LAW DEPARTMENT OF THE CITY OF CAMBRIDGE

Thomas F. Sullivan, City Solicitor
Harvard Square, Cambridge

Charles F. Gadsby, Assistant
(1595
University (9128

February 8, 1932.

Hon. Richard M. Russell,
Mayor,
City Hall,
Cambridge, Mass.

Dear Sir:

I have your letter of February 4, 1932, which is as follows:-

> "With reference to your papers in the case of Herbert H. White v. City of Cambridge, I note that the prayer to set aside the taking was not allowed by the Court. Has there been any action for damages? If so, what disposition was made of it? If there has been no disposition, what are the damages claimed? How much did the City actually lose in betterments by the Court's action in quashing the settlement? I should like to see your brief and memorandum of law filed in the case.
>
> One of the reasons I am particularly interested is that I am not convinced that you were right in regard to your two opinions of January 29th and February 2nd respectively on the assessment and abatement orders of the Council dated January 19th. I should like to have a definite answer on this before next Tuesday, because if you are wrong I want to ask the City Council to pass the two order over my veto.
>
> I note in the second opinion that your advice is that Chapter 80 of the General Laws be complied with, but the question of the moment is not the advisability of complying with Chapter 80 in making sewer assessments but whether or not enough has been done to accomplish the purpose of the orders now under consideration."

Suit has been brought in the Middlesex Superior Court, returnable the first Monday of April, 1931, in an action of tort for $50,000.00. This case is still pending. The actual amounts involved in the White case was an assessment of $132.29 on Lot 22 and an assessment of $645.02 on Lot 27.

In the Crofts case, at page 203, the Court said: "The provisions of G. L., c. 80, relative to the apportionment, division, reassessment, abatement and collection of betterment assessments made applicable by G. L., Chapter 83, paragraph 28, to sidewalk assessments do not include the requirements of G. L., Chapter 80, Paragraph 2, in regard to estimate and record.

Under the provisions of Section 2 of Chapter 80 of the General Laws, we have the following requirements in regard to an order which states that betterments are to be assessed:

(1) it shall contain a description sufficiently accurate for identification of the area which it is expected will receive benefit or advantage,

(2) it shall refer to a plan of the area,

(3) it shall contain an estimate of the betterments that will be assessed upon each parcel of land within such area,

(4) such order, plan and estimate shall be recorded, within thirty days from the adoption of the order, in the registry of deeds of every county, or district in which the benefited area is situated.

The Supreme Court in the Crofts case decided that items 3 and 4 above had no application to a sidewalk assessment. The Court did not decide that Section 2 of Chapter 80 of the General Laws had no application to sidewalk assessments but simply stated that the provisions listed as 3 and 4 above did not apply. Therefore, an order assessing betterments for the establishment of a sidewalk should contain (1) a description in accordance with requirement 1 above and (2) refer to a plan in accordance with requirements 2 above, and should also comply with the provisions of General Laws, Chapter 83, Section 27, which provides that they (the council) shall forthwith cause to be recorded in the registry of deeds of the county or district in which such city is situated a statement of their action, which shall specify the public ways in which such sewer, drain or sidewalk is located.

The assessment order of the Council dated January 19th, simply referred to Assessors Block Plan No. -----. In order that there be no question whatever, it is my opinion that this order should refer to a plan in this way, Assessors Block Plan No.----on file in the Assessors Office of the City of Cambridge. It is my opinion that, under the provisions of the statute, to refer to a plan it would be necessary to state in said order where the said plan is filed. I was of the opinion, therefore, that the assessment order should have been corrected in order to avoid any possible controversy in the future. So, instead of approving the said order, it was my opinion that it should be declared illegal and then have the defect remedied. However, this might seem to you to be only a technicality and that the order is correct and, therefore, the Council should pass it over your veto.

Respectfully submitted,

Thomas F. Sullivan
City Solicitor.

TFS/N

Q. on passing over Mayor's Veto order abating sewer assessments on Stearns St.

Veto 1.

City of Cambridge

Massachusetts

In City Council FEB 9 1932 193

YEA			NAY	ABSENT
1	MR. CAZMAY			
1	MR. DELANEY			
1	MR. FOLEY			
1	MR. HILLERY			
	MR. HILLIS			1
1	MR. LYONS			
1	MR. McMENIMEN			
1	MR. O'CONNOR			
1	MR. ROCHE			
1	MR. SENNOTT			
1	MR. SKILTON			
1	MR. SMITH			
1	MR. SWENSON			
1	MR. WYETH			
1	PRESIDENT MURPHY			
14				1

City of Cambridge

In City Council January 19, 1932.

The *Committee* on City Engineering

to which was referred a communication from the City Engineer with schedule of sewer assessments on Stearns Street amounting to $124.63 (Registered Land); also recommendation of City Engineer for abatement of sewer assessment levied against certain lands abutting on Stearns Street by order approved by the Mayor on December 24, 1931.

Reports, Recommending the adoption of the accompanying order authorizing the City Treasurer to levy and collect the same on or before February 19, 1932; also the adoption of an order for abatement of assessments levied against certain lands abutting on Stearns Street.

For the Committee.

John J. Sroka

For the Committee.

REPORT

Committee on City Engineering

recommending order abating certain assessment, also order levying assessment on certain land abutting on Stearns St.

A

Jan. 19, 1932

City of Cambridge

In City Council

January 19, 1932.

ORDERED:-

That, from the sewer assessment made by the City Council by its order adopted December 22, 1931 and approved December 24, 1931, the following sums be and hereby are abated, namely:-

STEARNS STREET

Assessors' Block Plan No 205, Lot No 68 (part of lot) Supposed owner-Sylvester and Florence Carey (wife)	$34.00
Assessors' Block Plan No 205, Lot No 63 (part of lot) Supposed Owners- A.H.Hews & Co., Inc. Mortgagee in Possession,Frank J. Day, Equity	$34.00

The City Treasurer is hereby authorized to desist and refrain from the collection of the aforesaid assessments.

Vetoed Jan. 30, 1932.

JAN 19 1932

In City Council

Adopted by the affirmative vote

of 14 members.

Frederick H. Burke City Clerk

Executive Department JAN 21 1932

Approved

Mayor

FEB 9 1932

In City Council

Order adopted notwithstanding objections of this Honor the Mayor

Yeas 14; Nays 0; Vetoed.

Frederick H Burke City Clerk

City of Cambridge.

JAN 21 1932

Presented to the Mayor

for approval.

Frederick H. Burke

City Clerk

Filed with #3
City Eng. 1932.

4

OFFICE OF THE MAYOR
CAMBRIDGE, MASSACHUSETTS

February 9, 1932

To the Honorable, the City Council

With further reference to my vetoes dated January 30, 1932 of orders of the City Council dated January 19, 1932 to abate and reassess betterments on Stearns Street, I am writing to advise you that, after further consideration, the City Solicitor is now of the opinion that the defects, if any, in said orders are only technical and suggests that I request your honorable body to overrule my said vetoes. However, he recommends that in the future certain additional language be inserted in such orders. I therefore recommend that in the future the City Solicitor's opinion be obtained in regard to such orders before final passage.

For the foregoing reasons I recommend that the said orders of abatement and assessment be passed notwithstanding my objections heretofore submitted.

Yours respectfully,

Richard M. Russell

Mayor

RMR:LMK

COMMONWEALTH

from the Mayor, ~~transmitting~~ ~~one from~~ relative to his Veto dated Jan 30, 1932 of an order abating and reassessing sewer betterments on Stearns St.

In City Council FEB 9 1932

PLACED ON FILE

Frederick H. Brooke
City Clerk.

(copy)

LAW DEPARTMENT OF THE CITY OF CAMBRIDGE

January 29, 1932

Hon. Richard M. Russell
Mayor
City Hall
Cambridge, Mass.

Dear Sir:

The enclosed assessment has been referred to this office for approval.

It is my opinion that the said order is invalid because it is not in compliance with General Laws, Chapter 80, Section 2. Said Section 2 provides as follows:-

> "Section 2. An order under section one which states that betterments are to be assessed for the improvement shall contain a description sufficiently accurate for identification of the area which it is expected will receive benefit or advantage, other than the general advantage to the community, from such improvement, and shall refer to a plan of such area, and shall contain an estimate of the betterments that will be assessed upon each parcel of land within such area; and such order, plan and estimate shall be recorded, within thirty days from the adoption of the order, in the registry of deeds of every county or district in which the benefited area is situated. No betterments shall be assessed for such improvement unless the order, plan and estimate are recorded as herein provided, nor upon any parcel of land not within such area, nor for a greater amount than such estimate."

In this order there is no reference whatever to any plan.

Respectfully submitted,

/s/ Thomas F. Sullivan

City Solicitor

TFS/N

OFFICE OF THE MAYOR
CAMBRIDGE, MASSACHUSETTS

January 30, 1932

To the Honorable, the City Council

I return herewith order of the City Council dated January 19, 1932 to abate certain sums from assessment made by the City Council December 22, 1931 and approved December 24, 1931, which I veto for the following reasons:

(1) It would appear that this order to abate was passed by the City Council in conjunction with an order of the same date to assess certain estates on Stearns Street in the sum of $124.63.

(2) The assessment in the opinion of the City Solicitor is invalid, a copy of which opinion, dated January 29, 1932, is hereto annexed and made a part hereof.

Yours respectfully,

Richard M. Russell

Mayor

RMR:LMK

JAN 30 1932 PM
CAMBRIDGE MASS
OFFICE OF CITY CLERK
RECEIVED

COMMUNICATION

from the Mayor, ~~transmitting~~ ~~out from~~ returning without his approval an order of the City Council adopted on Jan 19, 1932 abating the total sum of $68 from certain sewer assessments on estate on Stearns St made by City Council by order adopted on Dec. 22, 1931 and approved on Dec. 24, 1931

FEB 2 1932

In City Council

Letter Postponed for seven days

Frederick H. Burke City Clerk.