

TO: Aisling Kerr, Project Manager  
Boston Planning and Development Agency  
1 City Hall Square  
Boston, MA 02201

DATE: August 12, 2019

RE: Parcel 12 DPIR (additional comments)

Dear Ms. Kerr,

As a resident of Boston with a background in health and city/regional planning and as an active member of several environmental advocacy groups, I am sending my follow-up personal comments on Parcel 12 DPIR's latest version presented at CAC meeting on August 6.

My environmental advocacy groups and I sincerely appreciate Samuels & Associates' ground-breaking all electric heating system in Parcel 12's residential/hotel building using Variable Refrigerant Flow (VRF) and Air Source Heat Pumps (ASHP) for heating and cooling.

I am also pleased with the beautiful half acre publicly accessible open space with civic plaza.

My recommendations are:

1. Design for office building to be all-electric now.
2. Aim for Green Building LEED certified Platinum instead of LEED Gold
3. Continue Parcel 12 CAC monitoring
4. Plan for smaller building to be residential rather than hotel
5. Eliminate or decrease number of parking spaces

The Article 37 sustainability and greenhouse gas emissions design modifications move in the right direction, but further limits on fossil fuels and "stretching" for higher goals could be attained.

As I have indicated previously,

1. **ELECTRIFICATION** While we applaud the all electric heating system air source heat pumps (ASHP) for the smaller building, we feel strongly that the office building be designed to be all-electric now rather than constructed with fossil fuel gas to be convertible to all-electric sources in the future. There are many examples of all-electric urban high rise buildings in many cities. Berkeley, for example, became first city in California to ban natural gas in new buildings (July 2019).

Regarding the office building, the WSP engineer states that 100% electrification can be achieved eventually via boiler replacement 10-20 years out. We ask for a commitment by the Proponent to put together a financial assessment of when this will become feasible for the office building and to commit to "switch" benefitting the project (no GHG/cost penalty).

2. **LEED CERTIFICATION TARGET TOO LOW** Given the urban location, BPDA/MEPA requirements, and registration under LEED2009, there is no reason why this project cannot earn Platinum (80+ points), as it is not automatically disqualified from any voluntary points. Much is being left on the table (60 points for both projects is too conservative). We ask the project to commit to LEED Platinum certification, specifically earning 25 of 33 EA points (16, min. for Optimize Energy).

3. **LIGHTING POWER DENSITY** We ask the project to commit to LPD 0.6 watts/sf, max. (~33% reduction), which qualifies for utility incentives – good for the project, Owner and the environment. PD 0.7w/sf is too low to qualify.
4. **WINDOW-TO-WALL RATIO** We acknowledge the reduced window-to-wall ratio to 45%; however, ASHRAE states a 40% maximum window-to-wall ratio allowable; thus, we ask the project to meet/exceed code WWR (<40%) and not suffer an energy modeling penalty, requiring unnecessary systems
5. **WINDOW GLAZING and PASSIVE HOUSE DESIGN.** The updated resiliency scorecard notes the use of “fundamental tenets of Passive House”; however, proposed envelope/glazing does not reflect this. Additionally, they mention WELL and Living Building Challenge without evidence. We request further consideration of Passive House design to incorporate the BPDA IBGC review’s envelope/glazing recommendations and clarification of Preconditions and Optimizations from WELL/petals and Living Building Challenge imperatives be incorporated into design, construction and operations.
6. **RENEWABLE ENERGY** The project has not meaningfully demonstrated integration of solar PV, and we request that this be incorporated onto the building as such through building integrated PV (BIPV) via shading devices, a canopy over the penthouse, etc
7. **URBAN DESIGN AND PUBLIC REALM** We request there be zero onsite parking, as this will be superfluous in <5-years through cabs, rideshares and autonomous vehicles. 150 spaces is not “modest” amount of congestion. We request the design of a “Complete Street” along the road frontage of the project to protect vehicles, cyclists and pedestrians. We request keeping the median to reduce illegal U-turns and placement of a mid-street barrier to discourage jaywalking. We request a shuttle service be provided, parking offsite, to offer access to other major transit hubs for convenience and to reduce parking need.
8. **GRAYWATER REUSE** The project does not address graywater, a major opportunity for earning LEED points, particularly since LID’s are not feasible. We ask that condensate, washer water and other sources of non-potable water be reused in the building for irrigation (100%) and toilet flushing. We encourage the City to create a program incentivizing developers who employ graywater systems.
9. **RIGHT-SIZING PROGRAM SPACE** The podium offers an opportunity to reduce “doubling-up” on spaces/to make the residence/hotel more viable by sharing functions/amenities (gym, conferencing, etc.) between the office and the hotel/residence (benefitting both properties).

My opinion is the health, safety, and quality of life in Back Bay/Fenway would be better served by a residential rather than hotel building. A residential building does a better job helping connect neighbors and reconnecting neighborhoods.

Mayor Walsh, along with Somerville’s Mayor and Cambridge’s City Manager, recently submitted a letter to the BBRs advocating an update to the stretch energy code to meet net zero or comparable standards “Net Zero buildings can be cost-effective to build today” because the technical and economic viability of Passive House or Net Zero standards have been demonstrated and “highly energy efficient buildings can save thousands of dollars... and “energy efficiency is a life safety code” because NZ buildings reduce fossil fuel combustion improving both indoor and outdoor air quality whereas pollution leads to asthma and other health risks.

The Mayors’ letter provides a compelling imperative for Parcel 12 and all new buildings. The goal post has moved and a paradigm shift on fossil fuels and 21st century buildings is obvious.

Parcel 12 and all of us are responsible to help meet *Carbon Free Boston’s* goals.

Thank you for the opportunity to submit comments related to Sustainability/Green Building Design and Climate Change Resiliency, Energy Conservation, Fossil Fuels and GHG emissions.

Respectfully,  
Jacqueline Royce, PhD  
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August 12, 2019

**BY EMAIL ([Aisling.Kerr@Boston.gov](mailto:Aisling.Kerr@Boston.gov))**

Aisling Kerr, Project Manager  
Boston Planning & Development Agency  
One City Hall Square  
Boston, MA 02201

**Re: MassDOT Air Rights Parcel 12 – Planned Development Area (PDA) Review Approval**

Dear Ms. Kerr:

My firm represents Sean Doherty and Paul Lewis, each of whom is a condominium owner and full-time resident at 360 Newbury Street, which directly abuts the locus of the mixed-use development (the “Project”) proposed by S&A P-12 Property LLC (the “Applicant”) on “MassDOT Parcel 12” bounded by Newbury Street Extension to the North, Massachusetts Avenue to the East, and Boylston Street to the South. I appreciate this opportunity to submit this comment letter on their behalf and in opposition to the Applicant’s request for PDA approval.

My clients and I have actively participated in the local proceedings concerning this proposed Project to date, including attending and speaking at Citizen Advisory Committee (“CAC”) meetings, and submitting a detailed comment letter to you and the CAC on February 14, 2019 (this letter is attached hereto at *Exhibit A* and I incorporate its contents by reference herein). Candidly, my direct-abutter clients believe, justifiably, that their concerns have largely been ignored by the Applicant and, thus far, by City officials and the CAC. Indeed, the revisions that have been made to the Project in the past several months actually *worsen* the primary adverse impacts my clients are concerned about: traffic and pedestrian/bicyclist safety on Mass. Avenue.

As detailed in our February 2019 letter and in this letter, my clients and their properties will suffer serious damaging effects from this development. Consequently, they oppose it and respectfully request BPDA not to approve the PDA request, for the following primary reasons:

A. Traffic, Pedestrian, and Bicyclist Safety

My clients’ chief concern with this Project has always been traffic and pedestrian/bicyclist safety and the exacerbating effect it will have on those already treacherous conditions. It will also imperil their own personal safety as residents of 360 Newbury Street

across the street from the locus. The scale and intensity of the Project, together with more vehicles entering its parking facility, will lead to increased traffic, more crashes, and, regrettably, more injuries to pedestrians and bicyclists. It will also overburden a public transit system that has reached its capacity. The Applicant still has not demonstrated that its proposed infrastructure improvements will be adequate to remedy these new, exacerbating impacts.

1. The Project's New 28,000 Square Foot "Public Gathering Place" Traded Pedestrian and Bicyclist Safety for Aesthetics

The Applicant unveiled a major design revision in March 2019, the creation of an approximately 16,000 square foot "park" on Massachusetts Avenue, with another approximately 12,000 square feet of public space on an upper level, including "bleacher" seating overlooking the Massachusetts Turnpike. This change was intended to improve the aesthetics of the Project but actually appears to have made a bad pedestrian and bicyclist safety situation much worse. The Applicant added this park to create, by its own description, "a public gathering place" and a "public destination."<sup>1</sup> As the July 22, 2019 letter to you from Walk Boston described this new feature of the Project, "The public space facing Mass Ave is likely to be the most heavily used space for pedestrians and is described as a public gathering space where ... the street level is dedicated to primarily pedestrian activities."

But this March 2019 major design change was made with little to no apparent analysis of the impact on the perilous safety conditions for pedestrians crossing Mass. Ave. Before it proposed this public park, the Applicant had claimed, though with insufficient data to back up the assertion, that the Project's infrastructure improvements to the Mass. Ave.-Newbury St. and Mass. Ave.-Boylston St. intersections would mitigate the treacherous traffic-pedestrian safety conditions at those locations.<sup>2</sup> Now the Project features as its centerpiece a 28,000 square foot "public destination" – but the Applicant team has provided absolutely no projections as to the increased number of pedestrians who would be crossing Mass. Ave. each day to reach it. Similarly, there are no projections for the number of new bicycle trips this "public gathering space" is likely to draw.

2. Inexplicably, the Applicant has *Lowered* its Projection for Project-Generated Pedestrian and Bicycle since Proposing its Centerpiece "Public Gathering Place"

The Applicant's DPIR, submitted more than one month after it unveiled its plan to add a public park of more than a half-acre in area, contains a 77-page chapter on transportation and traffic impacts. Yet that chapter (Ch. 5) takes virtually no account of that flagship Project

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<sup>1</sup> Draft Project Impact Report, dated May 8, 2019 ("DPIR"), p. 1-9.

<sup>2</sup> My clients acknowledge that the planned re-location of the on-ramp to the Mass. Pike on Mass. Ave. will be an improvement from its current location. But there is insufficient traffic analysis demonstrating that this change will even come close to offsetting the increased pedestrian safety hazards the Project is likely to create, especially with the addition of the large public park that will draw pedestrian foot traffic orders of magnitude greater than the status quo.

revision. No mention is made there of the number of walkers, bikers, T-riders<sup>3</sup>, or drivers who are expected to flock to what the Applicant heralds elsewhere in the DPIR as a “signature at-grade civic plaza and an elevated park open to the public that will establish the Project Site as a new public destination.”<sup>4</sup>

Indeed, the only statistics on pedestrian crossings evident in the entire 1800-page DPIR are for just one of the pertinent intersections, Mass. Ave. and Boylston Street: 1,850 pedestrian crossings in the a.m. peak hour and 2,180 in the p.m. peak hour.<sup>5</sup> How much are those figures expected to increase from that particular intersection once the Project’s “signature ... public destination” opens? And from the Mass. Ave.-Newbury Street intersection? And from the re-located Mass. Ave.-Mass. Pike intersection? It’s anyone’s guess from reading the DPIR. And the number of bicyclists who are expected to converge on this new public gathering place, whether on a peak-hourly, daily, or seasonal basis? Again, the answer won’t be found in the DPIR or anywhere else in the Applicant’s public submissions.

But the Applicant and its DPIR fail even more spectacularly in their failure to explain, let alone analyze, these critical public safety concerns. Somehow, in a logic-defying turn, the DPIR provides a projection of daily combined pedestrian and bicyclist trips that is ***9% lower than the projection the Applicant presented to the City in November 2018 before*** it proposed the outdoor park space.

In the Applicant’s November 2018 Expanded Project Notification Form (“EPNF”), in Table 5-6 (“Project-Generated Trips”), the Applicant stated there would be 8,344 daily trips to the Project site by foot or bike, as shown here:

**Table 5-6 Project-Generated Trips**

<b>Time Period/ Direction</b>	<b>Public Transportation</b>	<b>Walk/Bike/ Other</b>	<b>Vehicle</b>
<b>Daily</b>			
Enter	2,052	4,172	1,730
Exit	2,052	4,172	1,730
<b>Total</b>	<b>4,104</b>	<b>8,344</b>	<b>3,460</b>

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<sup>3</sup> The Project does propose to refurbish and re-open an underground tunnel connecting the Hynes Convention Center Green Line station to the locus. This improvement, like moving the I-90 on-ramp 150 feet to the west, cannot by any objective measure be deemed sufficient mitigation to offset the new safety risks the Project will introduce through its huge increases in traffic volume by car, transit, bike and foot.

<sup>4</sup> DPIR, at 1-1.

<sup>5</sup> *Id.* at 5-8.

But in the Applicant’s DPIR, submitted in May 2019 after proposing in late March 2019 its “signature” public park space that would become a “public destination” for so many (though unquantified) Bostonians and visitors, the Applicant claimed there would be only **7,602** daily trips to the Project site by foot or bike, as shown here:

**Table 5-6 Project-Generated Trips**

<b>Time Period/ Direction</b>	<b>Public Transportation</b>	<b>Walk/Bike/ Other</b>	<b>Vehicle</b>
<b>Daily</b>			
Enter	2,005	3,801	1,825
Exit	2,005	3,801	1,825
<b>Total</b>	<b>4,010</b>	<b>7,602</b>	<b>3,650</b>

Note, too, that the Project, if the DPIR trip generation numbers are to be believed, will not only have 9% fewer pedestrians and bicyclists visiting it by virtue of the addition of its “new public destination,” but the number of people making their way to this “signature” gathering place via public transportation will somehow go down as well, per the Applicant’s figures: from 4,104 per day in the November 2018 EPNF projection to 4,010 in the May 2019 DPIR projection.

None of the other post-EPNF “project refinements” that the Applicant discusses in the DPIR (*see* Sect. 1.4.1) can account for this drop in projected daily pedestrian, bicycle, and transit trip generation, or can explain away the illogic of a new “public destination” that, per the Applicant’s statistics, will somehow result in fewer people visiting the location.

Only three inter-related conclusions can be drawn: (1) the Applicant’s DPIR trip generation numbers have no credibility; (2) no one has projected how many more people, on foot or bike, will be crossing Mass. Ave. to reach the public park; and (3) no one has analyzed the heightened safety risks attendant to that increase in volume. The BPDA would be doing not just abutters like Dr. Doherty and Mr. Lewis, but all City residents and visitors, a grave disservice should it approve this Project without first demanding answers to these vital safety concerns.<sup>6</sup>

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<sup>6</sup> Dr. Doherty and Mr. Lewis also support the concern stated in Senator Brownsberger’s July 22, 2019 letter that the Applicant’s traffic engineers are “over-relying on state-provided transportation as mitigation.” Those resources, the Green Line and Dudley 1 bus are “vastly overcapacity already,” as the Senator states, and the Project “will give little incentive to the occupants ... to use public transportation.”

Aisling Kerr, BPDA  
August 12, 2019

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be 'B. Tymann', written over the printed name.

Benjamin B. Tymann

# **EXHIBIT A**

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February 14, 2019

**BY HAND  
AND EMAIL ([Aisling.Kerr@Boston.gov](mailto:Aisling.Kerr@Boston.gov))**

Aisling Kerr, Project Manager  
Boston Planning & Development Agency  
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**Re: MassDOT Air Rights Parcel 12 – Samuels & Associates Proposed  
Development**

Dear Ms. Kerr:

My firm represents Sean Doherty and Paul Lewis, each of whom is a condominium owner and full-time resident at 360 Newbury Street, which abuts the locus of Samuels & Associates' proposed mixed-use development on "MassDOT Parcel 12" bounded by Newbury Street Extension to the North, Massachusetts Avenue to the East, and Boylston Street to the South. I appreciate this opportunity to submit this comment letter on their behalf.

A. Introduction

As direct abutters, my clients have serious concerns about the adverse effects this development will have on them, their respective homes, and their daily quality of life. While the project proposed by Samuels & Associates ("Samuels") is in many ways still at a conceptual stage, what is clear from what the developer has submitted to date is that the scale of the project is massive, out of character with the neighborhood, and will exacerbate already hazardous conditions with respect to traffic and pedestrian safety. Unless the development were to be drastically scaled back from current plans – something Samuels has unfortunately seemed unwilling, thus far, to consider – the particularized impacts on Dr. Doherty and Mr. Lewis will be severe, imperiling their safety, harming their overall quality of life, and causing the value of their properties to plummet.

Samuels filed its letter of intent with the BPDA on this project nearly nine months ago, and a series of Boston Planning & Development Agency ("BPDA") and Citizens Advisory Council ("CAC") meetings have taken place since that time. Both of my clients, as well as many other neighborhood residents and stakeholders, spoke at these meetings, expressing their concerns about traffic and pedestrian safety, wind and shadow impacts, and many other issues. My clients and these other speakers, as well as members of the CAC, raised a host of detailed

questions and suggestions concerning changes to the project they asked Samuels to consider and evaluate. At the CAC meeting held on February 5, 2019, member Brandon Beatty asked the Samuels team in attendance for feedback on these potential project revisions and associated mitigation measures.<sup>i</sup> A Samuels representative answered that the development team was still “testing the feasibility” of such measures. This was a discouraging response for my clients to hear given the amount of time Samuels has had to address these oft-stated concerns of abutters and other affected neighbors.

Dr. Doherty and Mr. Lewis urge the BPDA and the CAC, whose co-chairs are copied on this comment letter, to hold the Samuels team to its commitments on these necessary project changes and robust mitigation measures. This can be achieved by, at a minimum, insisting Samuels (a) promptly provide revised plans that markedly reduce the size and scale of the project; (b) commit to meaningful, comprehensive mitigation aligned to the revised, smaller project; and (c) share all data and analyses supporting the efficacy of such mitigation.

My clients are aware of the BPDA’s recent decision to require Samuels to undertake a Draft Project Impact Report (“DPIR”) for this project. They commend the agency for insisting the developer pursue this sensible initial step, and they thank the CAC to the extent its members advocated that a DPIR be required at this stage.

As you know, Samuels is pursuing a Planned Development Area (“PDA”) for this project,<sup>ii</sup> which if approved will replace existing use and dimensional requirements based on the Boston Zoning Code. Under Section 3-1.A.a of the Boston Zoning Code, PDAs may be approved by the BPDA and Boston Zoning Commission if a development plan is shown (1) to conform to the general plan for the City as a whole and (2) to not be injurious to the neighborhood. In its current form, the proposed project for Parcel 12 will not satisfy either of those criteria.

The CAC’s use of the Civic Vision process should remain a critical factor in the BPDA’s evaluation of the Samuels’ proposal. The Civic Vision was established in 2000 after an intensive, year-long effort by the Strategic Development Study Committee.<sup>iii</sup> This committee was created following a Memorandum of Understanding between the Massachusetts Turnpike Authority and the City of Boston to create a review process for air rights.<sup>iv</sup>

In short, the Civic Vision was intended to guide projects just like this one. It is also highly relevant because it states permit-granting authorities should “make every effort to minimize impacts of traffic, wind, shadow and other adverse impacts.”<sup>v</sup> As detailed in this letter, these are the same impacts that are of acute concern to my clients.

#### B. Traffic and Transportation Impacts

My clients’ chief concern is traffic and pedestrian safety and the worsening of the already dangerous conditions the Samuels project is likely to create. The scale and intensity of the uses, together with more vehicles entering the development’s parking facility, will lead to increased traffic and more crashes. It will also overburden a public transit system that has reached its capacity. Moreover, Samuels has yet to demonstrate that potential infrastructure improvements that have been discussed will be adequate to remedy these new, exacerbating impacts.

Though Samuels indicates that traffic near the project will not lead to a large letter-grade declines in Levels of Service, the project will greatly increase peak traffic at my clients' homes at 360 Newbury Street. In evaluating the data underlying the guidelines, the Civic Vision states the Mass. Ave./Newbury-Boylston St. area is already over capacity.<sup>vi</sup> According to Figures 5.2a and 5.2b of the EPNF, the current peak vehicle count on Newbury St arriving at Massachusetts Ave is 235 in the morning and 320 in the evening. Figures 5.10a and 5.10b show that the project-generated vehicle counts would be 25 in the morning and 65 in the evening. This is a 10% increase in morning peak hour traffic and a 20% increase in evening peak hour traffic on Newbury Street over current conditions due to this project. The total of 3,460 daily vehicle trips<sup>vii</sup> that this project is estimated to generate are simply too burdensome for this neighborhood.

The data presented by Samuels on the history of crashes at nearby intersections appears to be incomplete. As noted by Samuels, after receiving additional crash data from the Boston Police Department, "it is evident that more crashes occur than the crashes contained in the MassDOT Database."<sup>viii</sup> The MassDOT data for the Massachusetts Avenue / Newbury St / I-90 Ramp intersection (the "Intersection"), diagonal to my clients' building at 360 Newbury, show only two (2) crashes from 2011-2015 while the BPD data shows 34 from 2013-2017.<sup>ix</sup> Furthermore, on January 23, 2019, WGBH reported that "Boston's police department does not collect and submit standardized traffic crash data to state officials."<sup>x</sup> Indeed, my clients are aware of at least two (2) pedestrian fatalities at that treacherous Intersection within the last two (2) years.

Moreover, a February 2019 report by the traffic analytics firm INRIX has just bestowed Boston with the dubious distinction of "the most congested city in the United States" from a traffic standpoint.<sup>xi</sup> "Boston," the report finds, is "the only U.S. city included in the top 10 most congested cities worldwide."<sup>xii</sup> In short, the Samuels project as currently proposed would take one of the worst intersections in the city with the worst traffic congestion and make it markedly worse and more dangerous.

Adding thousands of new daily vehicle trips to streets and intersections where accidents are already high (and likely underestimated statistically) creates new crash risks that are simply unacceptable. My clients are also alarmed when the Samuels development team states that "hotel trips will be drop-off/pick-up only at the site on Massachusetts Avenue,"<sup>xiii</sup> a situation that creates additional risks for pedestrians and prospective hotel workers on an already hazardous Intersection. While there was some preliminary discussion during the February 5, 2019 CAC meeting about the hotel component of the Samuels proposal being replaced with condominiums or apartments – which would purportedly reduce overall traffic counts by approximately 33% from the hotel option and thus would be a step in the right direction – *any* significant increase in traffic at the Intersection without countervailing infrastructure improvements would create grave risks to public safety.

### C. Dimensional and Architectural Concerns

According to Boston Zoning Map 1 Boston Proper, the project is located within three (3) zoning subdistricts: Residential H-3 and Business B-2 and B-8-120b subdistricts. Per Map 1, the project is also located within the Restricted Parking Overlay District as established by Section 3-

1A.c. Of these three subdistricts, B-8-120b is the most permissive in terms of dimensional and use regulations.

Within the current zoning, a maximum FAR of 2 is allowed in B-2, a maximum FAR of 3 is allowed in H-3, and a maximum FAR of 8 is allowed in B-8-120b.<sup>xiv</sup> Samuels cites the FAR of the project as 5.<sup>xv</sup> However, within the same page where a FAR of 5 is cited, the total gross floor area of the building could be up to 545,000 sq. ft. on an approximate lot area of 79,050 sq. ft.,<sup>xvi</sup> which should be calculated as a FAR of 6.9. Whether 5.0 or 6.9, this level of density is higher than two of the three zoning subdistricts for the site.

Within the current zoning, a maximum height is established only under B-8-120b, which has a maximum height of 120 feet.<sup>xvii</sup> The Samuels project calls for two towers, an office tower and a residential/hotel tower. The office tower, which would be the larger of the two, has a proposed height of fourteen (14) stories above the podium (itself is two stories) for a combined height of sixteen (16) stories and 237 feet.<sup>xviii</sup> The residential or hotel tower has a proposed height of eleven (11) stories above the podium for a combined height of thirteen (13) stories and 154 feet.<sup>xix</sup> Both towers are higher than the 120 feet as limited by B-8-120b.

Additionally, the Civic Vision grouped Parcels 11-15 together for planning consideration. The guidelines state that there should be no more than one building over fifteen (15) stories among these parcels.<sup>xx</sup> In March 2018, the BPDA Board approved Parcel 15, a/k/a the 1000 Boylston Street project, that includes a residential building of 27 stories.<sup>xxi</sup> Accordingly, 1000 Boylston Street precludes any other building, such as Samuels' proposed 16-story office tower, from exceeding 15 stories in the Parcel 11-15 area.<sup>xxii</sup>

Both the height and the density of the project are simply too great for this neighborhood. As is well documented, the Back Bay is composed of much smaller structures. With the exception of abutters to Boylston St and Massachusetts Ave, the rest of the Back Bay is limited by zoning to heights of 65 feet. Though the project is located just adjacent to and not within the Back Bay Historic District,<sup>xxiii</sup> the Civic Vision's guidelines for Parcels 11-15 encourage respect for the Back Bay Architectural District.<sup>xxiv</sup> The Back Bay Architectural Commission Guidelines state that new construction building heights should reflect the "dominant cornice heights of surrounding buildings."<sup>xxv</sup> This project does not accord with these surrounding Back Bay building heights.

#### D. Shadow Impacts on Dr. Doherty's Residence

As proposed, the project's height and massing will decrease sunlight and increase shadow impacts on abutters to a dramatic degree. It appears from preliminary analysis that new shadows from the project will affect 360 Newbury Street at multiple times per year. This impact will be especially acute for Dr. Doherty, whose fifth floor, corner-unit residence fronts both Mass. Ave. and Newbury Street. In short, his currently unobstructed view from his Mass. Ave. windows will be blocked by a looming 150-foot-high edifice which, in turn, will block out sunlight to his home at levels that have yet to professionally measured, but are sure to be severe.

Dr. Doherty's loss of view and loss of sunlight are underscored by Samuels' own documents. According to the EPNF, the sky dome obstruction as viewed from Mass. Ave. will increase from zero percent obstruction to over 55%.<sup>xxvi</sup> Though Samuels specifically cites<sup>xxvii</sup> that the design may accommodate the westerly view of 360 Newbury, these views will still be substantially, if not completely, obstructed by the new construction. The Civic Vision guidelines for Parcel 12 noted that it "terminates a view corridor along Newbury Street" and that ways to preserve this view corridor should be explored.<sup>xxviii</sup>

Although Samuels provided very small illustrations of the project's new shadow impacts (Figures 6.3a-d), each of the afternoon and evening conditions appear to reflect new shadows onto 360 Newbury. Furthermore, this project will be casting new shadow onto the neighborhood's collective historic resources, including the Commonwealth Mall<sup>xxix</sup> and, potentially, Fenway Studios.<sup>xxx</sup> The Civic Vision guidelines for Parcels 11-15 note that shadow impacts on the tops and sides should be considered when minimizing shadow impacts.<sup>xxxi</sup>

#### E. Wind Impacts

While this project is developed with a podium style base, it will result in new wind conditions that are totally unacceptable. This project will generate new uncomfortable wind conditions on Commonwealth Ave, Mass. Ave., and Newbury Street as shown on EPNF Figures 6.1a-b. At my clients' residence at 360 Newbury, the project will also change the wind condition to uncomfortable. Indeed, the wind impacts created by this development are so bad that Samuels has had to resort to what might be the most tepid defense of a project impact a developer has put in writing in a long time: "There are no locations on or off-site with pedestrian wind comfort conditions," Samuels says in its EPNF, that are "categorized as *dangerous on an annual basis*."<sup>xxxii</sup>

#### F. Glare

The mass of the project also lends itself to increased visual glare. In particular, the most hazardous glare to the general public may be the 129 days of glare during evening rush hour on the Mass Pike.<sup>xxxiii</sup> Samuels estimates that the impact would be momentary as the developer assumes that vehicles are driving at 60 mph during rush hour.<sup>xxxiv</sup> However, in an impact that is described, but not illustrated, Samuels notes that there will be evening high impact visual glare on Newbury Street when facing west towards Mass. Ave. for up to 122 days per year.<sup>xxxv</sup> While Samuels considers ways that drivers could mitigate against this glare, no attention is paid to residents at 360 Newbury, like my clients, who would suffer daily impact.<sup>xxxvi</sup>

#### G. Use

While all of the proposed uses appear to be allowed in the Business subdistricts, there are a number of uses which would be forbidden or conditional in the Residential subdistrict.<sup>xxxvii</sup> The forbidden uses include: neighborhood retail (Use Item 34), Department Store (Use Item 35), Restaurants (Use Item 37), and Office Building (Use Item 41).<sup>xxxviii</sup> Department Stores would be a conditional use even in the Business subdistricts if over 75,000 sq. ft. and Hotels (Use Item 15) are conditional in the residential subdistrict. Lastly, in both Residential and Business subdistricts,

Aisling Kerr, BPDA  
February 14, 2019

Multi-Family Dwellings (Use Item 7) are allowed. What this demonstrates is that previous zoning practices prudently employed a cautious approach to large-scale, non-residential development at this site. Furthermore, preference for residential uses is noted by the Civic Vision, which states that housing is the most appropriate use for the parcels.<sup>xxxix</sup> The reason the Civic Vision gives for this preference is the relatively low traffic-generation characteristics of housing.<sup>xi</sup>

#### H. Parking

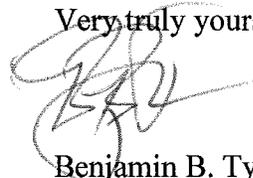
As noted above, the project is located within the Restricted Parking District. According to Section 3-1A.c, this means that off-street parking is a conditional use (for the non-residential and non-hotel uses), which may be approved in accordance with Section 6-3. The 150 spaces of parking to be provided will be “allocated only for office uses” according to the EPNF.<sup>xli</sup> The limiting of parking to non-hotel/non-residential uses would require a conditional use permit per the underlying zoning.

#### I. Conclusion

The Samuels project as currently proposed fails to comply with the general plan as outlined in either the City’s underlying zoning or the Civic Vision document. Accordingly, my clients respectfully request that the PDA not be recommended for approval by the BPDA, at least not before Samuels has committed to substantially scaling back the project and implementing meaningful and effective mitigation measures that ameliorate the myriad adverse impacts detailed in this letter.

Thank you for your consideration.

Very truly yours,



Benjamin B. Tymann

cc: Fritz Casselman, Co-Chair, CAC (Parcels 12-15)  
Meg Mainzer-Cohen, Co-Chair, CAC (Parcels 12-15)  
Sean T. Doherty, M.D.  
Paul Lewis

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<sup>i</sup> According to attendees at the January 14, 2019 public meeting of the BPDA, an agency official announced there would be a follow-on public meeting of that body in order to accommodate members of the public who showed up but could not participate due to the small size of the meeting room in the Hynes Convention Center. That follow-on public meeting of the BPDA has not happened. While the CAC allowed public comments at the conclusion of its February 5, 2019 meeting, it was primarily a forum for the CAC members to provide their feedback to the developer. Fewer members of the public likely attended the CAC meeting for that reason. More citizens and

stakeholders would likely have attended and given input at a follow-on BPDA public meeting had one been posted after January 14. My clients hope that will still happen.

<sup>ii</sup> Page 39, Parcel 12 Expanded Project Notification Form (“EPNF”) November 2018

<sup>iii</sup> Page 7, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>iv</sup> See M.G.L. c. 6C, § 46

<sup>v</sup> Page 77, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>vi</sup> Page 51, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>vii</sup> Page 147, Parcel 12 EPNF November 2018

<sup>viii</sup> Page 140, Parcel 12 EPNF November 2018

<sup>ix</sup> Pages 141-142, Parcel 12 EPNF November 2018

<sup>x</sup> <https://www.wgbh.org/news/local-news/2019/01/23/why-doesnt-the-boston-police-report-traffic-crash-data>

<sup>xi</sup> <http://inrix.com/press-releases/scorecard-2018-us>; see <https://www.wbur.org/bostonmix/2019/02/12/boston-gridlock-congestion-rank>

<sup>xii</sup> <http://inrix.com/press-releases/scorecard-2018-us>

<sup>xiii</sup> Page 147, Parcel 12 EPNF November 2018

<sup>xiv</sup> Boston Zoning Article 13 Table B

<sup>xv</sup> Page 26, Parcel 12 EPNF November 2018

<sup>xvi</sup> Page 26, Parcel 12 EPNF November 2018

<sup>xvii</sup> Boston Zoning Article 13 Table B

<sup>xviii</sup> Page 26, Parcel 12 EPNF November 2018

<sup>xix</sup> Page 26, Parcel 12 EPNF November 2018

<sup>xx</sup> Page 78, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>xxi</sup> Page 11, Parcel 15 aka 1000 Boylston Supplemental Information Document January 2018

<sup>xxii</sup> Page 26, Parcel 12 EPNF November 2018

<sup>xxiii</sup> Page 249, Parcel 12 EPNF November 2018

<sup>xxiv</sup> Page 15, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>xxv</sup> Page 2,

[https://www.cityofboston.gov/images\\_documents/Back%20Bay%20Guidelines%20for%20the%20Residential%20District\\_tcm3-13458.pdf](https://www.cityofboston.gov/images_documents/Back%20Bay%20Guidelines%20for%20the%20Residential%20District_tcm3-13458.pdf)

<sup>xxvi</sup> Page 211, Parcel 12 EPNF November 2018

<sup>xxvii</sup> Page 51, Parcel 12 EPNF November 2018

<sup>xxviii</sup> Page 77, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>xxix</sup> Pages 210 and Figure 6.3d, Parcel 12 EPNF November 2018

<sup>xxx</sup> Page 5, BPDA Meeting Notes to Parcel 12-15 CAC Meeting #25, April 4, 2018

<sup>xxxi</sup> Page 78, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>xxxii</sup> Page 206, Parcel 12 EPNF November 2018 (emphasis added)

<sup>xxxiii</sup> Page 213, Parcel 12 EPNF November 2018

<sup>xxxiv</sup> Page 213, Parcel 12 EPNF November 2018

<sup>xxxv</sup> Page 213, Parcel 12 EPNF November 2018

<sup>xxxvi</sup> Page 213, Parcel 12 EPNF November 2018

<sup>xxxvii</sup> Boston Zoning 8-7 Table A

<sup>xxxviii</sup> Boston Zoning 8-7 Table A

<sup>xxxix</sup> Page 11, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>xl</sup> Page 74, A Civic Vision for Turnpike Air Rights in Boston, June 2000

<sup>xli</sup> Page 132, Parcel 12 EPNF November 2018