



February 9, 2006

William Chin, Chair
Zoning Board of Appeal
c/o Jay Szklut, Planning and Economic
Development Manager
Homer Municipal building
Belmont, MA 02478

Re: 40B Uplands Proposal

Dear Mr. Chin:

Under its Chapter 40B application (the "40B Application"), AP Cambridge Partners II, LLC (the "Applicant") has requested the waiver of zoning and other local regulations that in the Applicant's opinion would impede the development of the 299 units of housing including 60 affordable units (the "Project").

Because the Uplands serve Belmont's needs for open space, conservation, wildlife habitat, recreation, and flood control, we address in this letter the loss of this valuable open space.

In determining whether the 40B Project is consistent with "local needs," the Zoning Board of Appeals ("ZBA") can address whether open spaces are critically needed, and whether local regulations and requirements bear a direct and substantial relationship to the protection of open spaces. "Local 40B Review and Decision Guidelines" by Massachusetts Housing Partnership and Edith M. Netter, Esquire, dated November, 2005, Page 1 (the "Guidelines").

As defined in 760 CMR 30.02, "Open spaces means land areas, including parks, parkland, and other areas which contain no major structures and are reserved for outdoor recreational, conservation, scenic, or other similar use by the general public through public acquisition, easements, long-term lease, trusteeship, or other title restrictions which run with the land.

On the subject of "open space" the Chapter 40B regulations contain specific language found in 760 CMR 31.07(3)(c), §§ 1 through 6. We will address each of the numbered subsections of this regulation. We will first quote the relevant regulatory language in bold italics, and second provide the response.

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Availability of Existing Open Space (§1).

We look first at the availability of open space to Belmont residents. Natural open space in Belmont is limited in the area near the Uplands. Open Space includes the Lone Tree Meadow (on the former McLean Hospital land) and Habitat operated by Mass Audubon on opposite sides of Concord Avenue on Belmont Hill, as well as the DCR Beaver Brook Reservation in Waverley and the Town Rock Meadow Conservation Land on the Waltham/Lexington border. However, all these natural areas in Belmont are on the west side of the Town and approximately two or more miles from the Uplands.

While the Uplands abut the narrow DCR Alewife Reservation that stretches from Little Pond along both sides of Little River and Alewife Brook to the Mystic River, the Uplands represent the only significant forested upland area. The remainder of the Reservation contains mostly water bodies, wetlands, and floodplains. Because of proposed development activities, water levels will increase. Bulfinch, the developer of the ADL property, because of high ground water levels will be discharging stormwater runoff to Little River and the adjoining wetlands. The MWRA working with Cambridge to alleviate the Combined Sewer Overflows to Alewife Brook, and in doing so, will convert approximately eight acres of the Reservation into a basin which will be wet for part of the year and will restrict the walkable areas of the Reservation.

From a regional standpoint, we add that Cambridge has no natural woodland areas. Arlington contains only Menotomy Park one mile from the Uplands.

Use of existing open spaces and need for additional open spaces (§2).

Highly populated suburban/urban areas are located to the west in Belmont, north in Arlington, and east in North Cambridge. There is a dearth of natural areas for these neighborhoods. There is a critical need for woodlands accessible to Cambridge and Arlington as well as Belmont. The proximity of the T station would make the Uplands convenient for people from Somerville, Cambridge, and other close by communities to visit an expanded wildlife natural reservation. The Alewife Reservation is used by bikers, bird watchers, naturalists, school children for environmental education, and the Uplands in this respect could allow for an enhanced experience. The Uplands compliment and enhance the conservation and recreational values of the Alewife Reservation, and therefore, are essential for the revitalization of the Reservation. This is starting to be realized pursuant to the MDC (now DCR) Master Plan dated 2001. Stage 1 of this Plan has commenced with the revitalization of the Central Marsh across Acorn Park Drive from the Uplands.

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As wet areas expand in the Reservation, land for recreation will decrease. Recently studies by Lynn Boyd of the University of Massachusetts, Amherst (Boyd, Lynn. *Buffer Zones and Beyond: Wildlife use of Wetland Buffer Zones and their Protection under the Massachusetts Wetlands Protection Act*, Department of Natural Resources Conservation, University of Massachusetts, Sept., 2001.) found that 76% of the freshwater wetland-dependent amphibian, reptile, mammal and bird species in Massachusetts also require upland habitats for survival. For example, many bird species feed in wetlands while nesting and breeding in adjacent uplands. Many amphibians reproduce in wetlands but live the rest of the year in the surrounding uplands. In fact 18 species that breed or have resident populations in the wetlands of the Alewife Reservation also require upland habitat to survive (e.g. mallard ducks, tree swallows, muskrats, beaver and mink). Without sufficient upland resources these species will likely become locally extinct in the Alewife area. There are probably more breeding wetland-dependent species, especially frogs, turtles, and snakes that inhabit and use the uplands in the Alewife, but have not been documented.

Relationship of the proposed site to Belmont's open space and outdoor recreation plan adopted by the Planning Board (§3).

Background

Belmont has an open space plan, the Belmont Open Space and Recreation Plan (the "Open Space Plan"), which was adopted by the Town in August 2001 and approved by the Massachusetts Executive Office of Environmental Affairs in the summer of 2001. We cite below the Open Space Plan by section number.

The Open Space Plan recognizes the importance of the Uplands for its open space and flood mitigation values and regards preservation of the parcel among its highest priority recommendations. Section 9.2.2. In Section 4.3.3, the Open Space Plan notes that the Belmont Uplands serves a vital wetlands function in attenuating flooding in low-lying areas of Belmont, Cambridge, and Arlington. We highlight the frequency of flooding events that these three communities have recently experienced. Section 5.3 points out that the majority of Belmont's wetlands converge on the Alewife area and that this area has been highly developed. Section 9.2.2 notes that further development in the Alewife area will jeopardize its ability to provide flood mitigation for the surrounding communities.

The Open Space Plan clearly specifies that the Belmont Uplands is the primary land parcel in Belmont needing protection (Section 7.1.1). The plan notes that the Belmont Uplands "serves as a crucial green space link to nearby and adjacent sensitive natural resource areas including wetlands, water resources, and wildlife habitat."

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Under Section 9.1, the protection and preservation of the Belmont Uplands is included under two sections in the Open Space Plan's five-year goals and objectives: *(1) preserve and protect Belmont's open space, historic scenic areas, and plant and animal resources (A-2); and (2) Identify and protect open space parcels critical to the prevention of excessive flooding and pollution of Belmont's wetlands (B-1a).*

Following the publication of the Open Space Plan, Town and community organizations have held many meetings to discuss the need for open space and how to resolve the flooding issue. These include the Conservation Commission, Tri-Community Task Force, the Mystic River Watershed Association, the Belmont Citizens Forum, Sustainable Belmont, and the Friends of Alewife Reservation. There also was an effort to seek designation of the Alewife Reservation and the surrounding area by the Executive Office of Environmental Affairs as a critical environmental area.

Relevance to the 40B approval process

The Open Space Plan provides special protection for land subject to a Chapter 40B Project. 760 CMR 31.07(3)(c) §3 states "*The inclusion of the proposed site in said open space or outdoor recreation plan shall create a presumption that the site is needed to preserve open spaces unless the applicant produces evidence to the contrary.*"

Since the Open Space Plan places a highest priority on the protection and preservation of the Belmont Uplands for its environmental benefits including its open space and flood mitigation functions, the Applicant has the burden to provide compelling evidence that the land is not needed for these purposes.

The UAC asks the ZBA to respect what Town and community organizations have done to create and support Belmont Open Space Plan, and to support Belmont's Open Space Plan by making all efforts to protect the Uplands and to give full and fair consideration to reasonable options for preserving the Uplands.

Relationship of the proposed site to Town Meeting actions to preserve open spaces

After the adoption of the Open Space Plan, the Town Meeting pursuant to the Memorandum of Understanding changed the zoning of the Uplands from General Residence to Research and Development ("R&D"). This was approved only after the first R&D proposal was rejected by Town Meeting. The agreed upon rezoning did require 65% open space, maximum lot coverage 20%, and maximum impervious surface 35%, and maximum gross floor area 245,000. The Town and the owner (the same as the current Applicant) also agreed upon the location and terms of a conservation restriction. The Town did this to protect as much open

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space as possible and to respect the close relationship between the R&D and the Alewife Reservation.

The Uplands is privately owned. The owner had a clear right to ask the Town to rezone its property. The Town in turn had to respond reasonably to that request. It did so and enacted the R&D rezoning with its restrictive language that recognized the environmental value of the area. The current Chapter 40B Application is not a rezoning request. It is a 40B request. By statute and regulation, the Town can choose to balance the proposed 299 units of housing against the Town's declared interest to preserve the Property as open space. The Owner/Applicant has the right to seek Site Plan Approval and a Building Permit to build an R&D project, or the right to seek rezoning. However, the Owner/Applicant has chosen the Chapter 40B route and therefore becomes subject to the above quoted regulation establishing a presumption that the Uplands are needed to preserve open space.

In balancing "local needs" against the need for affordable housing under 40B, we point out that Belmont is a town of neighborhoods and the 40B Project is not in a neighborhood. It is on an access road served by infrequent bus service and a 3/4 mile walk to the Alewife Station lonely and unsafe to walk after dark. Children will have to be bused or driven as all foot traffic into the Town will have to use the access road, hardly a safe transit route.

The ZBA has a choice. It can work to enhance the open space and encourage a return by the Applicant to its earlier approved R&D Project. Or it could take a more limited approach and work with the Applicant to redesign the 40B Project to live within the minimum controls established for the R&D proposal.

When reviewing the R&D rezoning proposal, the Town carefully weighed development and open space needs and arrived at a well-considered plan where development and open space values could co-exist on the site. The 40B proposal ignores that process and outcome. One of the differences between the R&D and this 40B Project is the large paved and built on areas as compared to the more open R&D plan. The second is the pressure that a large housing development will put on the Reservation as compared to the R&D development. The Applicant, by using all available space in the Uplands for his project, actually relies on the buffer areas and the Reservation to be the backyard for the houses. A small project would reduce the impacts but the Applicant has applied for 299 units bringing probably 600 to 700 people into the sensitive area. It was the sensitivity of the area, its location as an Upland surrounded by wetlands and its isolated location from the rest of the Town that encouraged the Town to protect the Uplands by its inclusion in the Town's Open Space Plan. Early in the review process, the ZBA should ask the Applicant to develop an alternative proposal based on the land use ratios and the conservation restriction worked out previously by the owner of the site (who is the same party as

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the current Applicant). Both alternative approaches should be subject of course to new information obtained since the Town Meeting approved the R&D rezoning.

Relationship of the proposed site to any regional open space plan prepared by the applicable regional planning agency (§4).

In June 2003 the Metropolitan District Commission, now the Department of Conservation and Recreation published a Master Plan for the Alewife Reservation and Alewife Brook. The plan states that the MDC is opposed to the development of any of the land around the Reservation while acknowledging the beneficial results of the 7.8 acres Conservation Restriction offered by gift by the owner of the Uplands to the MDC (p. 52). This is because the Reservation and the surrounding privately owned undeveloped parcels are all that remains of a much larger ecosystem, the Great Swamp, which has been almost completely developed.

The plan references the Belmont Uplands in several contexts. The Uplands is described as “ the highest elevation in the area. It supports a mature silver maple forest, a habitat type not found in the Reservation. This forested area is home to many animals including large mammals like deer and coyote. The area also likely supports vernal pools that provide breeding grounds for amphibians in the spring.” (p.65)

Because the Uplands represent almost all of the existing upland forest in the Alewife ecosystem the authors of the plan felt that “the development of the Belmont Uplands site will have negative effects on the habitat value of the whole Reservation given the loss of forest land and decreased habitat connectivity.’ (p.66). The plan goes on to state on page 66 that “the MDC has worked closely with the developer to define measures that protect and enhance the remaining open space and its connection to the Alewife Reservation.” The plan notes that the Uplands provides necessary habitat diversity (i.e. food resources and breeding areas) and refuges during extensive flooding, for the Reservation’s wildlife.

The plan states that while the Reservation now represents less than 4% of the Alewife Brook watershed it “still provides valuable ecological functions such as wildlife habitat and filtering stormwater runoff and also serves as a critical floodplain” The plan acknowledges that the Reservation and adjacent lands have been ignored and abused with sewer overflows and dumping but they do “deserve renewed attention, resources and stewardship.” The plan recommends a cessation of degradation, embarking on ecological restoration, and considering the value of the Reservation in the context of the larger surrounding landscape.

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Current use of the proposed site and of land adjacent to the proposed site (§5).

Land adjacent to the Uplands consists of the Alewife Reservation including Little Pond, Little River, and adjoining wetlands, floodplain and riverfront. The Friends of Alewife Reservation (FAR) conducts nature walks through the Reservation including the boundary of the Uplands where the Uplands abut the Reservation and at times along the edges of the Uplands.

FAR also conducts numerous educational programs that are described on FAR's website at www.FriendsofAlewifeReservation.org:

Inventory of sites suitable for use as open spaces, and available for acquisition or other legal restriction as open spaces, in the city or town.

Few sites remain for use as open spaces in the Town of Belmont. The Underwood Baker estate on Common Street has wetlands abutting the Wellington Brook but is privately owned. The Woodfall Road Site with no special natural features is already proposed for development. The Belmont Country Club with a 27 hole golf course is privately owned. While constituting open space, the golf course is not generally open to the public. The Incinerator Site/Transfer station is surrounded by wetlands and under an order to be sealed/or resealed to prevent seepage of pollutants. While owned by the Town, it is located in the far western border.

We are respectful of the steps that the Town has already taken regarding the potential development of the Uplands. However, as time has passed, the importance of the Uplands – an area that as part of the whole watershed helps to maintain natural infiltration and decreased flooding – has grown. For this reason, the UAC continues to believe that the highest and best use of the Uplands is Open Space.

Thank you for giving your full consideration to the above. If you have questions, members of the Uplands Advisory Committee will make every effort to respond and share with you additional information.

Very truly yours,

Frederick S. Paulsen, Chair
Uplands Advisory Committee

cc: Jeffrey Wheeler