



# TOWN of BROOKLINE

*Massachusetts*

## BUILDING DEPARTMENT

Daniel F. Bennett  
Building Commissioner

### MEMORANDUM

**Date:** April 29, 2014

**To:** Board of Selectmen

**From:** Daniel Bennett, Building Commissioner

**cc:** Alison Steinfeld, Planning and Community Development Director  
Kara Brewton, Economic Development Director  
Peter Ditto, Engineering / Transportation Director  
Todd Kirrane, Transportation Administrator

**Re:** Brookline Transportation Demand Management Monitoring & Enforcement

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As directed by the Board of Selectmen, staff from Building, Planning, and Transportation reviewed our existing Zoning By-law, the proposed Article 15 zoning amendment related to Brookline Place, and enforcement mechanisms with regards to Transportation Demand Management (TDM) for large projects. This memo summarizes how staff will monitor and enforce any special conditions related to TDM for large projects.

#### **TDM and Major Impact Review, Zoning By-Law Section 5.09 (6)**

The overall goal of TDM is to reduce the need to drive by providing realistic incentives to travel by means other than the car<sup>1</sup>. Our current Zoning By-Law requires a Traffic Impact Study, Access Plan, and Transportation Access Plan Agreement for projects that require a special permit and are over 100,000 square feet in commercial area or 100+ residential units. The Zoning By-law describes how an Access Plan should include mitigation measures such as encouraging use of public transportation, parking management, transit improvements, number and location of bicycle parking and storage facilities, and pedestrian amenities. The Transportation Access Plan Agreement (TAPA) is a binding agreement between the Town and the applicant addressing specific mitigation terms and conditions and “may also

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<sup>1</sup> Nelson-Nygaard memo 2/11/14

describe monitoring procedures to verify compliance and to evaluate the effectiveness of the mitigation measures.<sup>2</sup> The current Zoning By-Law specifies that any TAPA receive an annual permit from the Building Department. However, since this provision was adopted in Fall 1992 and amended in 1993, I am not aware of any special permits that triggered a required TAPA.

In addition to the TAPA annual permit, the Commissioner has the ability under the Zoning By-Law Section 9.02 to issue a non-criminal citation for any zoning violation or issue a fine up to \$300 per day. Zoning violations include the violation of any provisions of the Zoning By-Law or condition of a Special Permit.

### **Staffing Plan to Monitor and Enforce TDM-related Special Conditions**

As proposed by Article 15 relative to Brookline Place, Town staff will be required to review and monitor TDM provisions in two major phases:

- 1) Prior to the issuance of a building permit and during the major impact review process, the Transportation Division will be assisted by the Town's consultants (outside consultant peer review is paid for by the applicant) to review and approve a TDM plan and any related TAPA. Generally, TDM programs are drafted by the applicant based on his knowledge of potential tenants' employees and visitors, traffic studies, and transit availability, and often includes a wide variety of specific items to be implemented such as extending company-based transit programs already in existence; and providing ride matching services, carpool and/or car sharing spaces, shuttle service, public transit subsidies, bike and pedestrian amenities, and flexible work schedules. Most importantly, TAPAs must have specific provisions on how to measure the effectiveness of TDM and identify how TDM goals should be defined, and an agreement on how to amend TDM programs over time as needed.

TDM indicators allow comparison of a particular site's performance to other regional benchmarks. Measured indicators<sup>3</sup> as part of a TAPA might include: awareness (the portion of potential users who are aware of a program or service); participation (the number of people who respond to an outreach effort or request to participate in a program); utilization (the number of people who use a service or alternative mode); mode split (the portion of travelers who use each transportation mode); mode shift (the number or portion of automobile trips shifted to other modes); and vehicle trips (the number of private vehicles arriving at a destination over a day or over a peak period). Evaluation studies can compare performance indicator values for a single site over time, with other locations that do or do not have such programs, and with regional averages.

Specific to Brookline Place, the Town's parking consultant, Nelson\Nygaard, recommends a TDM monitoring and reporting plan (TAPA) that will: (i) include mode split goals to reduce the percentage of single occupancy vehicles traveled by employees to and from Brookline Place (for all tenants,

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<sup>2</sup> March 1992 Proposed Transportation Access Plan Guidelines

<sup>3</sup> [http://www.vtppi.org/tdm/tdm55.htm#\\_Toc218835144](http://www.vtppi.org/tdm/tdm55.htm#_Toc218835144)

whether or not they are Children's Hospital affiliated); (ii) perform an initial employee survey to form a preliminary TDM program to meet those mode split goals; and (iii) annually measure by survey and direct observation mode splits for employees and visitors. Children's Hospital has agreed to these specific provisions as part of a Special Permit condition in the Memorandum of Agreement.

- 2) Commencing within one year of the final Certificate of Occupancy, annual monitoring and assessment of the TDM goals will be submitted by the applicant and initially reviewed by the Transportation Division. Within a week of receipt, the Transportation Division will post the annual report to their Division's website and also notify the Building Commissioner and the Director of Planning and Community Development. The Director of Transportation in consultation with the Director of Planning and Community Development shall determine whether the Transportation Access Plan Agreement (TAPA) is working satisfactorily or whether reasonable modifications are required. The applicant/owner has the ability to appeal modifications to the Board of Appeals, following recommendation by the Transportation Board.
- 3) The proposed Article 15 zoning amendment 15 for Brookline Place requires that an approved TDM program and related TAPA be a condition of the Special Permit. If the parking facility associated with Brookline Place is operated in a manner that does not comply with the approved TAPA, the property owner will not be in compliance with the Special Permit for the project. If the Director of Transportation is not able to come to agreement with the applicant/building owner with regards to compliance (and following any appeal of specific additional TDM measures to the Transportation Board and Board of Appeals), then the following formal steps shall be taken:
  - a) If after investigation the Director determines that any provision of the TAPA is being violated, s/he shall provide a first written notice of violation of the TAPA to the current property owner, and shall order that the violation cease within thirty (30) days of the issuance of the first written notice.
  - b) If the TAPA violation is not cured within the thirty (30) days after issuance of the written notice, the Director of Transportation may request the Building Commissioner enforce the conditions of the Special Permit and remedy the non-compliance. Such steps may include cessation of operations at the parking facility or fines as described earlier as well as court action. Second or subsequent written notices to a facility owner for the same violation may be effective immediately and shall not necessarily provide the thirty (30) day opportunity to cure contained in the first written notice.

Based on discussions with Cambridge's TDM Officer, we anticipate significant staff time will be required for monitoring and seeking compliance through any annual adjustments of the TDM program. Although Cambridge has had a robust TDM program in place for over 20 years, the City has yet to shut down any parking facility or collect any violation fines related to TDM. It is my understanding that in any given year, several of Cambridge's TDM sites may be officially out of compliance because they fail to meet the required mode split goals. However, by spending significant time in working with the owners, the

Cambridge TDM officer is able to achieve significant compliance and overall improvement in mode split goals.

In the event that TDM goals are not met in a particular year, Transportation staff will need to rely on the expertise of consultants to suggest amendments to the TDM plan such that TDM goals are met. The cost of any peer review by outside consultants for an ongoing TAPA special permit condition would be paid for by the current permit holder (most likely the property owner/operator). The Brookline Place project would be the first to include TDM monitoring requirements of this scope, however, it is my understanding that the TDM monitoring plan would not be in effect until approximately 2019. Therefore, the Transportation Division is not requesting additional staff support at this time, but may need to do so in the future.

The Planning and Building Departments are working with the Town Administrator's office to move the responsibility of staffing the Board of Appeals from the Town Clerk's office to a full-time Zoning Administrative Assistant position within the Planning and Community Development Department; this position is reflected in the FY15 Financial Plan. The duties for this position include creating a database to track and monitor all special permit conditions, which will include any project with a TAPA in place. The Zoning Administrative Assistant will assist the Building Commissioner with the record-keeping so that projects are in compliance and special permit conditions are enforced in a timely manner. The Zoning Administrative Assistant will also be available to assist the Director of Transportation in preparing an annual report to post on the Transportation Division's website regarding the status and effectiveness of the implementation of all TAPAs within the Town of Brookline.

Additionally, to ensure compliance with other restrictions relative to garage operations (e.g., no satellite parking, limited valet parking, availability of overnight parking for residents, etc.), we anticipate that a Building Inspector will need to periodically survey the garage in operation at different times of the day and week. Any concerns will be immediately communicated to Transportation and Planning staff, which may then be incorporated into their annual review of the TAPA. Following the hiring of a Zoning Administrative Assistant, and depending on how much staff time is needed to monitor compliance of ongoing conditions for existing and new special permits, the Building Department may request the Town Administrator's budget include additional funding for building inspector hours in future years.

*We recommend that the Board of Selectmen consider creating an annual TAPA permit fee, which in conjunction with the one-time building permit fee, adequately covers the administrative costs of monitoring and enforcing a TAPA. Annual staff time related to a TAPA is estimated to include 2 days staff time of a Building Inspector, 2 days of the Zoning Administrative Assistant, and 3 days staff time of the Transportation Administrator.*

### **Enforcement of Existing TDM-related Special Permits**

The Board of Selectmen also asked us to report on how existing special permits are enforced, especially related to TDM measures. Existing special permits often require the provision of pedestrian/bike amenities, contributions for public infrastructure improvements, contributions towards future traffic studies, and provision of zip car or shared parking for other uses or residents, etc. These physical and one-time special conditions are easier to enforce than ongoing conditions as they must be complied with prior to Building Permit issuance.

On-going special conditions are enforced following complaints or direct observation by Building Inspectors. Enforcement investigations are usually prioritized based on health, safety, and welfare concerns. As described earlier, the Zoning Administrative Assistant position will assist the Building Commissioner to track on-going special permit conditions.