



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

DONALD A. DRISDELL
DEPUTY CITY SOLICITOR

MICHAEL C. COSTELLO
ASSISTANT CITY SOLICITOR

SEVERLIN B. SINGLETON, III
BIRGE ALBRIGHT
GAIL S. GABRIEL
LEGAL COUNSEL

January 26, 1989

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Council Order of 9/12/88 - Effect of Zuker Opinion on Cambridge
Removal Permit Ordinance Subsection c 1/2

Dear Mr. Healy:

You have requested, through the Office of the City Manager, an opinion of the City Solicitor's Office concerning the effect of a single justice's opinion in Zuker v. Brookline Rent Control, et al on City of Cambridge Removal Permit Ordinance Subsection c 1/2.

The Zuker opinion, Wikins, J., issued on July 5, 1988, declared invalid a portion of the Town of Brookline's regulatory scheme with regard to condominiums. The regulations in question stated that in order to sell a condo which is subject to Brookline rent control ordinances, the owner must obtain a removal permit from the Rent Control Board. If an owner sold all of his units in a building, however, then no removal permits were required.

The Brookline ordinance is similar in some respects to Cambridge's subsection c 1/2. Subsection c 1/2 provides as follows:

RECEIVED
89 JAN 26 AM 9:23
OFFICE OF THE CITY MANAGER

(c 1/2) Prohibited acts by developers. After August 1, 1981, no owner of a building for which a condominium master deed has been recorded shall directly or indirectly sell, offer for sale, or agree to sell any controlled rental unit therein, unless the board has granted a removal permit for that unit, or unless the sale or offer is to, or the agreement is with, a current tenant of the unit who holds an exemption certificate... Nothing in this subsection shall prevent an owner of a building or any portion thereof from conveying his entire interest in the building in good faith to one purchaser, who shall then be subject to the provisions of this subsection to the same extent as the original owner.

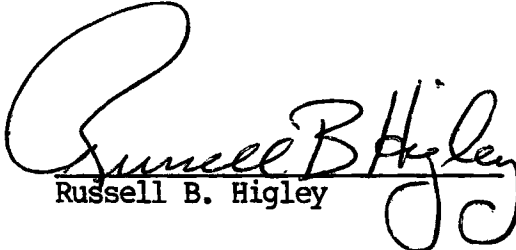
The first point to make in answering your question about what effect the Zuker opinion has on subsection c 1/2 is that it appears an opinion of a single justice of the Supreme Judicial Court in a declaratory judgment action has the same precedential value as a decision of a Superior Court Judge. That is, the opinion is binding on the particular parties involved in that case and merely advisory as to trial court judges in subsequent cases.

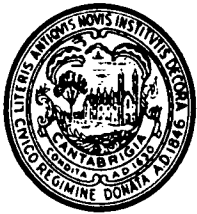
Subsection c 1/2 has recently been challenged in the Superior Court. Alex Steinbergh, et al. v. Cambridge Rent Control Board, #87-5907, Ginsburg, J. The judge in the case upheld the validity of c 1/2. The landowner has appealed to the Massachusetts Court of Appeals. The Cambridge Rent Control Board in Steinbergh has argued that a detailed factual record existed in Cambridge to support the need for subsection c 1/2. Justice Wilkins expressly noted the absence of such a record to support the Brookline regulation.

Although Zuker was decided some three months earlier than the decision in Steinbergh, Judge Ginsburg did not conclude that he was bound by the decision in Zuker.

It seems clear that the appeal in Steinbergh will lead to a comparison by the Appeals Court between the Zuker decision and Judge Ginsburg's ruling in Steinbergh. The anticipated decision by the Appeals Court in Steinbergh will provide the first appellate court decision regarding the validity of subsection c 1/2.

RBH/jab


Russell B. Higley



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

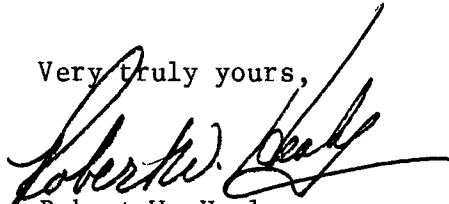
EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

February 6, 1989

To the Honorable, the City Council:

In response to Awaiting Report No. 10 regarding the effect of the Zuker v. Brookline Rent Control Board case on Cambridge Ordinance 966, I submit the attached report from the City Solicitor.

Very truly yours,

Robert W. Healy
City Manager

Re: response to Awaiting Report Item 10 on
the effect of Zuker v. Brookline Rent Control
Board case on Cambridge Ordinance 966.

In City Council,

February 6, 1989

2-6-89

Placed on file.