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To : The Ordinance Committee of the Cambridge City Council

From : Stephen H. Kaiser

## Key Issues Surrounding the MIT Volpe Petition

The zoning petition jointly submitted by MIT and the Federal General Services Administration is far more encompassing than most other zoning issues raised in recent years. Issues of housing and transportation are direct consequences of the size and potential impact of dense development of a 14-acre parcel.

Historically, MIT has been involved in housing and transportation since the battles of the 1960s and 1970s, when basic city policies were established that lasted many decades. In 1965, after a bruising encounter with controversy over the proposed Inner Belt expressway through Cambridgeport, MIT agreed with the state highway department to accept responsibility to relocate 400 of the families to be displaced by the highway construction. The total had been variously estimated to be between 1500 and 2000 families. MIT had never done relocation work before, and set up a program in the MIT Planning Office to implement the commitment. After a continuing controversy of highways and the state's approval of a "second Inner Belt" (through Mt. Auburn Cemetery, Fresh Pond and Alewife), MIT administrators changed their policy ... supported low-income housing in Cambridge ... and opposed the highway plans.

### HOUSING PRIORITIES

Today we have a development plan and related zoning petition from MIT to provide 1400 units, primarily market rate. A number of groups -- from *A Better Cambridge* to MIT Graduate students -- have urged a much more ambitious housing program, including 1,800 graduate student housing units. What should the City's housing goals be and what plan or program should be adopted to further these goals? Could this be another opportunity for MIT to help establish housing policies in the city, as they did almost fifty years ago?

## TRANSPORTATION

Kendall Square could be the focus for 7 to 8 million square feet of new development in the near future. The priorities of the battle against the Inner Belt remain -- that there will be no massive new roadways in the city. Fifty years ago MIT helped immeasurably to establish that policy and provide the necessary protection for neighborhoods throughout the City. One consequence is that there is no residual capacity in our roadway system to handle traffic growth on the local and regional road systems. The only way for growth to occur at Kendall Square and elsewhere within the city is by making improvements in the transit system. To provide the necessary capacity to handle more transit trips, a strong emphasis must be directed towards better operations on the MBTA Red Line.

There is still time for MIT to take the lead on transit policies and operations -- as they provided leadership on transportation during the Inner Belt era. Those ideas should be placed before the City Council and the public for open review. There is no longer any place for claims that whatever the MBTA is doing is fine and there is no need to do anything more. The City and its institutions must do better.

Two years ago, the Planning Board issued its final version of a zoning petition for Volpe. It contained admirable language on traffic congestion and transit capacity. I urge this language be included within the new Volpe petition :

*"The Planning Board shall determine that the proponent has demonstrated, at the time of Final Development Plan approval, a commitment to implementing a Transportation Demand Management and Mitigation Program consistent with the reduced parking mandated in this PUD zoning and the capacity limitations of the transportation network that serves the Kendall Square area, including roadways and public transportation systems. The measures to be taken in this program must address:*

- (1) The amount of parking provided,*
- (2) The scale of development, and the mix of uses proposed, + development phasing,*
- (3) The assumptions employed with regard to the proportion of automobile use trips by each mode for those traveling to the site.,*
- (4) The limitations on roadway capacity to accommodate new vehicle trips, and*
- (5) The impacts of increased demand on public transportation services in the Kendall Square area and measures to offset or mitigate such impacts.*

(Version of November 30, 2015)

## DESIGNING A SUITABLE PUBLIC-PRIVATE PARTNERSHIP

The plan for the 14 acres at the Volpe Center is a unique interaction between the Federal Government and a private developer. The land owner, the GSA, proposes to sell ten acres of the site to MIT for mixed use development, while retaining about four acres as government land on which MIT will build a new, modern 400,000 s.f. Volpe Center.

Only one other comparable government-developer partnership can be found in the city : the Sullivan Courthouse. In that case, existing government land and structure is being sold to a private developer for an existing severely nonconforming structure that may continue in private ownership, exempt from all zoning.

A shared element in both instances is the immunity of government buildings to local zoning, including the possibility that with certain government actions the integrity and viability of zoning could be significantly threatened. The key question is this : are the two situations significantly different? Are there aspects of MIT's proposed zoning and development plan that will assure the effectiveness and credibility of zoning, with no nonconforming buildings?

On July 17, the state Appeals Court affirmed its decision on the Cambridge courthouse in an appeal by Gund et al of the Planning Board special permit. The essence of the Special permit and the court affirmation would allow a government entity to construct a major nonconforming structure -- 2.5 times as dense as allowed by zoning -- and further allow its sale to a private developer with substantially the same degree of nonconformity. Finally, the newly privatized courthouse structure is allowed to exist with full exemption from zoning. This decision could offer a precedent for new public-private partnerships bypassing and undermining Cambridge zoning by taking advantage of government immunity from local zoning. The court decision makes this threat very real.

Another similar partnership arrangement was planned for the FBI building in Washington D.C. Just this month Federal officials canceled the plan, with no replacement.

The differences at Volpe are significant. GSA is an agency of the Federal Government, yet it is a co-sponsor of this zoning petition. GSA normally has no role in zoning, because it is exempt from zoning. The participation of GSA could be interpreted as a willingness of the Federal Government to abide by prevailing local zoning.

Another important difference is the presence of a binding legal contract between MIT

and GSA. On January 18 of this year, MIT and GSA signed an Exchange Agreement, formalizing the process for MIT to build a new and modern Volpe Center structure and acquire ten acres of Federal land. This Exchange Agreement is a legal document, in the form of a contract. One side cannot violate any provision without prior approval of the other. Federal agencies may be exempt from zoning, but they are still obligated to obey contract law.

With MIT plans and its zoning petition being consistent with the Exchange Agreement, the provisions of zoning are likely to be met. However, the Agreement must be flexible enough to accept any changes or conditions approved by the Council and the Planning Board, including housing and transportation. The Agreement must also be strong enough to hold both MIT and GSA to its provisions and be devoid of loopholes whereby Federal officials might seek to exercise their immunity from zoning.

To achieve this goal, the City Council needs to study the Exchange Agreement and see whether the text meets the necessary requirements for successful development of the Volpe site with no zoning violations. This discussion should begin forthwith.

#### **MAX ALLOWED GFA FOR VOLPE SITE**

A comparison of FAR limits for PUD zones in the Ordinance shows a wide range of simplicity and complexity for PUD-KS, Alewife and the MIT petition. At Kendall Square and Alewife there are fairly very simple descriptions of the FAR limits :

PUD-KS 13.13.1 @Kendall Square "the maximum ratio of floor area to Development Parcel shall be 3.0 ...."

At Alewife, PUD-5 @Alewife 13.63.2 "The maximum ratio of gross floor area of all structures in the planned unit development to the total area of the development parcel shall be 1.75 ...."

Careful editing of the language of the MIT petition at Volpe still shows a dramatic increase in complexity :

PUD-7 (MIT) 13.93.1 "In the PUD District the maximum Floor Area Ratio ("FAR") shall be 5.2 for all uses ... The FAR of any given Development parcel may exceed the limitation set forth above as long as the overall FAR in the PUD-7 District does not, at any time, exceed the limitation set forth

above. *Notwithstanding* the definitions of 'Lot' or 'Street' contained in this Ordinance ... the area of any streets .... within the PUD-7 District ... shall not be deducted from the overall lot area of the PUD-7 District for the purposes of calculating allowable FAR ... other than ... Potter Street ... Monroe Street ... Fifth Street ..." (*emphasis added*)

The MIT zoning overrides the definitions of "lot", "street," and "FAR" (which depends on lot). The best solution is to remove 13.93.1 in its entirety. Rewrite it with a simplified and consistent use of FAR and Lot (as utilized already in the zoning for Kendall Square and Alewife.)

### **OPEN SPACE**

A good start would be to review the history of past commitments to public open space for the Volpe site. ECaPS and K2 final reports show extensive areas of public open space within the Volpe site. CDD should distribute graphics from the relevant reports so that there is full awareness of past planning for open space. A review of aerial photos will show that the primary areas of "green space" in the Kendall Square area today are the Volpe site and the Rooftop Garden. The MIT petition proposes to remove the designation of "public open space" to become merely "open space" -- thus private and not public.

### **ARCHITECTURE**

Finally, I am aware that over the past two years there have been at least five different versions of the condition that must be met to allow a tower between 350 and 500 feet in height. My preference for the appropriate finding is contained in the November 30, 2015 version of the Volpe zoning : "*the Planning Board must find that any buildings above three hundred and fifty (350) feet are of a distinctive and particularly high quality architectural design ."* "*Exceptional architectural quality*" is also a good attribute, as is demonstrating "*excellence in architectural design*". Icons and landmarks are too ambiguous.

Sincerely,



Stephen H. Kaiser, PhD