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9 Eustis Street, #2R
Cambridge, MA 02140-2226
May 12, 1993

~~The Cambridge City Council~~
The Cambridge City Council
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Honorable Councilors:

I am a resident of Cambridge who treasures Fresh Pond as a resource as well as appreciates the natural beauty of the surrounding area. I run the perimeter path around the pond almost every day. I suppose this is why I have been drawn to explore how I might apply my science and engineering background to assist in finding solutions to problems that involve the area. This civic contribution to my community has been done pro bono. My research seems to have finally resolved the long standing controversy about cutting shoreline perimeter trees. Other work revealed that the Cambridge Water Department is currently violating state and federal regulations regarding the testing of Trihalomethanes. Although pleased with the contributions I have been able to make, I am disturbed by a number of findings. In particular, I am struck by the following:

1. Violations of state or federal code, rules, or regulations can remain hidden within a city department. This means that a city manager's attention is not focused on the issues raised by the violation, the public is not protected by knowledge of the violation and its consequences, and the citizens of Cambridge are denied the opportunity to express opinions regarding the violation.

Here I am thinking of a situation that occurred a number of years ago, when, as I understand it, the Cambridge Water Department violated the law by failing to notify the public that it was exceeding the maximum contamination levels for Trihalomethanes set by the United States Environmental Protection Agency. Another example is the illegal dumping of sludge into Fresh Pond that continues to violate state regulations and, according to David Erikson of the Massachusetts Department of Environmental Protection, "violates all existing water pollution requirements and any and all acknowledged good sanitary water supply practices and policies."

2. Apparently there is no consistently enforced ethics policy in place for city employees. I say this based on my experience with the City Manager's office. Written evidence was presented to City Manager Healy that Nancy Barnes, Managing Director of the Cambridge Water Department, misled me by claiming that no state or federal regulations were being violated when in fact she knew this was not the case. Mr. Healy has not disciplined Ms. Barnes, has not apologized for the incident, has not asked Ms. Barnes to apologize for the incident, and to date has not answered my certified letter of November 2, 1992, requesting that he respond to previous letters reporting the incident.

3. Apparently there is no independent oversight organization for the city. My discovery of a number of state and federal code violations at the

Cambridge Water Department was incidental to other work I was doing; I never set out to find violations. What would be found if an independent body conducted a deliberate review? If departments are violating the law, then are they being mismanaged in other ways that, though legal, are simply wasteful of the taxpayer's money?

4. Apparently there is no policy regarding responses employees of the city must make to formal letters or inquiries. Mr. Healy has never replied to any of my letters that required a direct response from the City Manager. When he has passed on one of my letters to a subordinate, he has never followed the common business practice of acknowledging the original letter and explaining to me who at that point was responsible for a response.
5. Citizens are discouraged from bringing issues before the City Manager and various City Departments.

Over the past year, I have raised a long list of issues with the City Manager and various city departments. The City Manager's lack of response and his failure to demand a response from department heads surely discourage citizens from bringing up issues that might lead to improvements in various city operations.

6. As far as I know, there is no formal mechanism that would assist the City Council in accurately tracking the details of important problems that the City Manager is supposed to be solving. Without such details, the City Council will be limited in its ability to evaluate the City Manager's performance. In addition, the City Council will be limited in its ability to assist the City Manager in solving problems and to give suggestions that would improve his performance and city operations over time.
7. When a significant issue arises, there is no formal administrative mechanism to assure that relevant background research be performed and the results brought before the City Council, city management, or the public. As an example, consider the failure of any City department to provide the background research required to solve the "Fresh Pond perimeter tree cutting problem" in spite of the fact that the controversy raged for years. As another example, it wasn't until my letter to the City Council of March 8, 1993, and Councilor Walsh's subsequent request of March 24, 1993, to Assistant City Manager Rossi, that a formal list of relevant questions needed to resolve the current Fresh Pond dog park controversy were put before a City department. I might add, that to date, Assistant City Manager Rossi has not complied with Councilor Walsh's request.

Many of the "political" controversies that are aired at public City Council hearings are less sources of input for creative problem solving than demonstrations of political support for a particular, narrowly drawn and predisposed position. Frequently, it seems a great deal of time is wasted while people argue about choices that would make little sense if the basic facts involved were elucidated. The facts that are brought up at a hearing are likely to be only those that support the position of a

constituent angry enough to attend a public meeting. I believe that many issues would not even be brought before the City Council if basic facts were researched and released to the public when a problem first arose.

How then can these problems involving policy and organization be solved? I don't have all the answers. Surely, the solutions are complex and require an effort by all city employees. However, I believe that the City Council can make a significant contribution by publicly acknowledging the existence of each problem and by taking action in the form of concrete measures that will encourage change. Here are my suggestions.

1. That the Cambridge City Council enact a policy such that if any city official, city employee, board, or board member is served by any federal or state official with a citation, notice, or report for any violation of code, rule, or regulation with regard to any operation or function of the city, then copies of this citation, notice, or report will be made and distributed as follows: One copy to the City Council. One copy to the City Manager for inclusion into a "Violations File" as described below. One copy to each of the major Cambridge newspapers (The Cambridge Tab and the Cambridge Chronicle) where it is to be printed as a public notice. The cost of such printing, if any, will be born by the City of Cambridge. If the citation, notice, or report exceeds ten 8½" X 11" pages, a summary and list of the major infractions shall be printed in the aforementioned newspapers along with information describing how a copy of the complete notice can be obtained. Furthermore, one full and complete copy per resident of said citation, notice, or report will be made available to any requesting resident at no charge.
2. That the Cambridge City Council require that the Cambridge City Manager create and properly maintain a "Violations File." This file is to contain all known instances of current or planned violations of state or federal code, rules, or regulations with regard to any operation or function of the city as well as the circumstances surrounding each violation. In addition, the following information is to be included: a citation of the relevant state or federal code, rules, or regulations, the name(s) of each individual or individuals who made each decision, when each decision was made, the justification used for each decision, the likely consequences of making each decision, the likely consequences of taking alternative choices that would result in compliance, plans being undertaken that would result in compliance, and plans being undertaken to avoid similar circumstances in the future. This file is to be made available for review by the general public during normal business hours. All changes to the contents of the file, such as additions and deletions, are to be communicated to the City Council within five working days of their occurrence.

When circumstances change so that entries in the Violations File are no longer violations and no longer expected to be violations in the future, they are to be removed from the "Violations File" and placed in a "Corrected Violations File." Entries in the Corrected Violations File will be kept for a minimum of 15 years and the file itself made available to the public for inspection during normal business hours.

3. That the Cambridge City Council enact a policy such that any city employee, who knows of extant or planned violations of state or federal code, rules, or regulations that ought to be included or submitted for inclusion in the "Violations File" described previously, and who does not do so, or does not report to the City Council or other appropriate City Official that a superior or other official has not done so, or who does so but knowingly includes false information about such violations, is then subject to disciplinary action including dismissal. If the violations relate to public health or safety and have placed or in the future would be likely to place any individual or group of individuals at risk, then the employment of said employee will be summarily terminated and other appropriate legal action taken against said employee by the City of Cambridge.
4. That the Cambridge City Council enact a policy such that any city employee, who, in an official capacity, is found to have misled any individual or group of individuals, by claiming or suggesting that any employee, department, or operation was in compliance with, is in compliance with, or in the future are likely to be in compliance with state or federal code, rules, or regulations, when in fact this is not the case, either intermittently or continuously, and it can be shown that said misleading employee knew that such was not the case, or it can be shown that said misleading employee had been informed by a state or federal official or other knowledgeable person that such was not the case, such misleading employee is then subject to disciplinary action including dismissal. If the violations relate to public health or safety and have placed or in the future would be likely to place any individual or group of individuals at risk, then the employment of said misleading employee will be summarily terminated and other appropriate legal action taken against them by the City of Cambridge.
5. That the Cambridge City Council enact a policy such that every city employee who receives a letter or inquiry is expected to reply to that inquiry or correspondence within 10 working days. If the inquiry or correspondence is referred to another department for a response, the fact of the referral is to be communicated within five working days to the inquiring individual.

Note: This policy does not suggest that concerns raised in a piece of correspondence are to be resolved in 10 days. I am urging that at least a simple, business-like acknowledgement of receipt be issued and that if the responsibility for a reply is transferred to another individual, that fact be made known.

6. The Cambridge City Council will track the City Manager's progress toward a specific, clearly articulated set of goals. The City Council will do this by developing a specific, written set of issues each of which the City Manager and his staff are to address. The City Council will identify and prioritize these issues in consultation with the City Manager, although final responsibility for the development and content is to rest entirely with the Council. A new "issue list", which may include old

issues, is to be formed and communicated to the City Manager on an annual basis or more frequently if necessary. In order to aid the City Council in tracking the progress made toward resolving each of these issues, the following documentation will be gathered by the City Manager and made available to the City Council:

- i) Background information gathered in response to the issue,
- ii) Correspondence sent and received in connection with the issue,
- iii) Transcripts of any public hearings associated with the issue,
- iv) A chronologically ordered list of decisions made concerning the issue, including a description of what decisions were made, when they were made, by whom, and the justification for each,
- v) Planned actions, deadlines, and milestones,
- vi) Actual actions taken, milestones reached, and completion dates.

During the period of time these issues are tracked, the City Council will monitor the information file associated with each issue and make recommendations to the City Manager as to priorities, deadlines, and milestones. The issues will be tracked until resolved or the City Manager's term of employment ends, whichever comes first.

Although it is appropriate that the City Council develop its own set of issues consistent with its own sense of priorities, I have enclosed a list of sample suggestions as the document titled "PERFORMANCE EVALUATION ISSUES, SAMPLE LIST."

7. That the City of Cambridge establish a Cambridge Research and Oversight Service modeled after the Congressional Research Service and the General Accounting Office (GAO), both of which serve the United States Congress. The GAO is staffed with approximately 5,000 people, or one person for approximately 50,000 United States Citizens. Proportionally, that would be a staff of 2 people for Cambridge (population 95,802 by the 1990 U.S. Census). According to the GAO, "The measurable benefits of GAO's recommendations continue to be in the billions of dollars." I believe the benefit to Cambridge of a similar organization would be hundreds of thousands of dollars. Senator Kennedy has forwarded my request to him for additional information about the Congressional Research Service to that agency. I would be glad to share this information with you when it is received.

The purposes of the Cambridge Research and Oversight Service would be as follows:

- i) To provide the City Council, City Manager, City Departments, and the public, with background information relevant to problems and issues being confronted by the city.

- ii) To audit and evaluate programs, activities, and financial operations of City Departments and make recommendations to improve their operation.
- iii) To assist the City Council in carrying out its oversight responsibilities.
- iv) To carry out special research, accounting, auditing, legal, or claims settlement functions assigned by the Cambridge City Council.

I believe that for a city of almost 100,000 residents, the best approach to carrying out the functions listed above is to create a separate, independent, municipal department. This would ensure credibility when dealing with controversial issues for which the city department under investigation has a vested interest. In addition, having a research staff serving all city departments will make it relatively inexpensive to employ individuals with the special skills required by this kind of work.

I respectfully would like to request that I be notified when the issues I have raised in this letter might be addressed by the Council. If additional information would be helpful, I would be glad to meet with the City Council or with individual councilors. I can be reached by telephone at (617) 876-4209.

Sincerely,

A handwritten signature in cursive script that reads "Peter Baum". The signature is written in dark ink and is positioned above the printed name.

Peter Baum

TO: The Cambridge City Council
FROM: Peter Baum
9 Eustis Street, #2R
Cambridge, MA 02140-2226
(617) 876-4209

SUBJECT: This document comprises a list of sample City Manager performance evaluation issues. Each issue would be managed and used as described in Peter Baum's letter to the City Council dated May 12, 1993

CREATION DATE: May 5, 1993
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PERFORMANCE EVALUATION ISSUES, SAMPLE LIST

1. Over the past 5 years, I have been nearly hit twice by golf balls while running along the paved Fresh Pond perimeter path adjacent to the Municipal Golf Course. These balls struck the paved surface, missing me by less than 30 feet. In one instance, the ball bounced off the pavement with such force that it went over the perimeter fence and into the pond. During warm weather, I often see golf balls within 10 or 15 feet of the running path. I've already collected two this year. The woman seated to my left at the February 2, 1993, public meeting at Fresh Pond stated that she had been hit in the head by a golf ball while using the perimeter path. I have spoken with others who have had close calls.

A golf ball in flight can easily cause a tragedy such as death or blindness. The current golf course layout and/or current golfing practice at the course represents a serious health hazard to the dozens of people who daily use the Fresh Pond perimeter path.

2. The Cambridge Tab has reported that more than one elderly person had been killed by trains while attempting to cross the tracks near one of the Fresh Pond shopping centers. There must be something the City of Cambridge can do to stop this loss of life. Perhaps consideration should be given to obtaining the required "right of way" and constructing either an overpass or an underpass for pedestrians.
3. Currently, the Cambridge Water Department dumps sludge from its water treatment plant back into Fresh Pond. The practice violates Massachusetts state code: 310 CMR (7/20/90) 22.20 (5). In a letter of June 19, 1987, from the DEQE (now the DEP) to the Cambridge Water Board, the Cambridge Water Department was explicitly required to find an alternative to the practice. In the DEP 1991 Sanitary Survey, David Erekson stated that "The illegal discharge of sludge into Fresh Pond must cease as soon as possible. This practice violates all existing water pollution requirements and any and all acknowledged good sanitary water supply practices and policies."

It is important to determine all the implications of continuing this practice. For example, the current practice of dumping sludge into Fresh Pond might be incurring costs that eventually will be greater than those required to build a dewatering facility.

Nancy Barnes's letter of October 28, 1992, to Richard Rossi does not provide any information that would justify the failure of the City of Cambridge to halt illegal sludge dumping for more than 5 years. My analysis of this letter suggests that the following documents are needed as part of background research:

- i. A copy of the MWRA staff summary of October 1991 recommending that the MWRA board prohibit the discharge of residuals to the sewer system. Also needed is a copy of any referenced technical data.
- ii. A copy of the Camp Dresser & McKee study that is referred to.
- iii. A copy of the second MWRA staff summary.
- iv. Any documents used by the Cambridge Water Department at the MWRA Board meeting at the end of June 1992.
- v. Minutes of the MWRA/DEP/community working group meetings.

My analysis also suggests that obtaining answers to the following questions would be useful:

- i. What negative effects does the DEP expect will result by continuing to dump sludge into Fresh Pond?
- ii. The Surface Water Treatment Rule of the U.S. Environmental Protection Agency has been promulgated to address the amendments to the Safe Drinking Water Act for controlling Giardia in treated drinking water. This rule, issued in June of 1989, mandates that all surface waters be treated to achieve at least a 99.9 percent removal of Giardia cysts. The practice of dumping sludge back into Fresh Pond implies that Giardia cysts removed by the required treatment process will be put back into the pond. Over time, the concentration of cysts in the pond will therefore increase. Although some cysts might be trapped by the residue, some might have an opportunity for more than one pass through the treatment system. Will the current practice result in an unacceptable health risk over time? If so, when? Are there other similar health risks associated with the current sludge disposal practice?
- iii. One disadvantage of continuing the practice of dumping sludge into Fresh Pond is that it accelerates the process of turning the pond into a swamp. At some point, dredging or other expensive remedial work will be required if Fresh Pond is to continue to be used as a reservoir. When is such a point likely to be reached? Will other problems surface before this point is reached that will require funding? Should the sludge be removed? What would be the cost of removing the sludge if the undertaking were begun this year? What would be the cost at a future time? It is also important to understand the way sludge is building up in the pond.

An important mathematical curve needed for some of these cost estimates can be determined from historical data that shows

the decrease in reservoir storage capacity over time. An obvious place to begin is by looking at elevation storage data over time. (Elevation storage data shows the relationship between pond level and the volume of water in the pond and therefore measures the capacity of the pond to hold water.)

NOTE: I first requested elevation storage data in a letter to Edward Dowling of the Cambridge Water Department written May 25, 1992 (item #4). References to this request can be found in Nancy Barnes's letters of September 9, 1992 (Page 1, item 4) and October 9, 1992, as well as my letters of September 17, (item 14) and October 17 (item 14). To date the Water Department has not fulfilled this information request.

- iv. What fines and court costs would the City of Cambridge be subjected to if it were sued for violating the state regulation?
 - v. Cost and attribute information for each of the alternative solutions needs to be obtained. In particular, what is the cost to Cambridge and what is the cost to the MWRA for the option of discharging to the sewer system? Has Cambridge offered to share some of the MWRA cost?
 - vi. Who on the MWRA staff processed the initial residual samples? Were additional tests made?
 - vii. What reason was given by the MWRA for the delay in processing the initial residual samples and how long was the actual delay?
 - viii. Who made what decisions between 1987 (or earlier) and October of 1991? [The statement by Nancy Barnes's in her letter of October 28, 1992, that "...the DEP 1991 Sanitary Survey points out that the disposal should cease," is misleading. The cited requirement dates as far back as the Sanitary Survey of March 4 and March 11 of 1987. It might even predate the 1987 survey.]
4. The water at the single water fountain at the Kingsley Park parking lot often has a very warm, very metallic, unpleasant taste. This water should be tested to be sure that it is safe to drink. The tests should include water drawn early in the morning prior to use and during the heat of a summer's day when it has not been used for a couple of hours. Tests for copper, lead, and coliforms should be included. Corrections to the system should be made as required.
 5. There is public concern over the possible contamination of Fresh Pond Drinking water by chemicals used on the adjacent golf course.
 6. There is public concern over the issue of toxic dump sites in the Fresh Pond area.

7. The Cambridge Water Department should allow the public to use rest rooms at the Fresh Pond facility whenever the park is open.

REASON: Management at the Cambridge Water Department has told filter plant operators not to allow the public to use the rest rooms at the Fresh Pond Water Department facilities except during business hours. Kingsley Park and the Fresh Pond perimeter path are used heavily on weekends. There are no other rest rooms available in the area. Because humans are a major source of Giardia lamblia contamination, I am concerned that this action will increase the number of people who defecate in the surrounding woods and that this in turn will increase the risk of contaminating Fresh Pond with Giardia lamblia cysts.

In addition, Cambridge would be well advisable to construct a public restroom near the Fresh Pond perimeter road approximately one mile from the main Water Department building.

8. Contamination of the Cambridge water supply with Giardia lamblia cysts by outdoorsmen in the Stony Brook and Hobbs Brook area is a concern. Those areas are not regularly patrolled, and there is a great deal of illegal fishing.
9. Provide dogs with access to treated drinking water at two locations in the Fresh Pond area.

REASON: If dogs do not have access to sources of safe drinking water while they are in the Fresh Pond area, they will at times drink from surface puddles. The surface puddles that form in areas such as the grassy field adjacent to the pond's main water inlet pipe is relatively high in fecal material. When dogs drink such water, their risk of Giardia infection is much greater than if they drink untreated water directly from Fresh Pond. Of course, drinking treated water would be even safer. If a dog does become infected, it will then become a reservoir for cysts and act as an amplifying host. The infection can then be spread to humans and other animals by various means. An example is by defecation which results in an increase in the concentration of Giardia cysts transferred into Fresh Pond. An outbreak of Giardiasis might result if the concentration of Giardia cysts in Fresh Pond becomes too high.

10. Take action that will decrease the cost of fence maintenance at Fresh Pond. Possible actions include signs posted requesting the public to notify the Water Department of trespass violations, insisting on rapid and proper fence repair, including the use of adequate footing, fishing disallowed and fines levied against violators, a surveillance camera set up to monitor frequently cut areas, and treated water made available for dogs during hot weather.

11. Amend Municipal Code section 13.12.010 to completely disallow fishing in Fresh Pond.

Cambridge Municipal Code 13.12.010 allows fishing at Fresh Pond under rules and restrictions established by the Water Board. The ordinance does not specifically require that such fishing be supervised, and the current municipal funding situation makes such supervision extremely unlikely.

Allowing fishing within the perimeter fence causes the following problems:

- i) Foot traffic near the water's edge increases the amount of humic acid that eventually gets into the water, and this in

turn increases the amount of Trihalomethanes formed during chlorination. Trihalomethanes are known carcinogens.

- ii) Fishing increases the likely incidence of defecation by dogs and humans at or near the water's edge and thereby increases the risk of Giardiasis.
- iii) Fishing increases the amount of refuse within the perimeter fence and ultimately the amount that ends up in the pond.
- iv) Allowing fishing within the perimeter fence increases the difficulty of using the public to notify the Water Department of illegal trespass violations. If the public knows that no one is allowed inside the fenced area, they simply can be told to report all incidents of trespassing to Water Department personnel.

12. A response is required to Peter Baum's letter to City Manager Healy of September 30, 1992, requesting that the City Manager proceed with an independent investigation of matters concerning public health and safety that were raised in his letters of June 23, 1992, August 17, 1992, August 19, 1992, and September 17, 1992, to the Water Department and in the Department of Environmental Protection's 1991 Sanitary Survey. Additional relevant information can be found in Peter Baum's letter to the Water Department dated October 17, 1992.

13. Amend chapter 13.12 of the Cambridge Municipal Code to clarify whether or not Little Fresh Pond is subject to any or all of the regulations of this chapter.

[END OF DOCUMENT C:\PB\TEXT\CITY\SETA.XY]

Consent Comm. #7

S-229

Communications received from Peter Baum
9 Eustis Street regarding Fresh Pond.

In City Council,
May 17, 1993

Refer to City Manager
Copy sent to City Manager 5/18/93
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