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TO: George Proakis and Planning Staff, Somerville Board of Aldermen

DA: 3/27/2015

RE: Zoning Ordinance Testimony

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Congratulations on taking a bold step towards new zoning in Somerville. I wish I had time to review every nuance of the proposed zoning, but I don't, so some of the feedback is more general, while other feedback is more specific.

The testimony includes sections addressing the following topics:

- [Inclusionary Zoning](#) - proposing a 20% citywide rate; suggesting changes to the proposed provisions on alternative compliance via off-site construction or cash-in-lieu-of-units; proposing protections for tenants in inclusionary units
  - [Building Definitions](#) - allowing a new category of mixed use building that includes ground floor retail, middle floor office/R&D, and upper floor residential
  - [Special District and Union Square Buildout](#) - adding phasing requirements to the buildout section of each special district to ensure that the planned number of new residential units are not constructed way before the planned non-residential buildings
  - [Linkage](#) - calling for a new Nexus study, in light of the recent study of Cambridge calculating a basis for a \$24/square foot rate, and proposing a \$10-12 rate.
  - [Discourage Subdividing Existing Properties](#) - requiring a variance instead of merely a special permit to subdivide units of housing (in residential properties ranging from cottage to six-plex) so as to protect our stock of family-sized units, and discourage profit-driven decisions to carve them up for the purpose of creating a larger number of smaller units to sell or rent
  - [Open Space / Greenspace](#) - various comments
  - [Transportation / Parking](#) - various comments
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(A) **Inclusionary Zoning**: I largely endorse the proposed language around inclusionary units, and especially **support the definition of income tiers in Table 9.2** and the provisions in subparagraph (3)(b) that at least **20% of the inclusionary units in developments of 30 or more units be 3BR or larger**.

- (1) I would suggest replacing the percentages in Table 9.1 with a **citywide 20% inclusionary rate** for on-site construction of the required units, and **higher requirements for off-site construction and cash-in-lieu-of construction**. I would **exempt buildings and developments with 4 or fewer units**, thereby exempting most property owners and most properties and small scale development in largely residential neighborhoods.

*Rationale: A uniform 20% rate would permit the City to maximize Chapter 40R and 40S revenues, would create a consistent landscape for developers, would avoid muddying the impact of other provisions intended to incentivize smart growth by allowing greater density where parking is more limited, and would maximize the inclusionary contribution to the city's affordable housing stock.*

- (2) **Off-Site Inclusionary Units** (amending subsection 7 ("Alternative Compliance") in the Affordable Housing section of the Zoning)

Subsection (a)(ii)(g) of the current proposal states that, "Offsite units must be designed to house three-person or larger households, even if the market rate units are designed primarily to house one- and two-person households."

Alas, in an out-of-control real estate market like Somerville, there is little difference, if any, between the square footage required to house a two-person household and a three-person household. **Unit size requirements should be based on the number of bedrooms, and not the number of occupants.**

And, if developers are going to build their inclusionary units offsite, **they should be required to build more units and bigger units than would be required onsite, and those units should be at least as affordable as they would be if they were onsite.** Therefore, replace the language in subsection (a)(ii)(g) with the following: "Offsite units must be affordable under the schedule prescribed by Table 9.4 on ADU diversity, must be designed in accordance with the following table of unit sizes, and must include at least one additional inclusionary 2BR unit at the Tier 2 affordability rate for every five otherwise required units that are built offsite, as follows:

	3BR	4BR	2BR
1 <sup>st</sup> Required Unit	1		
2 <sup>nd</sup> Required Unit	1	1	
3 <sup>rd</sup> Required Unit	1	2	
4 <sup>th</sup> Required Unit	2	2	
5 <sup>th</sup> Required Unit plus Additionally Required Unit	2	2	1 + 1 additional Tier 2 unit

The schedule would repeat for every five (plus one) offsite ADUs required."

*Rationale: The City has long recognized the importance of integrating our housing stock, and avoiding ghettos of low income housing. Obtaining more and bigger affordable units, as specified above, provides City residents with reasonable compensation for relaxing the on-site requirement.*

(3) **Buyouts and Payments in Lieu of Constructing Inclusionary Units** (amending subsection 8 in the Affordable Housing section of the Zoning) The zoning should prescribe a disincentive for buying out of the inclusionary requirement. The 100% rate described in the following subparagraph (i) acknowledges the goodwill of the developer who has built all of the fully required units (in accordance with the different on-site and off-site requirements specified above); the 150% rate described in the following subparagraph (ii) prescribes a higher cash payment in-lieu-of constructing the inclusionary unit:

- (i) For developments of 5 or more units in which ALL required inclusionary units will be built: the payment for fractional units required should be based on **the actual cost of the subsidy required to build the next required inclusionary unit.**
- (ii) For developments of 5 or more units in which ANY of the required inclusionary units will NOT be built: the payment for each unbuilt inclusionary unit and fractional inclusionary unit that is otherwise required should be based on **150% of the actual cost of the subsidy that would be required to build each such inclusionary unit or fractions thereof.**
- (iii) In calculating the subsidy required for any of the inclusionary units not built or the subsidy required for the next inclusionary unit, **the schedule of affordability prescribed in Table 9.4 "ADU Diversity" should be used;** that is, if the next inclusionary unit required would have been a Tier 1 rental unit affordable to households with 40% of the AMI, then the payment calculated should be based on the subsidy needed to make such a unit affordable to households with income equal to 40% of AMI.

*Rationale: Dollar-for-dollar cash in lieu of construction lets the developer off the hook, but provides inadequate funding to construct new units, because it only covers the marginal*

*cost for making a unit affordable. The cost of new development entails significant soft costs and site acquisition costs which must be allocated among all the units. If a developer contributes cash-in-lieu-of-inclusionary units, their contribution should help cover those other costs. A 150% multiplier helps cover those costs and creates a financial disincentive to buying out of the inclusionary requirement in the first place.*

- (4) **Household Selection for Inclusionary Units:** Eligibility for inclusionary units should be prioritized for appropriate-sized, income eligible households that currently live or work in Somerville or who have been **displaced from Somerville since January 1, 2005**. The second sentence of subparagraph (a) of Section 10 ("Household Selection") of the Affordable Housing section should be replaced with the following text:

- (a) First preference is given to households that currently live in Somerville and are at risk of displacement.
- (b) Second preference is given to households that were displaced from Somerville since January 1, 2005.
- (c) Third preference is given to households with one or more members that currently work in Somerville.

For the purposes of this section, "displacement" is defined as follows: In the case of renters: displacement means loss of rental housing caused by (a) inability to pay increased rent, (b) sale of the property by the owner, (c) conversion of the property to a condominium, (d) foreclosure on the property. In the case of owners: displacement means loss of housing caused by a foreclosure.

*Rationale: The proposed language targets the units in a manner that reflects their underlying purpose. By clarifying the meaning of "displacement," the provision links the role of the inclusionary unit to its most fundamental purpose. (Inclusionary units for households where one or more members work in Somerville links to the smart growth objective of minimizing commuting.) The look-back period of 10 years in the statement of the second preference acknowledges the increased level of displacement dating from the condominium boom in the mid 2000s. Since the burden of proof for showing displacement or risk of displacement is on the applicant for an inclusionary unit, a longer look-back period is no more burdensome to the City than a shorter look-back period. (The City would have to define what "risk of displacement" means and how it should be evidenced.)*

- (5) **Eviction Prevention in Inclusionary Units:** In order to protect the property owner and the tenant from the human and financial costs of eviction from an inclusionary unit, the lease between the tenant and the owner of an inclusionary rental unit shall include the following provisions in the form of a city-approved rider:

- (a) Eviction shall be limited to good cause related to tenant-fault. Good cause is defined as a substantial or repeated violation of a material lease term including, but not limited to, the obligation to pay rent; and
- (b) Any notice of termination or non-renewal shall state the complete reasons for the proposed eviction and the facts upon which such reasons are based.

*Rationale: This provision parallels similar language in the Cambridge ordinance providing tenants in inclusionary units basic protections from capricious evictions, which is consistent with the goal of providing stable housing for persons at risk of displacement or who have already experienced displacement from Somerville.*

- (6) **Parking and Other Amenities in Inclusionary Units:** I recommend adding the following provision to the section on Inclusionary zoning:

If access to onsite parking or other amenities for which there is a supplemental charge is routinely offered to occupants of the building in which the inclusionary unit is located, the total charge to the household occupying such unit, including access to such amenities, shall not exceed the Unit Price

calculated in paragraph 4 ("Unit Price") of section A ("Affordable Housing") of article 9 ("Community Benefits").

*Rationale: The cost of amenities attached to an inclusionary unit could render a unit unaffordable to the intended occupant. The proposed language seeks to avoid that eventuality, while at the same time, abutters to the property will not be burdened by any added competition for on-street parking by residents of inclusionary units who were denied access to the on-site parking.*

(B) **Building Definitions:** In all districts where "Mixed Use Building" is an allowed building type, replace "Mixed Use Building" with two types of buildings: "Mixed Use - Residential" and "Mixed Use - Residential/Non-Residential" as follows:

- "Mixed Use - Residential" would have the same meaning as the current "Mixed Use Building" and would include ground floor commercial uses and upper story residential with six or more dwelling units, provided that, for buildings with six (6) or more stories, the inclusionary zoning requirement would increase by 5% overall for each floor above five (5) floors, as follows: If the inclusionary zoning requirement were 20% for a five-story building, then the inclusionary zoning requirement for a seven-story building would be 30% and the inclusionary zoning requirement for a 10 story building would be 45%. Developers constructing such buildings would be exempted from any linkage requirements associated with such buildings if they could demonstrate that their cost in satisfying the increased inclusionary requirement - that is, affordability of residential units above and beyond the baseline 20% requirement - exceeded the ordinary linkage requirement for the non-residential square footage of the building.
- "Mixed Use - Residential/Non-Residential" would have ground floor commercial, upper story with residential and non-residential, such that 25-30% of total square footage would be residential, remainder would be non-residential (e.g., commercial, office, R&D, arts).

*Rationale: The proposed building type "Mixed Use - Residential/Non-Residential" allows developers additional options for ensuring occupancy of their buildings. However, given the premium on commercial development in districts designated for mixed use, there is a higher requirement for affordable units embedded in such mixed use properties.*

(C) **Special District Buildout:** In Special Districts **and Union Square**, revise the "Phasing" portion of each "Buildout" section to specify that:

- no more than 25% of the total residential construction will be permitted until at least 25% of the non-residential construction has been permitted and construction of that non residential development has begun;
- no more than 50% of the total residential construction will be permitted until at least 50% of the non-residential construction has been permitted and construction of that non residential development has begun; occupancy permits for the second 25% of residential construction will not be issued until at least 25% of the non-residential construction is completed;
- no more than 75% of the total residential construction will be permitted until at least 75% of the non-residential construction has been permitted and construction of that non residential development has begun; occupancy permits for the third 25% of residential construction will not be issued until at least 50% of the non-residential construction is completed;
- occupancy permits for the final 25% of residential construction will not be issued until at least 75% of the non-residential construction is completed.

*Rationale: It is much easier to build residential units than an office building, and developers seeking to obtain a quick return on investment will be likely to yield to market forces and make their money on residential development. So, even if there is a plan calling for 65% commercial development, there is a good likelihood that the residential units that are part of that plan will be completed first, potentially defeating the purpose of the zoning requirements associated with that district. The proposed phasing requirement would prevent accelerated development of the residential units while commercial construction languishes.*

(D) **Linkage:** The City should immediately commission a new nexus study to identify a more appropriate linkage rate, based on information from the recently completed Cambridge nexus study -- by Karl Seidman, et. al., the same team that did Somerville's most recent nexus study -- suggesting a rate of between \$10 and \$12, which would be twice the current Somerville rate. In fact, that Cambridge study found justification for a \$24 linkage fee, but argued that the new linkage rate had to be decided upon in context with the Boston and Somerville rates. The recently completed Cambridge nexus study also recommended a significant expansion of the ordinance's coverage by expanding the set of non-residential developments of 30,000 square feet or more which would be required to make housing contributions to address their impact on the need for affordable housing, including hotel, industrial, and private institutional uses to the use groups subject to the ordinance, and making the ordinance's contribution provisions applicable to all non-residential development of more than 30,000 square feet which include applicable uses.

(E) **Discourage Subdividing Existing Properties:** In all districts in which the following uses are permitted **or such buildings pre-date the adoption of this zoning**, a variance (which requires a higher threshold for approval than a special permit) would be required in order to subdivide an existing residential unit into two or more residential units: cottage, house, paired house, duplex, triple-decker, paired triple-decker, four-plex, six-plex, rowhouse. **Creation of an accessory unit (a..k.a. "mother-in-law apartment") should be the one exception that requires only a special permit**, if the accessory unit is being created in a portion of the house which is not routinely used as living space by the occupants of the other units in the building (e.g., space in a basement or storage area which is not routinely used as a bedroom area, kitchen, bathroom, or living room by the occupants of other units in the building).

*Rationale: Too many family-sized units have already been lost as property owners subdivided units in order to create additional rental properties or condominiums. The proposed language would protect the family-sized units that are left. The variance process allows an owner to demonstrate a compelling reason for subdividing a unit; presumably, maximizing the profitability of the property would not suffice, given the larger purposes of the City's zoning code, including the newly codified purpose in subparagraph (A)(2)(g) of Article 1 "To provide a range of housing types, unit sizes, and price points to accommodate the diverse household sizes, and life stages of Somerville residents at all income levels, paying particular attention to providing housing affordable to individuals and families with low and moderate incomes."*

(F) **Open Space and Greenspace:** Although most of my focus is on affordable housing and strengthening the City's commercial property tax base, I deeply appreciate the importance of open space, and in particular, greenspace. I appreciate the difficulty of achieving the City's competing development goals in terms of open space vs. denser development that strengthens our tax base.

That said, I would encourage the Planning Department to explore alternate options for creating more open space and green space, echoing the concerns of people who testified that the proposed open space requirements will not get us to the Somervision goals of 125 new acres of open space. (One person noted that "Even if 12.5% of every bit of the 365 acres of SomerVision's transformational areas were committed

to open space, it would still amount to only 45 additional acres, falling short of SomerVision's goal by 80 acres.")

Although some have suggested that developers who prefer to opt out of the open space requirement could contribute to a fund for open spaces, I would be wary of that option. There is very limited land for developing open space, and if development leaves inadequate room for open space, **money can't buy new open space to replace the lost opportunity to create or protect open space as part of the development process.** That said, we should ensure that developers provide some kind of mechanism for ensuring the ongoing maintenance of open spaces. In the same way that the City is responsible for its parks, and homeowners are responsible for shoveling their sidewalks and maintaining their street-facing yards, so, the zoning should require that **developers clearly specify in their submitted development plans how and by whom new parcels of open space and greenspace will be maintained, once the residential and non-residential properties they are constructing are occupied, and those commitments should be binding on the new owners/tenants of those properties.**

I would urge that the Zoning Code:

- Prioritize publicly accessible open space and greenspace over private spaces, while encouraging green roofs and other amenities that improve the overall environment
- Prioritize larger, useable, recognizable open spaces and greenspaces over fragmented spaces, while rewarding fragments of open and greenspace that improve the pedestrian experience.
- Prioritize greenspaces, plazas, sidewalks, and bikeways over wider traffic lanes. Traffic lanes should be wide enough for safe driving at the posted speed, and do not need to be as wide as highway lanes. Instead of widening driving lanes -- which will only encourage more through-traffic -- expand the space for these other uses.
- Allow developers to reduce the "furnishings area" of sidewalks in favor of alternate and equivalent amounts of open space or greenspace. For example, the zoning could allow a tradeoff, whereby a sidewalk would include the 6-foot minimum of pavement, but the extra 8 feet would be used to create a small linear greenspace, or two 4-foot-wide linear greenspaces that separate the bikeway from the traffic.
- Reward the creative use of airspace over the tracks as an open space. At one meeting, City staff cited the High Line in New York as a precedent. I encourage the City to explore options for using that airspace to provide better pedestrian linkages between the north and south sides of the tracks, to create new greenspaces, play areas, growing spaces (like the Urban Farm in the Boynton Yards area), and walking spaces.
- Establish at least minimum requirements for open space/green space in MU3, MU4, and MU5 districts.

(G) **Transportation and Parking:** Again, although most of my focus is on affordable housing and strengthening the City's commercial property tax base, I deeply appreciate the importance of transportation planning and zoning to address parking. Suggested adjustments to the current draft include:

- As in the above section on open space/greenspace, Traffic lanes should be wide enough for safe driving at the posted speed, and do not need to be as wide as highway lanes. Instead of widening driving lanes -- which will only encourage more through-traffic -- expand the space for bikeways, sidewalks, linear greenspaces, and plazas.
- At major intersections in Union Square and other Transformational and Enhancement zones, consider revising the timing on traffic signals to allow separate and adequate time (2-3 minutes) for pedestrians to cross in all directions at once. Prior to automotive traffic being given the green signal, allow 30 seconds or an otherwise appropriate time for bicycles to proceed, so that they can

make any turns ahead of traffic. The goal is to make our squares and streets safer for all uses, not more conducive to through-traffic.

- I would urge Planning staff to re-think their preference for two way streets. A one way street is inherently narrower, allowing easier crossings for pedestrians; is safer for bicyclists, particularly left-turning bicyclists; and requires less lane-width for cars, since there is no need to separate the traffic going in opposite directions. A signalized one way street carries less traffic at any point in time than a twice-as-wide two way street, which means that the pedestrian environment is less dominated by cars.
- Transportation and parking experts like Mark Chase have ideas for how shared parking and time-of-day-based parking rates could promote more efficient use of streets and parking spaces. I encourage you to explore strategies for further reducing parking requirements associated with new development. I'm not sure whether it belongs in the zoning code or elsewhere, but I would encourage you to explore the introduction of meaningful financial incentives for residents who do not seek an on-street parking permit, and to charge significantly more for on-street parking stickers for residents of buildings which provide on onsite, off-street parking.

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The proposed zoning code represents a monumental effort, which overall, deserves high praise. I fully expect that this first comment process will be followed by a revised draft which will require a second public consideration process. While the overall adoption process may not as quick as all of us may have hoped, I trust that we will end up with a Zoning Code that is truly a road map to the Somerville we all want to see in the decades to come.