



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

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LAW DEPARTMENT

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SEVERLIN B. SINGLETON, III
BIRGE ALBRIGHT
DONALD A. DRISDELL
LEGAL COUNSEL

25 June 1987

Mr. Robert W. Healy
City Manager

Re: First English Evangelical Lutheran Church of Glendale v. County of Los Angeles (U.S. Supreme Court, June 9, 1987, 55 LW 4781)

Dear Mr. Healy:

I attach a copy of a City Council Order of June 15, which requests my opinion as to the impact of the above decision (the Lutherglen decision) on "all zoning regulations or ordinances now in effect or pending in the City."

In this case, the facts were as follows: In 1957, the Church purchased land on which it operated a camp ground, known as "Lutherglen," as a recreational area for handicapped children. The land is located in a canyon along the banks of a creek. In 1978, a flood destroyed Lutherglen's buildings. In response to the flood, Los Angeles County, in 1979, adopted an interim ordinance prohibiting the construction of any structure in an interim flood protection area that included the land on which Lutherglen had stood. The Church filed suit, alleging, among other things, that the ordinance denied it all use of Lutherglen, and seeking to recover damages in inverse condemnation for such loss of use.

The trial court granted a motion to strike this allegation, and the California Court of Appeal affirmed. The Church appealed to the Supreme Court.

By a 6 — 3 vote, the Supreme Court, in an opinion by Mr. Chief Justice Rehnquist, held that "temporary" regulatory takings which, as here, deny a landowner all use of his property, are not different in kind from permanent takings for which the Fifth Amendment clearly requires compensation. Once a court determines that a taking has occurred, the government retains the whole range of options already available — amendment of the regulation, withdrawal of the regulation or exercise of eminent domain. But where the government's activities have already worked a taking of all use of the property, no subsequent action of the government can relieve it of the duty to provide compensation for the period during which the taking was effective.

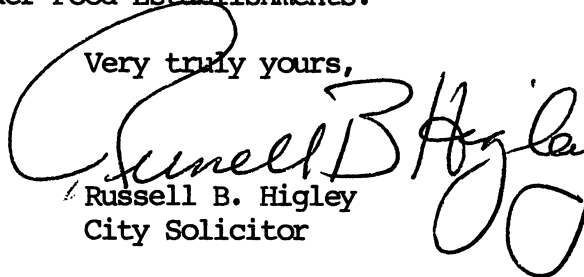
In conclusion, the Chief Justice stresses the fact that, for purposes of this case, the Court assumes the truth of the allegation of the Complaint that the ordinance in question denied the Church all use of its property. "We limit our holding to the facts presented, and of course do not deal with the quite different questions that would arise in the case of normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like which are not before us." 55 LW at 4786.

In determining whether any Cambridge zoning ordinance or regulation contravenes the Lutherglen decision, we must ask whether any ordinance or regulation denies any landowner all use of its property.

I have reviewed the Cambridge zoning ordinances, and have not found any which deprives a landowner of all use of its property. At the Council meeting of June 22, I stated my opinion that the recent amendment to the North Point Temporary Building Moratorium made it less vulnerable to attack under the Lutherglen decision. But even before the amendment, that Moratorium did not deny the landowners in that area all use of their property.

There has also been recent discussion of the rezoning petition filed by residents of Follen and Waterhouse Streets, which would affect the American Red Cross property at 9 Waterhouse Street. Here again, I do not believe that this rezoning would contravene Lutherglen, because the American Red Cross would not be denied all use of its property. My opinion is the same regarding the Central Square Temporary Moratorium on Fast Order Food and Automobile Oriented Fast Order Food Establishments.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "Russell B. Higley". The signature is written over the typed name and title.

Russell B. Higley
City Solicitor



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 29, 1987

To the Honorable, the City Council:

With reference to City Council Order of June 15, 1987, I transmit herewith communication from the Law Department with an opinion as to the impact of the Lutherglen decision on all zoning regulations or ordinances now in effect or pending in the City.

Very truly yours,

Robert W. Healy
City Manager

RWH/b

Re: opinion from the Law Dept. on the impact of the Lutherglan Decision on all zoning regulations or ordinances now in effect or pending in the City.

In City Council,

June 29, 1987

Placed on file