



CITY OF CAMBRIDGE

Office of the City Solicitor
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Cambridge, Massachusetts 02139

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OFFICE OF THE CITY MANAGER

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Legal Counsel

February 15, 1991

TO : Robert W. Healy
City Manager

FROM : Russell B. Higley
City Solicitor

SUBJECT : City Council Order # 49
Dated : January 28, 1991
Re : Cottage Park Avenue

Pursuant to the joint request made in the above-City Council Order, the Building Commissioner, Joseph Cellucci, and the Director of Traffic, George Teso, have investigated the use of Cottage Park Avenue by trucks for access to the property located at the end thereof, owned by Robert Fawcett & Son, Co., Inc. Further investigation was made, pursuant to the Order, in regard to the general right of access available to the property owned by Robert Fawcett Co., Inc. from Cottage Park Avenue. Specifically at issue, is whether a curb cut has ever issued to the Corporation or a predecessor in interest to allow access to the property from Cottage Park Avenue.

As is indicated in Interoffice Correspondence from George Teso, to Robert W. Healy, dated February 6, 1991, Robert Fawcett

Co., Inc. has been advised of the prohibition of truck access to its property from the entrance located on Cottage Park Avenue, pursuant to November 10, 1989 Judgment of Middlesex Superior Court. Said Interoffice Correspondence further indicates that signs have been installed in this regard and that the police department has been advised to conduct random checks of the location to determine whether trucks are using the Cottage Park Avenue entrance to the Fawcett owned land.

Interoffice Correspondence from Joseph J. Cellucci to Robert W. Healy dated February 12, 1991, indicates that neither Robert Fawcett & Co., Inc. nor a predecessor in interest applied for or received a curb cut from the City for access to its property from Cottage Park Avenue. However, access to the property from Cottage Park Avenue dates back to at least 1927 when a variance was granted by the Board of Zoning Appeal to the then owner of the property. There exist no other records on file with either the Department of Inspectional Services, the Building Department or the Department of Public Works with regard to this property.

A consideration of the aforementioned Correspondence, deeds in the chain of title of the property currently owned by Robert Fawcett & Son Co., Inc., Findings of Fact, Rulings of Law, and Order for Judgment entered by James Vallyely, Superior Court Justice, following a lengthy trial in this regard, as well as other relevant documentation, reveals that access to the property located at the end of Cottage Park Avenue has been available by way of Cottage Park Avenue since approximately 1900. Therefore, while a

curb cut was never obtained through an application with the City Council by an owner of the property, access thereto, via Cottage Park Avenue, is available as a result of this previous use.

In this regard, Findings of Fact, Rulings of Law, and Order for Judgment, Paragraph 7, states the following :

" The deed by which Fawcett was granted the subject property, and the chain of title with respect to that property going back to 1900, recited by its terms that it was granting Fawcett the right to use Brookford Street and Cottage Park Avenue in common with others having rights therein, for "way, drainage, prospect and all other purposes for which public streets are or may hereafter be commonly used. "

Robert Fawcett, President of the Robert Fawcett & Son Co., Inc. acquired title to the property by way of deed, dated October 1, 1969, which contained the aforementioned express grant of the right of way and use of Cottage Park Avenue. This expressly granted right existed from at least 1927 as is indicated in the Inspectional Services file pertaining to the variance granted to the 1927 property owner. According to the records contained in that file, the mailing address of the subject property in 1927 was Cottage Park Avenue. Furthermore, when Robert W. Fawcett acquired title to the property in 1969, the sole vehicular access thereto was by way of Cottage Park Avenue.

This means of vehicular access was terminated in 1972 following the adoption of an Order of the City Council which requested the City Manager to "cause the erection of a fence at the

end of Cottage Park Avenue to prevent the passage of all vehicles to and from the properties located at the end of Cottage Park Avenue...." According to Findings of Fact, Rulings of Law, and Order for Judgment, said Order was adopted "without a hearing, without any notice to Robert W. Fawcett, Robert Fawcett & Son, Co., Inc., or their counsel, and without publishing of any legal notice." The Court held in this regard, that the installation of the barrier restricting all vehicular access to the property owned by Robert Fawcett & Son Co., Inc. unreasonably regulated the access to which it was entitled. The Court, therefore, ordered that the existing barrier be immediately removed. The Court, however, restricted the access from Cottage Park Avenue to the Fawcett property to automobile and pedestrian traffic, to the exclusion of trucks and commercial vans. Furthermore, pursuant to Order Enforcing Judgment, entered on January 10, 1991 by Judge Vallely, the aforementioned restricted access is to be enforced by the use of signs and other reasonable means. A replacement barrier is not to be erected in place of the one removed.

The historical means of access to the property currently owned by Robert Fawcett & Son Co., Inc., by way of Cottage Park Avenue, dates back to at least the early Twentieth Century. Said access was restricted by the City in 1972 by the erection of a barrier which the Superior Court has held deprived the property owner of legal access to its property and was constructed without proper notice to that owner. Furthermore, as aforementioned, the Superior Court held that access to the Fawcett property from Cottage Park Avenue is

legal as a result of prior access to the property via Cottage Park Avenue. In light of these findings contained in Findings of Fact, Rulings of Law, and Order of Judgment, which pertain to the historical use of the property and access thereto, the Superior Court has determined that Robert Fawcett & Son Co., Inc., has legal access to its property from Cottage Park Avenue. Said access is restricted to automobile and pedestrian traffic, to the exclusion of trucks and commercial vans.



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300
FAX 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

February 25, 1991

To The Honorable, The City Council:

With regard to Awaiting Report Item No. 27, relative to Fawcett Oil Company trucks entering and exiting Cottage Park Avenue, please find attached a response from Russell B. Higley, City Solicitor.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
attachment

CONSENT Agenda # 16

Cal #1
5-379

Awaiting Report Item Number 27 regarding
Fawcett Oil Company trucks entering and
exiting Cottage Park Avenue.

In City Council,

February 25, 1991

Moved from Consent
Ag. Cancellation Cpr.
Charter Right
exercised by Councillor
Russell
Placed on file.



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Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy
City Manager

RWH/mev
attachment

CONSENT Agenda #16

Cal III
5-379

Awaiting Report Item Number 27 regarding
Fawcett Oil Company trucks entering and
exiting Cottage Park Avenue.

In City Council,

February 25, 1991

Moved from Consent
by Councillor Cyr.

Charter Right
exercised by Councillor
Russell

Placed on file.