
Community Development

August 1, 1996

To: Cambridge City Council
Cambridge Planning Board

From: Lester Barber, Community Development Department

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CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

SUSAN B. SCHLESINGER,
Assistant City Manager for
Community Development

August 1, 1996

To: Cambridge City Council
Cambridge Planning Board

From: Lester Barber, Community Development Department

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OFFICE OF THE CITY CLERK

CITY OF CAMBRIDGE

(617) 349-4260

FAX (617) 349-4307

tty/TDD (617) 492-0235

D. MARGARET DRURY
CITY CLERK

DONNA P. LOPEZ
DEPUTY CITY CLERK

August 8, 1996

TO: SALLY POWERS
ASSESSORS DEPARTMENT
DMD

FROM: D. MARGARET DRURY
CITY CLERK

SUBJECT: WRITTEN PROTEST TO ZONING PETITION

Attached you will find two copies of written protest filed regarding the petition of Maureen Quinlan, Russell Bromfield, et al.

Please affix the block and lot identification for the land owned by the protester within the area proposed to be rezoned, please forward one copy with the block and lot information included to the Engineering Department so that they may calculate the percentage of the area proposed to be rezoned owned by the protester.

Thank you for your cooperation.

Rec'd 8/1/96 City Clerk's office
DWD

David L. Wightman
Vice President, Administration
Grace Construction Products

GRACE

W.R. Grace & Co.-Conn.
62 Whittemore Avenue
Cambridge, MA 02140-1692

(617) 498-4983

*DAVE WHITEMAN
876-1400*

July 31, 1996

Margaret Drury, City Clerk
City of Cambridge
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

RE: Protest of Petition to Amend the Zoning Ordinance of the City of
Cambridge to Add a New Section 4.29 Creating a 400 Foot
Buffer Zone in the IC District

Dear Ms. Drury:

On September 1, 1987, the Planning Board of the City of Cambridge issued a PUD Special Permit for the development in Zone 1C of The Alewife Center Project which allows the construction of 1,050,000 square feet of office, hotel and retail space on land owned or controlled by W. R. Grace & Co.-Conn. and Alewife Land Corporation (collectively "Grace").

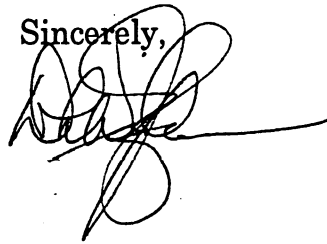
We have been informed that on Thursday, August 1, 1996 at 5:30 p.m. in the Sullivan Chamber, City Hall, Cambridge, Massachusetts a petition submitted by Maureen Quinlan, Russell A. Bromfield, et al will be considered by the Committee on Ordinances comprised of the City Council which would amend the zoning ordinance of the City of Cambridge to add a new section 4.29 to the zoning bylaws and to make related changes. This zoning change, if adopted, would establish a 400 foot buffer zone in Zone 1C which would essentially curtail further development of the Grace-owned property and



July 31, 1996

render current structures non-conforming. Grace's property is the only land affected by the proposed zoning amendment. Accordingly, and in accordance with G. L. Chapter 40A, Section 5, WE HEREBY PROTEST this proposed zoning change which is targeted to materially and adversely affect solely the Grace property.

Sincerely,

A handwritten signature in black ink, appearing to be "Grace", written over the word "Sincerely,".

DLW/mlr/DRURY

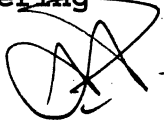
cc: Francis H. Duehay, Chairman, Committee on Ordinances
Cambridge City Council
Cambridge Planning Board
Cambridge City Manager

62 Whittemore Ave.

RECEIVED BY
OFFICE OF CITY CLERK
96 AUG 15 AM 11.22
CAMBRIDGE MA.

CITY OF CAMBRIDGE
ASSESSING DEPARTMENT

TO: D. Margaret Drury, City Clerk
Martha Bavaro, Engineering

FROM: Sally Powers 
Director of Assessing

SUBJECT: Written Protest To Zoning Petition

DATE: August 14, 1996

Attached please find the completed letter(s) of protest to
the above named petition.

attachment

SP:tm

Rev'd 8/1/96 City Clerk's office
DMD

David L. Wightman
Vice President, Administration
Grace Construction Products

GRACE

W.R. Grace & Co.-Conn.
62 Whittemore Avenue
Cambridge, MA 02140-1692

(617) 498-4983

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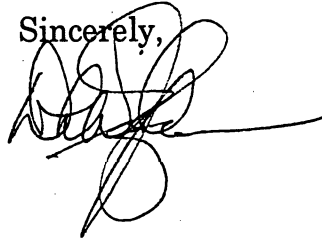


CITY OF CARBRIDGE
ASSESSING DEPT.
Aug 8 3 31 PM '96

July 31, 1996

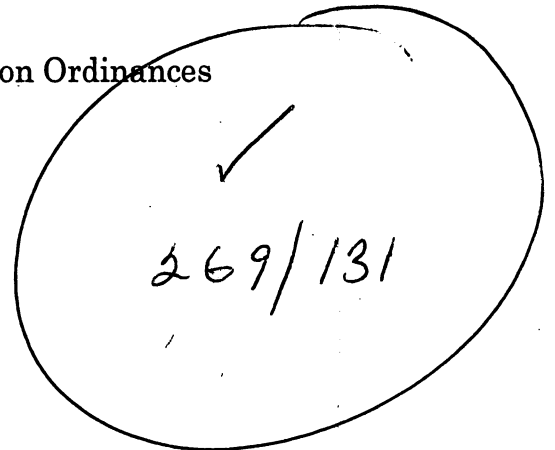
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Sincerely,

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DLW/mlr/DRURY

cc: Francis H. Duehay, Chairman, Committee on Ordinances
Cambridge City Council
Cambridge Planning Board
Cambridge City Manager

A large hand-drawn oval containing a checkmark and the handwritten number '269/131'.

Aug 8 3 31 PM '95

CITY OF OAKLAND
ASSESSING DEPT.

Rev'd 8/1/96 City Clerk's Office
DMD

David L. Wightman
Vice President, Administration
Grace Construction Products

5

GRACE

W.R. Grace & Co.-Conn.
62 Whittemore Avenue
Cambridge, MA 02140-1692

(617) 498-4983

July 31, 1996

Margaret Drury, City Clerk
City of Cambridge
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

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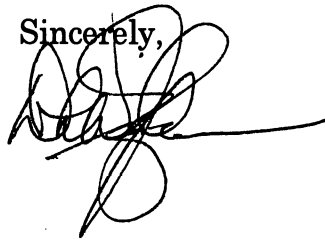
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5

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DLW/mlr/DRURY

cc: Francis H. Duehay, Chairman, Committee on Ordinances
Cambridge City Council
Cambridge Planning Board
Cambridge City Manager

Consent Communication #5

Communication was received from
W.R. Grace & Company transmitting written
protest of the Quinlan-Bromfield
Petition.

In City Council September 9, 1996

*Referred to the
petition*

9

RECEIVED BY
OFFICE OF CITY CLERK
96 OCT 25 AM 9:38
CAMBRIDGE, MA.

TO: City Council Members
City Clerk's Office
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Report in Support of the 400 Foot Buffer Zone for the W. R. Grace Site in
North Cambridge.

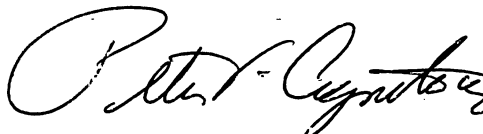
DATE: October 24, 1996.

Dear City Council Members:

Attached for your review and further City Council action at the City Council meeting for October 28, 1996 is the "Report in Support of the 400 Foot Buffer Zone for the W.R. Grace Site in North Cambridge" dated October 1, 1996, prepared by the Alewife Study Group, and submitted to the Planning Board on that same date. The rather substantial appendix to this report was submitted to the City Council at the City Council meeting held on October 21, 1996.

If I can be of further assistance to you in this regard, please do not hesitate to contact me.

Sincerely yours,



Peter V. Cignetti III
5 Theriault Court
Cambridge, MA 02140
491-6314

Consent Communication #9

Communication was received from Peter V. Cignetti, III, transmitting a report in Support of the 400 Foot Buffer Zone for the W.R. Grace Site in North Cambridge.

In City Council October 28, 1996

Referred to the
Petition

14.

RECEIVED BY
CITY CLERK
95 MAY -9 AM 10:49

131 Whittemore Ave.
Cambridge, MA 02140
May 6, 1996

City Council Members
City Clerk's Office
795 Massachusetts Ave.
Cambridge, Ma 02139

Dear City Council Members:

I unconditionally support the Bromfield/Volpe petition to amend the PUD-IC zoning in North Cambridge to create a 400 feet wide buffer strip to protect the surrounding residential area. I urge each of you to pass this zoning modification to protect the character of this small neighborhood.

My husband and I moved to this area 2 years ago because we were immediately attracted to the open space with access to the bike path and playing fields that surrounds the Alewife train station. In the past two years we have been delighted to discover rabbits, Canadian geese, and the occasional skunk in this area. The open wetland space provides a safe environment for them. The proposed buffer strip would help safeguard these creatures.

In addition, this space currently provides valuable drainage area during heavy rainfall. Currently our house has two sump pumps which are frequently in use throughout the year. Additional paving across the street would lead to increased water flow on our property and substantially increased flood risk. The buffer strip would help to maintain the current condition.

In the two years we have lived here we have come to love the small, peaceful character of our neighborhood. Please help us preserve this by passing the Bromfield/Volpe amendment to the PUD-IC zoning in this area.

Sincerely,

Neera K. Dahl

Neera K. Dahl

RECEIVED BY
CITY CLERK

20 JUN 16 AM 11:37

Wendy Baring-Gould
525 Franklin Street
Cambridge, MA 02139

May 31, 1996

Francis Duehay
26 Lowell Street
Cambridge, MA 02138

Dear Frank,

I am writing in support of the Lohnes Petition to rezone a portion of Green Street from Business B-1 to Residence C-1. The logic of this change seems self evident as the zoning it proposes would:

continue the natural division between residential and commercial uses that exist in the surrounding area

create a consistent line to separate commercial and residential use

protect the neighborhood from the impact of spill over developments such as 1000 Mass Ave and Bay Square which, because of their scale and use, have a dramatic and negative impact on the neighborhood quality of Green and adjacent streets.

As a resident of Franklin Street almost at the corner of Bay, I can attest to the fact that the impact of these two developments has been significant.

There is considerable additional traffic and parking congestion created by both the residents and visitors to Bay Square, as well as the overwhelming number of commuter students to Cambridge College who clog the streets and consume all available parking in the evening. The entrance and exit all traffic to both buildings is on Bay Street, not Mass Ave as originally promised, and as a result, Franklin and Green Streets are access streets for much of the traffic both these buildings generate.

The noise and fumes from the ventilation systems, as well as the noise from the Bay Square party deck and swimming pool are unpleasant and impossible to change because suggestions and complaints are heard by a corporation, not by neighbors.

Finally, and perhaps the most importantly; residents are continually confronted with the decidedly impersonal back sides of these dense, large scale developments which give us parking garages and trash pick up points, faux balconies, walled courtyards and closed glass doors as neighbors. This has definitely altered the safety and livability of the neighborhood.

Like others in this area, I pay fairly hefty property taxes (\$6160 annually for two very small houses) and at these rates, it seems only just that the residents of this area should be guaranteed a residential, not a quasi commercial neighborhood. Enough damage has been done by these two existing developments. Changing the zoning on Green Street would protect this neighborhood from more negative impact, and as a result, I hope you will support the petition.

Thank you for your consideration.

Sincerely,

Wendy

P.S - I've been out of the country working for the last 1 1/2 years - now back - look forward to seeing you!

Consent Communication #19

Communication was received from
Wendy Baring-Gould, transmitting
her support for the Lohnes
Petition to rezone a portion
of Green Street from Business
B-1 to Residence C-1.

In City Council June 24, 1996

Referred to the Petition

Patrick Mehr
62 Kinnaird Street
Cambridge MA 02139

Phone: 617-876-3311

Fax: 617-876-3023

June 3rd, 1996

Francis Duehay
26 Lowell Street
Cambridge MA 02138

RECEIVED BY
OFFICE OF CITY CLERK
JUN 14 AM 11:37
CITY OF CAMBRIDGE, MA.

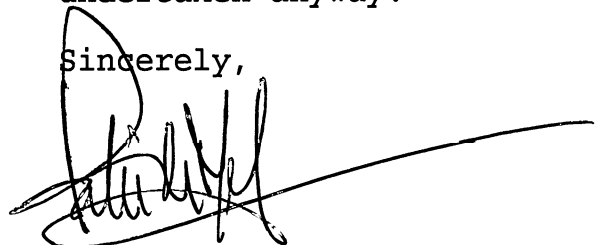
Dear Francis Duehay:

I am writing to you as a member of the Cambridge City Council to express my strong support for the proposed re-zoning from Business B-1 to Residence C-1 on Green Street from Hancock Street to 639 Green Street (excluding 1000 Mass Ave and Bay Square).

I believe it is important for this Cambridge neighborhood to retain its residential detached character and quiet. Under the current B-1 zoning, the proposed development at 1008 Mass Ave would spill over onto Green Street in a manner that would substantially alter this neighborhood in a very detrimental way.

I also urge the City to consider developing public underground auto parking facilities in conjunction with the underground garages the developers of 1008 Mass Ave plan to construct for their future residents. As you may know, well planned underground garages under the Champs Elysées in Paris have made that major artery much more attractive to residents and visitors of the French capital. Similarly, I believe "our own Champs Elysées", Mass Ave, should become more user friendly and planned for the long term with additions of needed parking facilities when underground construction by a private developer will be undertaken anyway.

Sincerely,



Patrick Mehr

Consent Communication #22

Communication was received from Patrick Mehr, transmitting her support for the proposed rezoning from Business B-1 to Residence C-1 on Green Street.

In City Council June 24, 1996

Referred to the Petition

RECEIVED BY
OFFICE OF CITY CLERK
96 JUN 14 PM 12:48
CAMBRIDGE MA.

324 Franklin Street
Cambridge MA 02139
13 June 1996

Councillor Francis Duehay
Cambridge City Hall

Dear Councillor Duehay:

I am writing at this time to express my concern with the proposed condominium development at 1000-1008 Massachusetts Avenue. Please do not feel obliged to respond to this letter.

While I have been casually interested in the project since first hearing about it, only recently have I learned details of the scale and likely adverse impact of the development. Apparently, the principals wish to project their building from its Mass. Ave. frontage all the way to the back side of the block to accomodate an inappropriately large number of units.

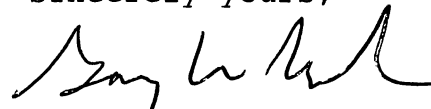
The proposed high density structure is entirely unsuited to the surrounding area by virtue of the number of condos planned. More importantly, the Green Street neighborhood will be irrevocably changed for the worse from its residential character by a block-style highrise.

Please consider my strong objection to this heavy density development and reject any variances or special allowances requested by the developers needed for their proposal. The council should bear in mind the hit-and-run aspect of the principals who have no real long term interest in the project following completion.

Discussions with neighbors about the proposal usually include mention of the 931 Mass.Ave. and Bay Square condos as indicators that the "camel's nose is already under the tent". It should easily be recalled that both these projects got into serious financial trouble for years because, quite simply, the units are overpriced. We do not need yet another bunch of quick profiteers gambling with the shape of this neighborhood.

I urge you to take whatever action necessary to enforce present zoning at this location and bring about a downscaled proposal for the site.

Sincerely yours,



Gary W. Mello

Consent Communication #24

Communication was received from Gary
W. Mello, transmitting his concern
with the proposed condominium
development at 1000-1008 Massachusetts
Avenue.

In City Council June 24, 1996

Referred to the Petition

RECEIVED BY
OFFICE OF CITY CLERK
96 JUN 20 PM 4: 50
CAMBRIDGE, MA.

Date: June 12, 1996

To: Cambridge City Council members
Cambridge Planning Board members

From: Dena Feldstein Brody and Edward Brody
661 Green Street
Cambridge, MA 02139

Re: Support of down-zoning on Green Street

Please accept this letter in support of the initiative to down-zone the areas along Green Street between Putnam Avenue and Hancock Street that are currently B-1 to C-1.

The Green Street neighborhood is small-scale and residential and should remain so. Putting up high density construction in the current Green Street B-1 zone will dwarf the existing homes, and will turn the already tight and difficult (and in the winter, dangerous) parking situation into a nightmare.

We have already personally lived through the construction of 1010/1030 Massachusetts Avenue (the building with Barsamian's in it) behind our house, and now live in the shadow of an office building that looms behind our house, and has tenants whose cars take up space on our street.

Thank you for your attention to this matter, and we encourage your support of the Green Street down-zoning petition.

Dena Feldstein Brody

Edward Brody

Consent Communication #36

Communication was received from Dena Feldstein Brody and Edward Brody, transmitting their support of the initiative to down-zone the area along Green Street between Putnam Avenue and Hancock Street.

In City Council June 24, 1996

Referred to the Petition

109 Clay Street
Cambridge, MA 02140
June 10, 1996

To Whom It May Concern:

The North Cambridge Neighborhood Survey was developed, designed, and distributed by the Alewife Study Group to respond to community concerns over the proposed development of the W.R. Grace site. The survey questions evolved through numerous survey committee meetings during the fall and winter of 1995. Our aim was to make the wording as neutral as possible. Distribution of the survey was conducted in coordination with the mailing of the February/March 1996 issue of the *North Cambridge News*. The survey was mailed to 2750 residents living within a defined area. (See packet for samples of survey and North Cambridge street map). Each survey was stamped with a red control number to discourage unauthorized reproduction, and stapled to an inside page of the *News*.

During March and April, 150 residents mailed completed surveys to a Cambridge post office box. In May, the raw data was tabulated and analyzed by members of Cambridge Citizens for Liveable Neighborhoods (CCLN). Participants' written comments were also transcribed by CCLN. The CCLN data tabulation, summary analysis, and transcribed comments are also included in the enclosed packet. Survey results have been reported in aggregate form to ensure the confidentiality of those who participated in the survey.

Below are some highlights of the aggregate data:

Who are the respondents?

- Almost one-half have lived in North Cambridge more than 10 years.
- Just less than two-thirds have never attended a meeting on the proposed development.
- Slightly over one-third are tenants.

What are their concerns?

- 85% were concerned about traffic and hazardous waste.
- 79% were concerned about the size and type of stores.
- 75% were concerned about the location of stores.

What kind of development do they desire?

- 77% would like the land to continue to serve as a flood plain.
- 76% would like landscaped open space.
- 72% would like additional or enhanced athletic uses.
- Neighborhood opinion was evenly divided on the subject of limiting the development to a small, neighborhood market.

What kind of development do they oppose?

- 71% were opposed to the superstore/retail proposal.
- 78% were opposed to an office park.

We look forward to an opportunity to discuss the survey results with you. We sincerely hope you will consider these results when addressing the current and future needs of the North Cambridge community.

For the Alewife Study Group,

A handwritten signature in black ink that reads "Toni L. Snow". The signature is written in a cursive style with a large initial 'T' and 'S'.

Toni L. Snow

28 Magoun Street
Cambridge, MA 02140
June 17, 1996

Ms. Margaret Drury
City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Ms. Drury:

In response to neighborhood concern over the proposed development of the Grace site in North Cambridge, the Alewife Study Group developed, designed, and distributed a survey to 2,750 neighbors. Cambridge Citizens for a Livable Neighborhood prepared the analysis.

We would like to *briefly* present highlights of the results to the City Council on Monday, June 24. To that end, would you submit the attached materials (a cover letter, the analysis, the aggregate data, written comments, a sample survey, and a distribution map), for the Monday, June 24, Consent Communication Agenda?

Thank you.

For The Alewife Study Group,



Lisa Birk
Co-chair

RECEIVED BY
OFFICE OF CITY CLERK

96 JUN 20 PM 12:24

59

Consent Communication #33

Communication was received from Lisa Birk, Co-Chair, The Alewife Study Group, transmitting her concern over the proposed development of the Grace site in North Cambridge.

In City Council June 24, 1996

*Referred to the zoning
petition*

RECEIVED BY
CITY CLERK
JUN 20 PM 2:00

364 Rindge Avenue, 17L
Cambridge, MA 02140
June 19, 1996

Ms. Margaret Drury
City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Ms. Drury:

I would like to bring the following observations to the attention of the Cambridge City Council as a consent communication for the June 24, meeting of the City Council. The purpose of this communication is to more clearly illustrate the natural value of the Grace site area so that any development that proceeds will benefit by a more comprehensive awareness of ecological issues typically ignored at locations of this sort. The observations catalog a brief period of sightings of wildlife at or abutting the W.R. Grace site in North Cambridge.

Barred Owls - Probably related to the one at Fresh Pond. They rarely leave established territories. Seeing one at Jerry's Pond probably indicates that they need area to expand. They are normally deep woods and riverine species. They nest in hollow trees or the platform nests of hawks. There are 3 stick nests on the unlighted side of Jerry's Pond. Hopefully, this could be kept that way. They are probably old Osprey nests as Alex Strycky, of the Cambridge Conservation Commission, indicated that they had been seen previously around Danehy Park.

Also seen were Great Horned Owls, Skunks, Mallard Ducks, Great Blue Herons, Muskrats, Turtles, Grey Squirrels, Racoons, Garter Snakes, Ground Hogs, Sharpe-shinned Hawk, Red-tailed Hawks, Cardinals, Chickadees, House Sparrows, Grackles, Crows, Mourning Doves, Pigeons, Gulls, Starlings, Green Herons, Black-crowned Night Herons, Brown Bats, Kingfishers, Killdeers, Chimney Swifts, White-breasted Nuthatch (by a resident in the neighborhood), Great Flycatcher, Rough-winged Swallow, Kingbird, Marsh Wren, Woodcocks, White-throated Sparrows, Song Sparrows, Grasshopper or Savannah Sparrow, Vesper Sparrow, Robins, Hermit and other Thrushes, Goldfinches, Purple Finches, Yellow Warblers, Yellow rumped Myrtle Warbler, Redstart, Wilson's Warbler, Black and White Warbler, Northern Oriole, Northern Parula Warbler, Yellowthroats, Louisiana Waterthrush, Downey Woodpecker, Yellow-bellied Sapsucker, Solitary Sandpiper, Yellow-shafted Flicker, Bumblebees, Yellowjackets, Ants, Earthworms, Ticks, Tent Catapillars, various Butterflies, Brown Thrasher, Rufus-sided Towhee,

Consent Communication #32

Communication was received from Ralph Yoder, Member, Grace Site Advisory Committee, transmitting a letter to more clearly illustrate the natural value of the Grace site area so that any development that proceeds will benefit by a more comprehensive awareness of ecological issues typically ignored at locations of this sort.

In City Council June 24, 1996

*Referred to the Young
petition.*

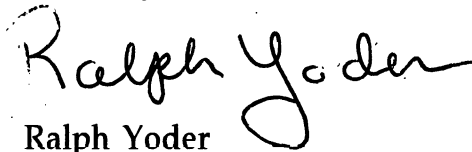
Pheasants, Red-winged Blackbirds, Brown Headed Cowbirds, Scarlet Tanager, several Feral Cats, Rabbits, Wood Ducks, Double-crested Cormorants, Magnolia Warblers, Chat, Hooded Warblers, Tree Swallows, Common Nighthawks, Chestnut-sided Warblers and a Black-throated Blue Warbler. Also sited were Cedar Waxwings, Bass, Carp, Catfish, Canada Warblers, Foxsparrows, and [small Flycatchers (1995).]

All of these species I have seen on or near the Grace Site, the MDC Reservation, the Arlington Cattail Marsh, Yates Pond, Little River/ Alewife Brook, Jerry's, Parkway and Infield Ponds. I have seen frog eggs (green and dead eggs) but no frogs until I heard a Bullfrog at Yates Pond on June 3. I have still seen no toads or chipmunks. Others have mentioned seeing opossums, and I'm certain there are mice, rats and other small birds and animals not recounted here.

Included in my personal logs are dates of first sightings and additional interesting phenomena surrounding the sightings. Interestingly, there are undoubtedly at least ten sparrow species within this small area.

Thank you for your kind consideration.

Sincerely,



Ralph Yoder
Member, Grace Site Advisory Committee

cc: Massachusetts Audubon Society
Sierra Club
Alex Stryskyt

Survey: Jan-May, 1996

28 Magoun Street
Cambridge, MA 02140
June 17, 1996

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City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

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Thank you.

For The Alewife Study Group,



Lisa Birk
Co-chair

RECEIVED BY
OFFICE OF CITY CLERK

96 JUN 20 PM 12:24



We look forward to an opportunity to discuss the survey results with you. We sincerely hope you will consider these results when addressing the current and future needs of the North Cambridge community.

For the Alewife Study Group,

A handwritten signature in black ink that reads "Toni L. Snow". The signature is written in a cursive, flowing style.

Toni L. Snow

109 Clay Street
Cambridge, MA 02140
June 10, 1996

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- 78% were opposed to an office park.



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

MAIN OFFICE (617) 349-4343

RESIDENTIAL VALUATION (617) 349-4110

ASSESSING DEPARTMENT

From: Kay Wheelock (VAX:WHEELOCK)
To: DRURY, MARGARET
Date: August 9, 1996, (Friday) 4:42pm
Subject: PROTEST PETITION

8-9-96

Margaret,

Sally asked me to contact you. The petition you sent us yesterday afternoon does not specify the location of the properties involved; therefore, we are unable to proceed. We expected to receive the locations after our meeting on Monday. There is a petition from you dated May 1, 1996 which looks to be the same protest; at that time, we listed all the property owned by W.R. Grace, and if there is a time constraint, we will do that for this one. However, as discussed at the meeting, we do not want to guess at the information required, and would appreciate your supplying us with the locations of the properties to ensure that the correct data is sent to Engineering. Also, in the past (as shown on your May 1, 1996 letter), the particular petition is named on your letter under "Subject;" this would be most helpful in the future. Please advise as to the next step. Thanks,

Kay

~~HOVEY~~ URBELIS, FIELDSTEEL & BAILIN

155 FEDERAL STREET

BOSTON, MASSACHUSETTS 02110-1727

TELEPHONE 617-338-2200

TELECOPIER 617-338-0122

PLYMOUTH OFFICE
170 WATER STREET
PLYMOUTH, MA 02380-3854
TELEPHONE
508-747-8250
TELECOPIER
508-748-6075

ANDOVER OFFICE
26 CHESTNUT STREET
ANDOVER, MA 01810-3600
TELEPHONE
508-475-4552

OF COUNSEL
WILLIAM V. HOVEY
GEORGE M. DALLAS

August 9, 1996

PLEASE SEND
CORRESPONDENCE TO
BOSTON ADDRESS

Robert W. Healy
City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Bromfield/Volpe Petition

Dear Mr. Healy:

As you know, Susan Schlesinger, Assistant City Manager for Community Development, requested, on behalf of the Planning Board, a legal review of the Bromfield/Volpe Petition ("the Petition") which would amend the IC and PUD-IC rules to create a 400 foot wide "open space" buffer strip and preclude use of the strip, inter alia, for access to the commercial development beyond the 400 foot buffer.

ISSUES PRESENTED

We have been asked to examine the Petition in relation to two issues: (1) Is the Petition a valid exercise of zoning power or does it constitute reverse spot zoning? (2) If the Petition is a valid exercise of zoning power, would it effect a taking?¹

FACTUAL BACKGROUND

History on Alewife Center Project

We understand that a Planned Unit Development ("PUD") special permit was issued to Reynolds, Vickery, Messina and Griefen ("RVMG") and W.R. Grace & Co. ("Grace") in September of 1987 for the development of the Alewife Center Office Campus Project ("the

¹ We assume for purposes of this memorandum that Alewife Center PUD special permit is entitled to zoning freeze protection but, as the construction schedule requires modification, the project may nevertheless become subject to the proposed Petition.

Project”), comprised basically of six office buildings with some retail, a hotel and common areas. The building at One Alewife Center was commenced in the Fall of 1987 and was completed in 1988. The PUD special permit recognized that the Project would be developed over an 8 to 10 year period. The owner had obtained a height variance from the Zoning Board of Appeals in November of 1986 and a flood plain special permit from the Planning Board in November of 1987 for One Alewife Center. According to the owner, due to problems with the State (including curb cuts and unsettled taking plans), there were delays in completing any other parts of the Project. In light of these problems, a minor amendment modifying the construction schedule was granted in August of 1989. The real estate is owned by a wholly owned subsidiary of Grace. Spaulding & Slye apparently purchased RVMG’s interest in the Project. Grace recently sought again to modify the schedule on April 10, 1996, as a minor amendment. We understand that the Planning Board deemed such amendments at this time to require the filing of a major amendment and a full public hearing. Grace has not as yet applied for same.

After publications by the City of Cambridge Community Development Department of a report identifying areas and neighborhoods of the City poorly served by full service supermarkets, Grace proposed a new project at Alewife Center including a supermarket and other retail establishments. The neighborhood and others objected to the traffic and other impacts of such a project.

We understand from Les Barber that the Petition impacts only the Grace Alewife site and a small house lot owned by Catherine Kennedy.² We also understand that, although the site has access off Alewife Parkway, the lack of access from Whittamore Avenue might negatively impact development on the site. We also understand that as of the Planning Board’s action in 1989, that Board did not require any buffer area other than the setback for the site. Although the site has recently been the subject of extensive analysis from an environmental and traffic perspective by the Grace Committee, we have been advised that the site has not been the subject of any zoning study or zoning analysis since at least 1989, that there were no zoning studies undertaken to

² Given the dimensions of the lot, the four hundred foot open space buffer zone would consume the Kennedy lot if the owner sought to convert the residential use to commercial use. Obviously, residential use would remain grandfathered for zoning purposes. We also understand that technically MDC land lies within the area affected by the proposed zoning amendment, but it is unlikely that the MDC will seek to use its property for other than public purposes.

justify the need for a 400 foot open space buffer at the time on this site, and that the City has no other open space buffer requirements which compare to the magnitude of that proposed for this site. (We do note that there was an Alewife study process which considered a wide range of planning and zoning issues for all commercial areas in Alewife but did not include the Grace site.)

The Petition

The Petition sets forth the following as justifications for the zoning amendment to IC-PUD-IC rules:

WHEREAS the neighborhood of North Cambridge could be impacted negatively by inappropriate over-development in the Alewife area; and

WHEREAS the zoning protections offered by zoning districts industry C, and also the overlying PUD-IC, do not adequately protect nearby streets and homes from undue impact; and

WHEREAS current development proposals for the PUD-IC development abutting Alewife Brook Parkway are not consistent with the best interests of the adjoining neighborhood; and

WHEREAS it is the intent of this Petition and the proposed Zoning Ordinance amendment attached to protect low density residential areas adjacent to Industry C and/or PUD-IC Districts from certain development projects (both as-of-right and by special permit) by establishing a protective Open Space buffer strip between said residential areas and said projects;

As the Petition itself explains: "The main point of this petition is to create a 400 ft wide "Open Space" buffer strip between the neighborhood and new construction within the IC district or the PUD-IC development parcel. Within this buffer strip, most buildings and uses, including parking, are prohibited. To accomplish this, several parts of the zoning ordinance must be amended as below..."

The Petition specifically proposes the following zoning amendments:

- A. In Article 4.000, Use Regulations, add to Special Classification Rules a new Section 4.29 as follows:

"4.29 Special Use Limitations in Industry C Districts.

For any lot or portion of a lot in an Industry C District that is located within 400 feet of any Residence A or B Zoning District, only those uses permitted in the Open Space District as set forth in the Section 4.30, Table of Use Regulations, shall be allowed. Expressly prohibited are the accessory uses of parking, loading, and vehicular access serving any use prohibited from Open Space Districts."

As the Petition itself explains, this section provides that “any part of any lot or parcel within 400 ft of Res A or B zoning is limited to used [sic] as allowed in Open Space districts. In other words, all residential, commercial and industrial structures and uses are prohibited within this 400 ft wide buffer strip. The last sentence helps ensure that the open space buffer strip is not used for cars, trucks, or driveways related to adjacent development.”

- B. In Section 4.30, Table of Use Regulations, add a new superscript number 54 to the heading “Ind C” in column fourteen. Additionally, in Section 4.40, Footnotes to the Table of Use Regulations, add a new footnote 54 to read as follows:

“54. Subject to the provisions of Section 4.29”

As the Petition itself explains, this section “cross-references from the Table back to the new buffer strip Section 4.29 described in A above.”

- C. In Section 5.34, Industrial Districts, Table 5-4, add a new footnote (e) in the first column at the seventh line “IC”. Additionally, in Section 5.34, add a new footnote (e) to read as follows:

“(e) Notwithstanding the dimensional requirements set forth in this Section 5.34 for Industry C districts, no structure constructed on a lot or portion of a lot in an Industry C district that is located within 400 feet of any Residence A or B Zoning District shall exceed the dimensional limitations for the Open Space District as set forth in Section 5.35.”

As the Petition explains “this cross-reference ensures that the few structures and uses which are allowed in an Open Space District -- e.g. a municipal library -- are built to comply with dimensional restrictions applicable in the Open Space District.”

And, finally:

- D. In Section 13.10, Planned Unit Development in IC Districts, add a new Section 13.19 to read as follows:

“13.19 Open Space Buffer Requirements in the PUD-IC District.

Notwithstanding any use provision or dimensional requirement as set forth elsewhere in this Section 13.10, for any development parcel or portion of a development parcel located within 400 feet of any Residence B or Residence A Zoning District, only those uses permitted in the Open Space District as set forth in Table 4.30 shall be permitted, and any structure constructed shall be subject to the dimensional requirements of the Open Space District as set forth in Section 5.35. Accessory parking, loading, and vehicular access facilities for any use not

otherwise permitted in the Open Space District are expressly prohibited from this buffer strip.”

As the Petition explains: “This requirement ensures that the 400 ft buffer strip established for the IC zone as above also applies to PUD-IC development parcels. This provision is not necessary, and may be deleted from the Ordinance, if the currently pending Bromfield petition is properly adopted.”

LEGAL RESEARCH

Spot Zoning Analysis

Does the proposed zoning amendment, subjecting Grace’s property (“the site”) to a four-hundred foot open space requirement, violate the basic requirements of uniformity and generality of zoning legislation by creating special detrimental treatment for the site as compared with other properties and, therefore, constitute unlawful spot zoning? In other words, has the locus been singled out for adverse treatment vis-a-vis substantially similar parcels?

In our opinion, the proposed amendment in this case appears to create a unique and detrimental regulation for the site.³ The record on the Petition does not, in our opinion, currently identify adequate justification or zoning objectives served thereby. As the cases discussed below evidence, this is precisely what may constitute improper spot zoning: “Singling out a parcel of land for special treatment as compared to other parcels in the same zoning area.” Canteen Corp. v. Pittsfield, 4 Mass.App.Ct. 289, 293 (1976).

“Spot zoning” cases depend very particularly on what in fact the municipality has tried to do as against the background of G.L. c. 40A, Section 4, which provides that any zoning ordinance or by-law shall be uniform within districts. The requirement of uniformity has long been a part of our zoning statutes and case law. See, e.g., Shapiro v. Cambridge, 340 Mass. 652, 659 (1960). In spot zoning cases, the result depends rather on both the generality of the principle in question and on the facts of the particular case. Even the existence of a comprehensive plan and laudable objectives will not justify a violation of the legal requirement of uniformity. Aronson v. Sharon, 346 Mass. 598 (1964).

³ Unlike the Rowe and Lohnes petitions which seek to realign zoning boundaries, this petition imposes unique detrimental regulations on the Grace and Kennedy sites. Like those petitions, however, the courts will look closely at whether the regulations serve justifiable and legitimate planning objections.

In a recent “spot zoning” case, National Amusements, Inc. v. City of Boston, 29 Mass.App.Ct. 305 (1995), the Court held that:

Although all rational presumptions favor the validity of an amendment by a municipality of its zoning code, we decide that the amendment of the Boston Zoning Code presented for review arbitrarily singled out the land of the plaintiff National Amusements, Inc. (“National”), for disparate treatment from similar land in the same zoning area.

The Court noted that National’s property, a vacant 13.8 acre tract, had been originally zoned for industrial use and had sometime prior to 1964 been changed to general business. Id. at 307.

After the plaintiff began the process of applying for building permits to construct a shopping center, the City began seeking to “down zone” the property. This was ultimately accomplished in February of 1987 when the property was down zoned to Residential 8 (multifamily).

The Court in National Amusements set out the pertinent standard applicable to zoning by-laws changes. The Court explained:

There must be a showing of some substantial relation between the zoning code amendment and the general objectives of the enabling act. [Citations omitted.] Paramount among those objectives is the promotion of the public welfare. [Citations omitted.] Every presumption, as we noted at the outset of the opinion, is to be made in favor of the zoning amendment. [Citations omitted.] If the reasonableness of a zoning regulation is fairly debatable, the judgment of the local legislative body (here the zoning commission of Boston) should be sustained and the reviewing court should not substitute its own judgment. [Citations omitted.] Nevertheless, a zoning ordinance or by-law will be held invalid if it is unreasonable or arbitrary, or substantially unrelated to the public health, safety, convenience, morals or welfare. [Citations omitted.] Id. at 309-310.

In reaching its conclusion that the rezoning was unlawful, the Court noted:

What is striking about the record is the absence of analysis of land use planning considerations by municipal authority before the decision to change the zoning was taken. Among the considerations to be taken into account are the physical characteristics of the land, its location, size, and the nature of adjoining uses. Barney & Carey Co. v. Milton, 324 Mass. 440, 449 (1949). There were, before the fact of the rezoning, no market studies. Id. at 310.

The Court concluded:

Rather, what appears to have occurred is that, in response to the WRNC [i.e., West Roxbury Neighborhood Council], the decision to change the zone was made, following which a few fig leaves of rationalization were decorously draped by the BRA around the submission to the zoning commission. Id. at 311.

The National Amusements Court, in concurring with the Land Court's finding of invalid rezoning, explained:

In view of the lack of land use study and the illogic of the ostensible reasons for the rezoning, it is not to be wondered at that the Land Court judge found those reasons to be pretexts, that "the primary motive of the rezoning was to protect small business in the general West Roxbury neighborhood," and that the "surroundings are environmentally unsound for residences." Id. at 312.

To the City's argument that the Land Court improperly focused on the motives for the zoning change, the Court responded:

The point that the judge correctly made, however, is that under our cases zone changes which have no roots in planning objectives but which have no better purpose than to torpedo a specific development on a specific parcel are considered arbitrary and unreasonable. The vice is the singling out of a particular parcel for different treatment from that of the surrounding area, producing, without rational planning objectives, zoning classifications that fail to treat like properties in a uniform manner. [Citations omitted.] Id. at 312.

Takings Analysis: The Federal Courts

Analysis of so-called regulatory takings must begin with the general principle that the rights of owners to use and enjoy property are subject to reasonable regulation designed to promote general welfare. Penn Central Trans. Co. v. City of New York, 438 U.S. 104, 123-128 (1978); Franklin v. Spadofora, 388 Mass. 764, 773 (1983).

With respect to regulatory takings, "[t]he general rule at least is that while property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking." Pennsylvania Coal Co. v. Mason, 260 U.S. 393, 415 (1922). "Answering this question [of whether a regulation "goes too far"] involves regulatory takings analysis which is peculiarly fact dependent, involving 'essentially ad hoc, factual inquiries.'" Yankee Atomic Electric Co. v. Secretary of the Commonwealth, 403 Mass. 203, 209 (1988), quoting Penn Central, supra, 438 U.S. at 124.

In Penn Central, supra, the owner of Grand Central Station, which building was designated as a landmark, sought permission from the New York City Landmarks Commission to build a fifty story office tower on the roof. When that permission was denied, the plaintiff brought suit, claiming a regulatory taking. The Supreme Court, in holding that there was no taking, looked to three factors: the economic impact of the regulation, the extent to which the regulation interferes with specific reasonable investment-backed expectations of the owner, and the character of the government's action.

Because the regulation permitted Penn Central to obtain a reasonable return on its investment, 438 U.S. at 136, the Court found there to be no taking.

In Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470, 485 (1987), the plaintiffs challenged, as an unconstitutional taking, the Pennsylvania Subsidence Act which required that fifty percent of the coal beneath certain structures be left in the ground to provide surface support. In finding no taking, the Court, found that the plaintiff suffered only a small diminution in value and thus that the statute did not deprive the owners of economically viable use of their property. See also Agins v. City of Tiburon, 447 U.S. 255, 260 (1980) (zoning ordinance which restricted parcel to maximum use of five single-family residences not a taking, since owner could still make economically viable use of land).⁴

In Lucas v. South Carolina Coastal Council, 505 U.S. ____, 120 LE2d 798, 112 S.C. 2886 (1992), the plaintiff had purchased "two lots, both of which were zoned for single-family residential construction and...there were no restrictions imposed upon such use of the property by either the State of South Carolina, the County of Charlestown, or the Town of the Isle of Palms." 120 L.Ed. 2d at 808-809, quoting App. to Pet. for Cert. 36. After the plaintiff's purchase of the lots, the State of South Carolina adopted the Beachfront Management Act. That Act "decreed a permanent ban on construction insofar as Lucas's lots were concerned..." Id. at 809. The trial court, concluded that the prohibitions of the Act "deprive[d] Lucas of any reasonable economic use of the lots,...eliminated the unrestricted right of use, and render[ed] them valueless." Id., quoting App. to Pet. for Cert. 37. The trial court then concluded that a compensable taking had occurred and the South Carolina appellate courts affirmed.

The Supreme Court in Lucas explained, that, while "we have generally eschewed any 'set formula' for determining how far is too far, preferring to "engage[e] in. . . essentially ad hoc, factual inquiries," Penn Central Transportation Co. v. New York City, 438 US 104, 124, 57 L Ed 2d 631, 98 S Ct 2646 (1978) (quoting Goldblatt v. Hempstead, 369 US 590, 594, 8 L Ed 2d 130, 82 S Ct 987

⁴ Obviously, the use regulation proposed here does not invite the application of the rule in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), that a "permanent physical occupation" of property is a per se taking. Not only did the Court in Loretto carefully limit its per se rule to permanent physical occupations of property, but it expressly reaffirmed its decision in Penn Central, supra, 438 U.S. at 104, that use restrictions were to be analyzed differently. Loretto, supra, 458 U.S. at 426-27. The Court in Loretto explained that its "holding ... [is] very narrow" and did not "question the ... substantial authority upholding the State's broad power to impose appropriate restrictions upon an owner's use of his property." Id. at 441 (emphasis in original).

(1962)", *id.* at 812 "[w]e have, however, described at least two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint. The first encompasses regulations that compel the property owner to suffer a physical "invasion" of his property. . . . The second situation in which we have found categorical treatment appropriate is where regulation denies all economically beneficial or productive use of land." *Id.* at 812-813.⁵ The *Lucas* Court noted that:

It is correct that many of our prior opinions have suggested that "harmful or noxious uses" of property may be proscribed by government regulation without the requirement of compensation. For a number of reasons, however, we think the South Carolina Supreme Court was too quick to conclude that that principle decides the present case. *Id.* at 817.

The Court explained that:

"Harmful or noxious use" analysis was, in other words, simply the progenitor of our more contemporary statements that "land-use regulation does not effect a taking if it "substantially advance[s] legitimate state interests"..." Nollan, *supra*, at 834, 97 L Ed 2d 677, 107 S Ct 3141 (quoting *Agins v. Tiburon*, 447 US, at 260, 65 L Ed 2d 106, 100 S Ct 2138); see also *Penn Central Transportation Co.*, *supra*, at 127, 57 L Ed 2d 631, 98 S Ct 2646; *Euclid v. Ambler Realty Co.*, 272 US 365, 387-388, 71 L Ed 303, 47 S Ct 114, 54 ALR 1016 (1926) *Id.* at 818.

The Court went on to hold that total regulatory takings need not be compensated if the prohibited uses of property were not "previously permissible under relevant property and nuisance principles." *Id.* at 821. In other words: "Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with." *Id.* at 820. Thus,

A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts -- by adjacent landowners (or other uniquely affected persons) under the State's law of private nuisance, or by the State under its

⁵

The Court noted:

Regrettably, the rhetorical force of our "deprivation of all economically feasible use" rule is greater than its precision, since the rule does not make clear the "property interest" against which the loss of value is to be measured. When, for example, a regulation requires a developer to leave 90% of a rural tract in its natural state, it is unclear whether we would analyze the situation as one in which the owner has been deprived of all economically beneficial use of the burdened portion of the tract, or as one in which the owner has suffered a mere diminution in value of the tract as a whole. *Id.* at n.7.

complementary power to abate nuisances that affect the public generally, or otherwise. *Id.* at 821.

The Court in *Lucas* remanded the case to the South Carolina courts to determine whether there were any common-law or nuisance principles under South Carolina law that "would have prevented the erection of any habitable or productive improvements on petitioner's land" *Id.* at 822. The Court emphasized:

to win its case South Carolina must do more than proffer the legislature's declaration that the uses Lucas desires are inconsistent with the public interest, or the conclusory assertion that they violate a common-law maxim such as *sic utere tuo ut alienum non laedas*. As we have said, a "State, by ipse dixit, may not transform private property into public property without compensation" *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 US 155, 164, 66 L Ed 2d 358, 101 S Ct 446 (1980). Instead, as it would be required to do if it sought to restrain Lucas in a common-law action for public nuisance, South Carolina must identify background principles of nuisance and property law that prohibit the uses he now intends in the circumstances in which the property is presently found. Only on this showing can the State fairly claim that, in proscribing all such beneficial uses, the Beachfront Management Act is taking nothing. *Id.* at 823. *Id.* at 822-823.

In *Dolan v. City of Tigard*, 512 U.S. ____, 129 L.Ed.2d 304, 114 S.Ct. ____ (1994), the Supreme Court invalidated a municipality's attempt to condition the issuance of a building permit for the expansion of a store and paving of a parking lot upon the dedication to the city by the owner of a bicycle path and greenway/flood plain area (comprising approximately 10% of the property)⁶. The Court announced a three-part test to determine the validity of regulations governing property: (1) Does the regulation or permit condition promote a legitimate public purpose or state interest? (2) Is there a reasonable relationship - "essential nexus" -- between the legitimate state interest and the permit condition or regulation? (3) If such nexus exists, has the municipality demonstrated the required degree of connection -- a "rough proportionality" -- between the exactions and the projected impact of the development? 129 L Ed. 2d at 317.

The facts of *Dolan* are relatively simple. "Petitioner applied to the city for a permit to redevelop the site. Her proposed plans called for nearly doubling the size of the store to 17,600

⁶ The Court reiterated at the outset of its reasoning that: "A land use regulation does not effect a taking if it 'substantially advance[s] legitimate state interests' and does not 'den[y] an owner economically viable use of his land.' *Agins v. Tiburon*, 447 US 255, 260 (1980)." *Id.* at 316. The Court noted that: "There can be no argument that the permit conditions would deprive petitioner of 'economically beneficial us[e]' of her property as she currently operates a retail store on the lot. Petitioner assuredly is able to derive some economic use from her property." *Id.* at 316 n. 6 (emphasis in original).

square feet, and paving a 39-space parking lot.” *Id.* at 313. Pursuant to state requirements mandating comprehensive land use management, the city developed and adopted its Community Development Code (“CDC”), which required owners to comply with a 15% open space and landscaping requirement, which limits total site coverage, including all structures and paved parking, to 85% of the parcel. The city, in order to deal with congestion, also adopted a plan requiring dedication of a pedestrian/bicycle pathway. Finally, the city adopted a Master Drainage Plan (Drainage Plan) to deal with flooding created by increasing impervious surfaces.

The Court quickly determined that the city’s permit conditions served legitimate public purposes and that a nexus existed between these purposes and the conditions sought to be imposed. The Court then turned to the question of “whether the degree of the exactions demanded by the city’s permit conditions bear the required relationship to the projected impact of petitioner’s proposed development.” *Id.* The Court then looked to the city’s explanations for imposing the conditions it did:

The city required that petitioner dedicate “to the city as Greenway all portions of the site that fall within the existing 100-years floodplain [of Fanno Creek]...and all property 15 feet above [the floodplain] boundary.” In addition, the city demanded that the retail store be designed so as not to intrude into the greenway area. The city relies on the Commission’s rather tentative findings that increased stormwater flow from petitioner’s property “can only add to the public need to manage the [floodplain] for drainage purposes” to support its conclusion that the “requirement of dedication of the floodplain area on the site is related to the applicant’s plan to intensify development on the site.” City of Tigard Planning Commission Final Order No. 91-09 PC, App. to Pet. for Cert. G37.

The city made the following specific findings relevant to the pedestrian/bicycle pathway:

“In addition, the proposed expanded use of this site is anticipated to generate additional vehicular traffic thereby increasing congestion on nearby collector and arterial streets. Creation of a convenient, safe pedestrian/bicycle pathway system as an alternative means of transportation could offset some of the traffic demand on these nearby streets and lessen the increase in traffic congestion.” *Id.*, at 24. *Id.* at 318-319.

The Court determined that “these findings [were not] constitutionally sufficient to justify the conditions imposed by the city on petitioner’s building permit.” *Id.* at 319. The Court noted that: “Despite any semantical differences, general agreement exists among the courts “that the

dedication should have some reasonable relationship to the needs created by the [development].” *Id.* at 320 (citation omitted). The Court concluded:

We think the “reasonable relationship” test adopted by a majority of the state courts is closer to the federal constitutional norm than either of those previously discussed. But we do not adopt it as such, partly because the term “reasonable relationship” seems confusingly similar to the term “rational basis” which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment. We think a term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development. *Id.* at 321. (emphasis added)

Massachusetts Appellate Court Analysis of the Takings Clause

In Steinberg v. Cambridge, 413 Mass. 736, 741 (1992), the Supreme Judicial Court, applying Fifth Amendment constitutional analysis, noted that there are “two categories of governmental regulatory action that constitute compensable takings without regard to other considerations, such as the public interest sought to be advanced.” The first is where a challenged regulation authorizes, directs or otherwise involves a physical intrusion onto private property. *Id.* The second is where a challenged regulation denies all economically beneficial or productive use of the plaintiff’s interest in the property. *Id.* The Court then notes:

If the governmental regulation neither results in a physical invasion of the property nor deprives a landowner of all economically beneficial use of land, there may nevertheless be a regulatory taking based, in part, on the regulation’s economic impact on the property as a whole and the extent to which the regulation has interfered with a property owner’s distinct investment-based expectations. *Id.* at 742.

The Court in Steinberg also rejected the plaintiff’s alternative takings argument that “a taking occurs when a land-use regulation ‘does not substantially advance legitimate state interests’.” Agins v. Tiburon, 447 U.S. 255, 260 (1980).”, *id.* at 744, finding that “the challenged [and previously invalidated] ordinance [mandating that an owner owning more than one rent controlled condominium unit within a building was required to sell all of his interests] substantially advanced the purpose of rent control.” *Id.* at 746.

Following the Lucas decision, the Supreme Court of the United States remanded the case of Lopes v. Peabody to the Massachusetts courts. As the Supreme Judicial Court on remand noted:

In its Lucas opinion, the Supreme Court held that a landowner was entitled to compensation for a taking when a zoning regulation effectively prohibited all economically beneficial use of the land, unless the prohibition could be independently justified under principles of South Carolina nuisance or property law. Lopes, supra, 417 Mass. 299, 300 (1994).

In Lopes, the plaintiff challenged the wetlands conservancy district established by the City and “[t]he parties stipulated that Lopes ‘is unable to use his land as a result of the revision of the Zoning Ordinance.’ The judge viewed Lopes’s use of the land to be a mixed question of law and fact. There was no evidence to permit a comparison of the fair market value of the property with and without the restrictions in effect.” Id. at 301. The Supreme Judicial Court, in remanding the case to the Land Court for new hearing and further consideration in light of the Lucas decision, explained:

The Lucas opinion appears to have changed, or at least refocused, the applicable standards for determining whether, for Federal constitutional purposes, there has been a regulatory taking of property. An essential fact question is whether application of the ordinance has caused the Lopes land to have no economically beneficial use. If the land has no economically beneficial use, a term that the Supreme Court has not yet defined, the ordinance may be upheld only if it substantially advances legitimate State interests and its application to the Lopes land reflects established principles of State property and nuisance law. Id. at 304-305.

The Supreme Judicial Court suggested:

The Land Court judge may elect first to consider the question whether Lopes has proved that the zoning restriction, particularly the 88.5 foot minimum elevation, does not substantially advance legitimate State interests as applied to his lot. See Lucas, supra at 2893-2894; Agins v. Tiburon, 447 U.S. 255, 260 (1980). There is no doubt that flood control and the prevention of pollution of surface and ground water (and great ponds) are legitimate State interests. Lopes is entitled to try to prove that these legitimate State interests are not served by the 88.5 foot contour in any substantial way that a lower contour would not serve. The Land Court judge considered conflicting expert views on the soundness of the imposition of the 88.5 foot contour. She suggested that that line preserved a margin of safety, and that its selection was a peculiarly political decision. The Lucas case directs that the test must be made on a case by case basis as to the particular land involved. After the Lucas opinion, generally expressed political judgments concerning the desirability of a zoning regulation will do little to resolve the question

whether a regulation substantially advances State interests. See Lucas, supra at 2896-2899. Id. at 305-306.

Alternatively, the Court suggested:

The Land Court judge, on the other hand, may wish first to decide whether the regulation deprived the land of all economically beneficial use. Of course, the land must be otherwise useable, economically and legally, for Lopes to demonstrate that the zoning regulation is unlawful. In other words, Lopes would have to show that his land, free of the regulation, has some economically beneficial use and that it has none when subject to the zoning regulation.

If the judge concludes that the zoning regulation deprives the parcel of all economically beneficial use, the Lucas opinion advises us that there is a categorical regulatory taking, unless under the land use law of the Commonwealth the proposed use would be a nuisance or otherwise impermissible. Id. at 306.

In Leonard v. Brimfield, 423 Mass. 152 (1996), the Supreme Judicial Court held that the town's enforcement of its flood plain restriction did not result in a compensable taking under the United States Constitution even though it diminished the value of her land. The Court noted that:

When a regulatory taking involves neither a physical invasion nor a complete deprivation of use, as in the case here, Federal law has established several interrelated factors which are to be considered in determining whether a compensable taking has occurred: "(1) 'the economic impact of the regulation on the claimant'; (2) 'the extent to which the regulation has interfered with distinct investment-backed expectations'; and (3) 'the character of the governmental action.'" Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211, 225 (1986), quoting Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 124 (1978). Id. at 154.

As to investment-backed expectations, the Court held:

A property owner's investment-backed expectations must be reasonable and predicated on existing conditions. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005 (1984). It must be more than a "unilateral expectation or an abstract need." Id. quoting Webbs Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161 (1980). The plaintiff's argument fails because she could not have had a reasonable, investment-backed expectation that she would have been permitted to subdivide the flood plain property. Id. at 155.

As to the economic impact of the flood plain restriction, the Court concluded:

Even if we ignore the fact that the zoning restriction was in place prior to the plaintiff's purchase of the property, the evidence was insufficient to show that the economic impact was severe. The plaintiff's economic loss argument is based on her inability to build houses on approximately ten acres of her sixteen-acre parcel. This has not frustrated her

purpose to build her own home on the parcel which she has done. There is no dispute that the complete sixteen acres is suitable for agricultural, horticultural, and recreational purposes. The land was used for agricultural purposes prior to her purchase and can continue to be used as such. As stated by the United States Supreme Court: "Zoning laws are, of course, the classic example [of land use regulations] which have been viewed as permissible governmental action even when prohibiting the most beneficial use of the property" (citations omitted). Penn Cent. Transp. Co. v. New York City, supra at 125.

As to the character of the governmental action, the Court reasoned:

The final factor that may be considered is the character of the governmental action. "A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government." Id. at 124. Here, there was no physical invasion of the plaintiff's property alleged apart from the water channeling claims. Those claims are barred by the release given in connection with her prior litigation. Her takings claim is based on the zoning restriction and special permit process which is not a physical invasion by the government. Id.

CONCLUSION

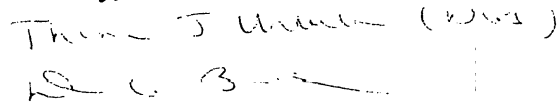
(1) In our opinion, because the Petition is applicable only to Grace's property, because it was not preceded by any zoning study or analysis indicating the need for or justifying a 400 foot open space buffer, because the proposed buffer can only be used for what are commonly referred to as public purposes, because the proposed buffer effectively precludes access to the property from the public way abutting residential properties, because the Petition may have been advanced in order to defeat a proposed retail project on the site, it is likely that our courts would find the Petition to constitute reverse spot zoning.

(2) In our opinion, although the protection of adjoining residential areas from the increased traffic, use and other negative impacts of commercial developments clearly constitute legitimate state interests, it is questionable whether the condition of a 400 foot open space buffer through which no commercial traffic can pass and which can only be used as of right for public purposes affords the essential nexus with that legitimate state interest. Even if the essential nexus existed, it is questionable whether the courts would conclude that the required degree of connection between the exactions of the Petition and the proported impact of the development existed. Thus, in our opinion, in the absence of evidence regarding the necessity and justification for such a substantial open space buffer and the total ban on access through Whittemore Avenue,

the courts might find the requirements to constitute a taking. In our opinion, a very serious question exists as to whether the requirement of the proposed open space buffer would meet the rough proportionality test mandated by Dolan; there must be an individualized determination that the required condition is related both in nature and extent to the impact of the proposed development. While the Petition does not require the out-in-out dedication of the open space buffer to the City and while it simply regulates the use of that area, the use permitted is so limited as to permit only public or municipal uses as of right (e.g. municipal library).⁷ “[R]egulations that leave the owner of land without economically beneficial or productive options for its use -- typically, as here, by requiring land to be left substantially in its natural state -- carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm.” Lucas, supra, 128 L. Ed. 2d at 814.

If additional justifications or rationale for the Petition come to light during the public hearings, we will be happy to reevaluate these conclusions in light of same. At any rate, please feel free to call us if you have any further questions or wish to discuss the above.

Sincerely,



Thomas J. Urbelis and
Devra G. Bailin

DGB/dmk

⁷ We do note that commercial recreation and theater or hall for public gatherings are uses permitted by special permit in the open space district.



CITY OF CAMBRIDGE
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6.

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

October 21, 1996

To The Honorable, The City Council:

Please find attached an opinion from the Law Firm of Hovey, Urbelis, Fieldsteel & Bailin, relative to the Quinlan/Bromfield, et al petition.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachment



CITY OF CAMBRIDGE

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October 17, 1996

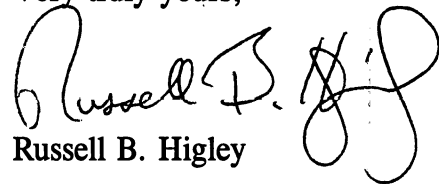
Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: *Bromfield/Quinlan Petition*

Dear Mr. Healy:

I am attaching a legal opinion from the law firm of Hovey, Urbelis, Fieldsteel & Bailin relating to the Bromfield/Quinlan zoning petition. This opinion is submitted as a supplement to the earlier opinion dated August 9, 1996. As you know, during the City Council Ordinance Committee hearing on this petition and during the Planning Board process, questions were raised by members of the Board and the Committee regarding the legality of the proposed amendment. The original and supplemental opinions were obtained and have been provided in response to those questions.

Very truly yours,


Russell B. Higley

HOVEY, URBELIS, FIELDSTEEL & BAILIN

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PLEASE SEND
CORRESPONDENCE TO
BOSTON ADDRESS

October 17, 1996

Robert W. Healy
City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Bromfeld/Quinlan Petition

Dear Mr. Healy:

As you know, Susan Schlesinger, Assistant City Manager for Community Development requested, on behalf of the Planning Board, that we review additional materials in connection with our legal review of the Bromfeld/Quinlan Petition ("the Petition"). We have been asked whether the additional materials affect the opinion expressed in our August 9, 1996 letter.

Pursuant to Ms. Schlesinger's request, we have reviewed the following materials:

1. Letter to the Planning Board from Alice Wolf, 48 Huron Avenue, dated August 13, 1996.
2. Letter to Margaret Drury, City Clerk, from David L. Wightman, Vice President, Administration of Grace Construction Products, dated July 31, 1996.
3. Letter to the Planning Board from Katherine Triantafillou, City Councilor, dated August 2, 1996.
4. Internal Correspondence to Don Smith/EPA, from NUS Corporation Superfund Division, dated April 23, 1986, and September 5, 1986, re: Comments on W.R. Grace Groundwater Monitoring Plans.
5. City of Cambridge Zoning Ordinance updates through #1143.

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Robert W. Healy
October 17, 1996
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6. Memo "How will the IC-PUC-IC zoning amendment affect the W.R. Grace Suite which abuts Russell Field in North Cambridge??"
7. Recommendations submitted by Members of the Grace Site Advisory Committee.
8. Newspaper clipping, "Grace Material Brought Here Illegally".
9. 11 x 17 inch map of site conditions during Dewey and Almy operations, by Haley & Aldrich, Inc., and storage areas.
10. City Council Order #53, dated April 22, 1996.
11. Alewife Study Group flyer of meeting on July 22 at 7:00 p.m.
12. Memorandum to the City Council from Robert W. Healy, dated June 24, 1996.
13. Alewife Study Group Update dated June 1996.
14. Letter to City Council from Peter V. Cignetti, 5 Theriault Court, et al, dated June 19, 1996, attached to report on North Cambridge Neighborhood Survey Results.
15. Letter to Whom It May Concern, from Toni Snow, 109 Clay Street, dated June 10, 1996, attached to report on North Cambridge Neighborhood Survey Results.
16. Transition List of Confirmed Disposal Sites and Locations to be Investigated, dated August 1993, from Trudy Coxe, Secretary of EOEa.
17. Hazardous Substance Fact Sheet, from New Jersey Department of Health, re: Naphthalene.
18. Materials Safety Data Sheet, re: Naphalene, issued November, 1987 from Genium Publishing Company.
19. Internal Correspondence to Don Smith, from NUS Corporation Superfund Division, dated July 8, 1985, Subject: Preliminary Assessment of W.R. Grace and Company, Cambridge, Massachusetts.
20. Letter to Mark Stoler, W.R. Grace, from Richard Chalpin, Deputy Regional Environmental Engineer, dated February 9, 1987.

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21. Review of the Draft EIR and related Environmental Assessment Documents for the proposed Alewife Center Development at the W.R. Grace and Co. property in Cambridge, Massachusetts ("Draft Final Report") February 19, 1987.
22. Letter to James Hoyte, Secretary of Massachusetts Executive Office of Environmental Affairs from the North Cambridge Stabilization Committee to James Hoyte, dated January 12, 1988, re: EOE #5869.
23. Certificate of the Secretary of Environmental Affairs on the Final Environmental Impact Report, dated November 27, 1987.
24. Final Draft Public Health Risk Evaluation for W.R. Grace, site in Cambridge, Massachusetts, dated April 23, 1996.
25. Notice of Project Change, Alewife Center, dated January 16, 1996.
26. Public Health Risk Evaluation for W.R. Grace Site, dated April 23, 1996.
27. Certificate of the Secretary of Environmental Affairs on the Final Environmental Impact Report, dated January 20, 1988.
28. Report on North Cambridge Neighborhood Survey, dated June 10, 1996.
29. Petition re: Independent Traffic and Environmental Study and Permit Moratorium.¹
30. City of Cambridge Conservation Commission's Wetlands map for the vicinity of the W.R. Grace Property.
31. City of Cambridge Conservation Commission's floodplain maps for the vicinity of the W.R. Grace property.²
32. Notice of Reclassification Haley & Aldrich, September 30, 1996.

¹ The petition attached is one for independent environmental (soil sampling and ground water) and traffic studies at and surrounding the W.R. Grace Site, and a permit moratorium at the site until those studies are completed. Although we have not been asked to render a legal opinion on this petition, we would like to note that a permit moratorium does raise temporary takings issues. We would be happy to address this specifically should you so request.

² We understand from Alex Stryky that the floodplain map is considered to be accurate by the Wetlands Regulations, but that the accuracy of the wetlands maps created by a commission consultant in 1989 may not be entirely accurate.

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33. Notice of Audit Findings, Notice of Noncompliance, Interim deadlines letter dated September 20, 1996.
34. October 1, 1996 Memorandum from Community Development Staff to Planning Board with attached Report on Issues and Types of Solutions at W.R. Grace Site.
35. September 27, 1996, Memorandum from Community Development Staff to Planning Board Re: Report on Issues and Types of Solutions at the W.R. Grace Site.
36. September 30, 1996 Legal Notice to Robert Healy re: Grace Site from Haley & Aldrich.
37. Excerpt from Alewife Revitalization 1979.
38. Excerpt from North Cambridge Neighborhood Study 1990.
39. Memorandum from Alex Strycky (CCC) to Susan Schlesinger dated September 27, 1996 with attached Memorandum.
40. Report in Support of 400 Foot Buffer Zone for W.R. Grace Site in North Cambridge dated October 1, 1996 by the Alewife Study Group and Appendix of supporting documents.
41. Flood Plan Map of area.
42. Wetlands Maps of area.
43. Excerpts from Haley & Aldrich, February 1988 sampling maps and data.
44. Letter dated August 1, 1996 from Lester Barber to City Council and Planning Board re: Existing Transition Provisions in Cambridge Zoning Ordinance.
45. Letter dated August 9, 1996 from Craig A. Keeley to Robert Healy.

In addition, Devra Bailin met with Kathleen Brown on September 18, 1996 to go over some additional documents and materials regarding locations of contamination on the site.

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Review of these materials provides the following general list of reasons set forth to justify the proposed 400 foot open space buffer and the prohibition of the use of that strip, inter alia, for access to the commercial development beyond the 400 foot buffer:

- (1) Provide open space for floodplain storage during periods of heavy rain and snowfall;
- (2) Protect wetlands;
- (3) Protect valuable open space to resolve contamination on the site;
- (4) Protect adjoining neighborhoods from pollution caused by construction and/or site disturbance;
- (5) Site contamination justifies zoning measures to restrict development on the site;
- (6) Preserve and protect the adjoining residential neighborhood by providing valuable open space;
- (7) Provide a buffer between the development and the adjoining residential neighborhood to protect the neighborhood from noise, traffic, and general nuisances related to development and against encroachment on light and air; and
- (8) Protect neighborhood streets from commercial traffic.

Purposes of Zoning Bylaws

Municipalities may enact zoning restrictions for the purpose of promoting health, safety, convenience, morals or welfare of its inhabitants. Sinn v. Board of Selectmen of Acton, 357 Mass. 606, 609 (1970). To this end, the Cambridge Zoning Ordinances provides in relevant part:

It shall be the purpose of this Ordinance to lessen congestion in the streets; conserve health; to secure safety from fire, flood, panic and other danger; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve

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the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most rational use of land throughout the city, including the encouragement of appropriate economic development, the protection of residential neighborhoods from incompatible activities and including the consideration of plans and policies, if any, adopted by the Cambridge Planning Board, and to preserve and increase the amenities of the City. Article 1.30.

It must be recalled that the primary purpose of zoning is the preservation of the public interest of certain neighborhoods against uses which are believed to be deleterious to such neighborhoods. Kaplan v. City of Boston, 330 Mass. 381, 384 (1953). It must also be noted that zoning power is merely one category of the more general police power, concerned specifically with the regulation of land use. Rayco Inc. Corp. v. Board of Selectmen of Raynham, 368 Mass. 385, 392 n.4 (1975).

Floodplain Protection

Based on our review of the information provided, it appears that only a small area, if any, of the 400 foot proposed open space buffer area is within the 100 year flood plain.

That municipalities have authority to enact flood plain zoning bylaws is not to be questioned. Turnpike Realty Corp. v. Town of Dedham, 362 Mass. 221 (1972). Such authority is derived from the general grant of power to zone for public health, safety and welfare. Id. at 227-228; 237-238. The Court explained:

We believe that the test governing the validity of a flood plain zoning by-law or ordinance is the same as that governing any other zoning by-law or ordinance. "The test is whether there has been shown any substantial relation between the amendment and the furtherance of any of the general objects of the enabling act. Caires v. Building Commr. of Hingham, 323 Mass. 589, 593. Lamarre v. Commissioner of Pub. Works of Fall River, 324 Mass. 542, 545. The promotion of the public welfare, as that term is fairly broadly construed, is chief among the

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purposes of the enabling statute.” Lanner v. Board of Appeal of Tewksbury, 348 Mass. 220, 228. Id. at 228.

The Court reasoned that: “The general necessity of flood plain zoning to reduce the damage to life and property caused by flooding is unquestionable.” Id. at 233. The Court concluded that “[t]he principal criterion as to the reasonableness of the inclusion of the petitioner’s land in the flood plain district is the extent of the flood hazard to its land.” Id. Flood plain restrictions serve to protect not only those who might choose to develop or occupy the land in spite of the dangers to themselves and their property (see Pinnick v. Cleary, 360 Mass. 1, 24-25, and cases cited), but also other people in the community from the harmful effects of flooding. Similarly, there is a substantial public interest in avoiding the public works and disaster relief expenditures connected with flooding.” Id. at 234-235.

However, like other wetland conservancy districts discussed below, the floodplain rules and regulations cannot be applied to sites used, for example, for commercial uses but not to similarly situated residential sites. Floodplain rules and regulations must be use-neutral. See South New England Conference Association of Seventh-Day Adventists v. Burlington, 21 Mass.App.Ct. 701, 706 (1986), discussed below.

It does not appear, therefore, in our opinion, to be appropriate to require a landowner to set aside open space areas for flood plain storage when similarly situated landowners are not so required. In other words, we do not think that the City can, through the use of its zoning powers, single out the Grace site for mandating open space requirements to provide additional floodplain storage. (We do not here render any opinion as to whether the city may adopt universally

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applicable flood plain rules and regulations mandating the provision of additional open space areas to accommodate floodplain storage.)

Wetlands Conservancy Districts

According to the wetlands map, wetland areas have been designated on the site to the west and to the south. The area along Whitmore Avenue proposed as a 400 foot open space buffer appears to be uplands.

G.L. c.40A, §3 provides in relevant part that no zoning ordinance or bylaw should exempt land or structures from floodplain or wetlands regulations established pursuant to general law. While a municipality may enact wetland conservancy districts, it may not subject property used for particular uses to more stringent requirements. As the Court in Southern New England Conference Association of Seventh-Day Adventists v. Burlington, 21 Mass. App. Ct. 701, 706 (1986), explained:

The Wetlands Protection Act, G.L. c.131, §40, has no concern for particular land uses. That act has the broader purpose of protecting wetlands from the destructive intrusion usually associated with Twentieth Century development. In preserving land, the act is use-neutral -- if a parcel has been properly denominated wetlands, all use is barred (or limited to activities compatible with the wetlands) without regard for the type of use intended, the propriety of the use in other circumstances or the identity of the landowner. This is accomplished by the creation of wetlands (or similar conservancy) protection districts which transcend zoning district boundaries. All activities within the protected district inimical to the wetlands are prohibited, even though the activities might otherwise be permitted on the parcel or elsewhere in the district in which it lies.

The Court added:

As previously noted, protection of wetlands is a valid objective of local zoning by-laws, see Fogelman v. Chatham, 15 Mass.App.Ct. at 588, and cases cited, and a municipality can adopt more stringent wetlands controls than those established in

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the Wetlands Protection Act. See Lovequist v. Conservation Commn. of Dennis, 379 Mass. at 15. In general, a wetlands zoning by-law will be held valid if there is a substantial relation between it and the furtherance of any of the objectives of wetlands protection. Fogelman v. Chatham, *supra* at 588. Id. at 709-710.

In our opinion, while the City may adopt more stringent requirements with regard to the protection of wetlands, it may do so only through wetlands protection districts which transcend zoning boundaries. The City may not, through its zoning ordinances, rules and regulations, subject one site to more stringent requirements than other properties similarly situated.

Site Contamination

There is conflicting evidence in the materials regarding the extent of contamination on the site. We understand that the site requires remediation by the year 2000. We further understand that, while some test pits within the area of the proposed 400 foot buffer at building sites 2 and 3 exceeded generic standards, the proposed buffer does not contain the highest concentrations of contaminants on the site. In fact, the three areas requiring soil removal and/or remediations are outside the proposed buffer area. An independent consultant engaged by the Community Development Department concluded in April of 1996 that there was no reason to consider the Grace site to be a health concern to the neighboring community and that the redevelopment of the site, conducted under proper precautions, should not cause unacceptable health risk from exposure to contaminants on the site.

In our opinion, the fact that the site is contaminated or that special precautions need to be taken to develop the site does not provide sufficient justification for a zoning ordinance for a four hundred foot open space buffer or to preclude all access through that buffer to the development.

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Site contamination and cleanup are not within the province of zoning but rather within the jurisdiction of other authorities, including primarily the DEP. Further, the nexus between this justification and the open space buffer proposed is weak, since, on the evidence gathered to date, it does not appear that the proposed open space area is of primary concern with regard to contamination.

Open Space

This issue was addressed at length in our previous letter to you. While municipalities have routinely adopted buffer or open space requirements (including density limitations), there are limits to what a municipality may legally mandate.

The information received and documents reviewed do not, in our opinion, provide the necessary evidence regarding the necessity and justification for a new zoning ordinance for such a substantial open space buffer, especially a buffer which substantially exceeds any buffer presently mandated by the zoning ordinance.

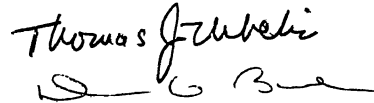
Preservation of Neighborhood by Providing a Buffer from Noise, Traffic and Nuisances

Like the open space justification, these issues were previously addressed in our prior memorandum. As with the open space justification, in our opinion, the materials reviewed do not appear to provide the requisite nexus between the conditions sought to be imposed and the legitimate state interests sought to be served nor do they provide the required nexus between the exactions of the Petition and the purported impact of the development.

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Should additional materials or justification be submitted, we would be happy to reevaluate these conclusions in light of same.

Sincerely,

Handwritten signatures of Thomas J. Urbelis and Devra G. Bailin. The signature of Thomas J. Urbelis is written in cursive and is positioned above the signature of Devra G. Bailin, which is also in cursive.

Thomas J. Urbelis and
Devra G. Bailin

Consent Agenda #6 *0-8 Cal 13*

Transmitting communication from Robert W. Healy, City Manager, relative to an opinion from the law firm of Hovey, Urbelis, Fieldsteel & Bailin regarding the Quinlan/Bromfield, et al petition.

together with original opinion dated August 9, 1996.

In City Council October 21, 1996

Tabled by Mayor Russell

*October 28, 1996
Referred to the
Petition*