

HILL & BARLOW

City Councilors

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parcel, which was adjacent to train tracks, was not sufficiently differentiated from other land located in the Industry B zone to support the change. Here, not only the surrounding land, but no other land in Cambridge is subject to a 50% open space requirement or a limitation on construction below grade.

Second, the city has neither engaged in the extensive analysis nor conducted the numerous studies that one would expect before adopting the proposal. In National Amusements, the court invalidated a zoning change from business to multi-family residential where the city had not considered the land's physical characteristics, its location, size, and the nature of adjoining uses; and had not conducted studies of population patterns, economic trends, social developments, the local markets, access to educational facilities, recreational facilities, and public safety services.

Third, as was the case in National Amusements and Canteen, the Born/Toomey proposal is not rooted in broader planning objectives or in a broader change in the city's zoning scheme. Indeed, the proposal arises while the city is in the midst of – and before it has completed – a comprehensive, long-term evaluation of its entire zoning scheme. Similarly, in Schertzer and Shapiro, courts struck down zoning amendments where a study in recent years had concluded that the targeted site was already properly zoned.

Fourth, as in National Amusements and Schertzer, the purpose of the petition appears to be to “torpedo” the Cambridge Research Park proposal, and is a response to opposition to that proposal. In National Amusements, the court invalidated rezoning that occurred after a developer applied for building permits to build shopping center. In Schertzer, property was reclassified at the behest of neighboring residential owners, who sought to prevent the property from being used for parking or storage of trucks. In the case of the Com/Energy site, the owner, Cambridge Research Park, LLC, participated in an approximately twelve month review process before the Planning Board pursuant to section 12 of the Cambridge Zoning Ordinance and has received approval of its Final Development Plan by the Planning Board after considerable review and numerous changes.

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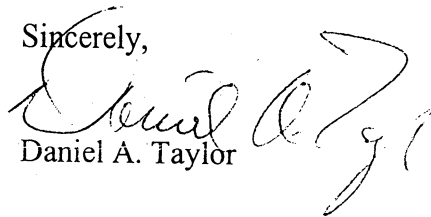
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Thank you in advance for your careful consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel A. Taylor", written in dark ink.

Daniel A. Taylor

cc: Donald A. Drisdell, Esq. (By Fax)
Planning Board
City Clerk

0466383.01

City Clerk

HILL & BARLOW

A Professional Corporation

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DANIEL A. TAYLOR

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OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

April 5, 1999

BY HAND

City Councilors
City Hall
Cambridge, MA

Re: Cambridge Research Park – Born/Toomey Petition

Dear Councilor:

I represent Cambridge Research Park, LLC, with respect to the Com/Energy site. I write to urge you to carefully consider the implications of adopting the proposed zoning amendment that is before the Cambridge City Council (the so-called Born/Toomey or PUD amendment), and to reject it. If adopted, the proposal would be invalid, because it engages in spot zoning, and violates the Zoning Act's uniformity requirement.

There seems to be no doubt, based on comments submitted to the City Council and Planning Board, that the proposed ordinance is intended to target the Com/Energy site. A zoning amendment that singles out a particular parcel or parcels for "disparate treatment from similar land in the same zoning area" engages in spot zoning, violates the Zoning Act's uniformity requirement, and is therefore invalid. Schertzer v. City of Somerville, 345 Mass. 747 (1963); Shapiro v. City of Cambridge, 340 Mass. 652 (1960); Caputo v. Board of Appeals of Somerville, 331 Mass. 547 (1954); National Amusements, Inc. v. City of Boston, 29 Mass. App. Ct. 305 (1990); Canteen Corp. v. City of Pittsfield, 4 Mass. App. Ct. 289 (1976). See Mass. Gen. Laws c. 40A, § 4 ("Any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted.").

The proposal before the City Council is similar to zoning amendments that courts have invalidated for spot zoning and uniformity violations. First, it singles out some land for different treatment from that accorded to similar surrounding land. In Schertzer, Shapiro, Caputo, National Amusements, and Canteen, courts invalidated zoning changes because the land, typically commercial or industrial, was similar to surrounding land. In Shapiro, for example, the court held that Cambridge unlawfully rezoned land from Industry B to Industry A because the

Consent Communication #7 *269 S*

A communication was received from Daniel Taylor, Hill & Barlow, Attorney for Cambridge Research Park, transmitting legal arguments against the Com/Energy site.

In City Council April 12, 1999

Referred to
the Executive Session of
4/26/99 and forward to
John Leland before session.