

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Nancy E. Glowa
First Assistant
City Solicitor

Arthur J. Goldberg
Supervising
Legal Counsel



CITY OF CAMBRIDGE

Office of the City Solicitor
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Assistant City Solicitor

July 23, 1998

Robert W. Healy
City Manager
City Hall
Cambridge, MA

Re: *City Council Order #48 dated June 15, 1998—Water Board Authority Over Neville Manor site*

Dear Mr. Healy:

I am attaching the legal opinion from Attorney D. M. Moschos in response to the above-referenced City Council order.

Very truly yours,

A handwritten signature in cursive script that reads "Donald A. Drisdell".

Donald A. Drisdell

MIRICK O'CONNELL
ATTORNEYS AT LAW

MIRICK, O'CONNELL, DEMALLIE & LOUGHE, LLP

July 23, 1998

Via Facsimile and First Class Mail

Donald A. Drisdell, Esq.
Deputy City Solicitor
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Neville Manor Nursing Home Site Ownership and Control

Dear Attorney Drisdell:

You have requested advice regarding the legal ownership and control of certain lands where the Neville Manor Nursing Home is located in the City of Cambridge. As I understand the facts, issues regarding ownership control as well as the physical description of the property have arisen in connection with the proposed development of facilities at the site. In brief, it is clear that legal control of the site belongs to the City of Cambridge Public Health Commission as detailed in the attached legal description.

By legislative act dated March 16, 1888, the State Legislature created the right of the City of Cambridge to establish the Fresh Pond Reservoir. The Act provided that the City of Cambridge may take and hold by purchase or otherwise any part or whole of the land and buildings within certain boundaries: at the north, Concord Avenue; at the east, Fresh Pond Parkway and the railroad lines; at the south, Grove Street and Huron Avenue; and, at the west, Blanchard Road. At that time, the City Council directed and authorized the Water Board to conduct the process of procurement. Through this process in 1888, the Water Board was given full charge and control of the aqueducts, lands, reservoirs, storage basins and other works and property connected with the water works, which authority is reflected in the current Cambridge Municipal Code, Section 2.70.060.

Not all parcels acquired during this process, however, are still controlled by the Water Board. Following the creation and assemblage of property surrounding the Fresh Pond Reservoir, certain parcels have been excluded from the Reservoir property.

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100 FRONT STREET
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MIRICK O'CONNELL

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MIRICK O'CONNELL

Donald A. Drisdell

July 23, 1998

Page 2

One of these excluded parcels is the current site of the Neville Manor Nursing Home. Specifically, by legislative act on April 7, 1925, the Legislature authorized the City of Cambridge to use a portion of the Fresh Pond Reservoir land for a "city home." The 1925 legislation, however, did not define a specific site but specified that "No lands shall be used for such a site without the approval of the state department of public health nor until plans for the construction of adequate works for the purification or disposal of sewage, drainage or other polluting organic matter, which may be discharged from lands so used, have been submitted to and approved by [the state department of public health]." City records indicated that this Act was accepted by the City Council on May 19, 1925, and approved by the Mayor on May 22, 1925.

In accordance with the 1925 legislation, the Water Board transferred the property to the Board of Public Welfare. The Annual Report of the Cambridge Water Board submitted to the City Council for the year ending March 31, 1928, confirms this transfer of the property to the authority of the Board of Public Welfare (whose direct successor in interest is the Public Health Commission). Similarly, by order of the City Council dated January 31, 1928, the City Council confirmed the transfer of the "city home" property as authorized by Chapter 225 of the Acts of 1925. This order also contains a full legal description of the property, generally described as a parcel containing approximately 359,028 square feet. City records also indicate that building permit numbered 27918 was issued on December 10, 1927.¹ This physical description is confirmed by a plot drawing of the "City Home for the Aged and Infirm" contained in the Atlas of the City of Cambridge, Plate 35 (G.W. Bromley & Co., Philadelphia, 1930), also attached.

Accordingly, based on my review of the materials available, I advise that the buildings and portions of the appurtenant land necessary for the operation and maintenance of the facilities are within the control of the Public Health Commission. The extent and dimensions of the property are contained in the attached property descriptions.

Please feel free to contact me if you have any further questions.

Very Truly Yours,



D. M. Moschos

¹ We assume that the appropriate approval of Department of Public Health was sought and obtained as required by the 1925 legislation.

February 14, 1928

of said land; also to place on file the plan showing the lines of said taking.

I D G E

January 24, 1928,

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J. W. End

CLERK.

D G E

4, 1928,

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CITY OF CAMBRIDGE, IN CITY COUNCIL,

WHEREAS:

JANUARY 31, 1928,

By Chapter 225 of the Acts of 1925 the City of Cam- bridge was authorized to use for a site for a City Home a por- tion of land taken or acquired for water supply purposes under the provisions of Chapter 137 of the Acts of 1888 it is hereby ORDERED:

That a certain portion of said land be transferred from the care and supervision of the Water Board to the care and sup- ervation of the Board of Public Welfare, the same to be used as a site for a City Home. Said portion of land transferred is bounded and described as follows:

Beginning at a point in the southeasterly line of Concord Avenue said point being at right angle to a point in the northeasterly line of Concord Avenue three hundred fifty-five and eighty- eight hundredths (355.88) feet southeasterly from the angle / in the northeasterly line of Concord Avenue at Smith Place; thence southwesterly one hundred ten (110) feet, more or less, by a line making an angle of ninety (90) degrees with Concord Avenue, said line being twenty (20) feet distant southeasterly from the easterly corner of the barn of the Water Works buildings; thence westerly one hundred twenty-three (123) feet by a line to a corner, said line making an angle of one hundred thirty (130) degrees with the line above described as being one hundred ten (110) feet long; thence southwesterly two hundred sixty-eight (268) feet to the tangent point of a curve by a line, said line making an angle of one hundred twelve (112) degrees with the line above described as being one hundred twenty-three (123) feet long; thence in a general southerly direction one hundred sixteen (116) feet along a curve of one hundred (100) feet radius to its other tangent point, said tangent point being seventy-five (75) feet north- easterly from the northeasterly line of the Pond Drive; thence southeasterly along a line fifteen (15) feet to the tangent point of a curve, said line being seventy-five (75) feet dis- tant northeasterly from and parallel to the northeasterly line of the Pond Drive; thence in a general southerly direction one hundred eighty-three (183) feet along a curve of eight hundred (800) feet radius to its other tangent point, said curve be- ing seventy-five (75) feet distant easterly and parallel to the easterly line of the Pond Drive; thence southerly fifty-eight (58) feet to a corner along a line parallel to and seventy- five (75) feet distant easterly from the easterly line of the Pond Drive; thence southeasterly three hundred (300) feet to a corner, said corner being five hundred seventy-five (575) feet southwesterly from the southwesterly line of Concord Avenue; thence northeasterly five hundred seventy-five (575) feet to the southwesterly line of Concord Avenue, said line being at right angle to Concord Avenue and one hundred (100) feet south- easterly from the southerly wing of the proposed main building; thence northwesterly along the southwesterly line of Concord Avenue six hundred twenty-two (622) feet to the point of be- ginning.

Containing three hundred fifty-nine thousand twenty-eight (359028) square feet, more or less. All above measurements are given as being more or less. The above described parcel of land is shown upon a plan en- titled "Home for the Aged and Infirm of the City of Cambridge," drawn by Charles R. Greco, being Plot Plan Number 1 and on file in the office of the City Engineer of Cambridge, Mass. Adopted by the affirmative vote of 14 members, Jan. 31, 1928. Approved by the Mayor, February 7th, 1928.

A true copy. Attest: (Signed) FREDERICK H. BURKE, City Clerk.

REPORT OF THE CAMBRIDGE WATER BOARD

To the Honorable City Council:

The sixty-third (63d) annual report of the Cambridge Water Board for the year ending March 31, 1928, is hereby submitted for your consideration.

The report of the General Superintendent gives in detail the operations and financial condition of the Water Works. Reference is also made to the report of the Commissioners of the Sinking Fund of the City.

FINANCIAL STATEMENT IN BRIEF

Total cost of Water Works to March 31, 1928.....	\$7,887,850 00
Total amount of funded bonds outstanding April 1, 1928.....	427,500 00
Less value of sinking fund.....	402,063 48
	\$25,436 52
Serial water debt.....	523,500 00
	\$548,936 52
During the year water bonds matured and were paid as follows:	
August 18, 1927.....	\$2,500 00
October 22, 1927.....	1,000 00
January 13, 1928.....	26,500 00
March 31, 1928.....	3,000 00
	\$33,000 00

Funded Water Debt

Date of Issue	Interest	From	Due	Amount
May 1, 1906	4	30	May 1, 1936	\$280,000 00
June 1, 1907	4	30	June 1, 1937	49,000 00
July 1, 1907	4	30	July 1, 1937	25,000 00
June 1, 1908	4	20	June 1, 1928	20,000 00
Aug. 1, 1908	4	30	Aug. 1, 1938	17,000 00
Jan. 1, 1910	3½	20	Jan. 1, 1930	5,000 00
Feb. 1, 1910	3½	20	Feb. 1, 1930	5,000 00
Mar. 1, 1911	3½	30	Mar. 1, 1941	16,500 00
Dec. 1, 1911	3½	30	Dec. 1, 1941	10,000 00
				\$427,500 00

From April 1, 1921, to March 31, 1922.....	\$441,109 10
From April 1, 1922, to March 31, 1923.....	486,098 14
From April 1, 1923, to March 31, 1924.....	500,193 02
From April 1, 1924, to March 31, 1925.....	490,487 73
From April 1, 1925, to March 31, 1926.....	512,219 95
From April 1, 1926, to March 31, 1927.....	525,034 28
From April 1, 1927, to March 31, 1928.....	517,487 82

METERS

Fifty-one per cent (51%) of our services are metered. They are installed on

industrial and domestic services.....	18,243
schoolhouses, public buildings, etc.	80
fire supplies.....	66
	8,389

The meters set on public buildings, etc., are installed to record the water which is furnished to the City and for which the Department has not made any charge to the City for years.

RESERVOIRS

At date, all of our reservoirs are full.

The water in Fresh Pond is at elevation 17.22; in Stony Brook 83.26; and in Hobbs Brook 183.50.

During the year the highest elevation of water in Hobbs Brook Reservoir was reached on December 17, 1927, 183.65; its lowest, on August 27, 1927, 181.19.

In Stony Brook Reservoir the highest elevation of the water was reached on December 18, 1927, 83.91; the lowest, on June 28, 1927, 76.29.

2,118,753,000 gallons of water wasted from Stony Brook over the spillway into the Charles River during the year; this amount represents nearly fifty per cent of our pumpage.

In Fresh Pond the water reached its highest elevation on February 29, 1928, 17.24; its lowest on July 22, 1927, 15.01.

The average elevation of the Pond was 16.10.

In July, 1927, a contract was awarded to the Rust Engineering Company, of Pittsburgh, Pa., for relining Payson Park Reservoir, which had been leaking for over twenty years. Although the storage capacity for full reservoir was 43 million gallons, it has

been impossible to fill the reservoir for that storage because of leakage. The repaired reservoir will not only save the leakage of 500,000 gallons a day, but will give an additional pressure for the high buildings, and fire protection. "Reinforced gunite" was used with "guns." At date, no official test has been made as to the tightness of the reservoir, but we are confident that the leakage is less than the guarantee amount (25,000 gallons) per day. The work was completed at a cost less than the \$145,000 appropriated. We now are equipped with a unit that renders us independent, for twenty-four hours, of any necessity for purchasing water should a break occur at our pumping station. Rust Engineering Company gave work to as many of the unemployed Cambridge men as was possible. An official test is to be made at an early date, and our City Engineer has been requested to make the usual preparation for this investigation.

On July 27, 1927, Mr. A. O. Doane, of the Metropolitan Water Works, was engaged to prepare plans and specifications for a 20 million gallons pump, of cross compound type. On October 4, 1927, the bids for furnishing same were opened, but to date no contract has been awarded.

During the "Sacco-Vanzetti" agitation an armed guard was maintained around our various dams, pumping station, etc., to protect our properties.

Permission was voted by the Board to give leave of absence to the veterans of the World War to attend the convention in Paris.

The claim of Mrs. John J. Sullivan for workingmen's compensation due, because of injuries that caused the death of her husband, was settled for \$2,500.

In December, 1927, the Board received a letter of appreciation of the quick response to the needs of the "Navy Salvage Force" during the suspense attending the salvaging of *U.S.S. S-4*. The Department, through its Superintendent, provided machines, fittings, etc., for the emergency use at all times of day and night as required. Commandant Philip Andrews also complimented the Board on the Department's equipment which was so complete and available.

FILTRATION PLANT

The Board voted to settle the outstanding claim of Coleman Brothers for \$16,500. This claim was for extras in dispute since 1923 when the building was completed. It was determined to settle rather than carry the matter into Court at a greater expense.

The members of the New England Water Works Association, which held its convention in Boston in September, 1927, were interested to visit our Plant. The usual hospitality was extended.

In October, 1927, to take effect December 1, 1927, Mr. Harold C. Chandler, who has been our resident biological chemist since December, 1922, resigned to take charge of a filtration plant in Connecticut. Mr. Philip L. McLaughlin has been appointed to assume his duties.

Mr. Thomas E. Kennedy has been again nominated by the Mayor and confirmed by the City Council as a member of the Water Board for a period of five years.

The Board has transferred to the Board of Public Welfare a portion of the land on Concord Avenue, which was acquired from Dr. Somers' estate in 1893 for the protection of the water supply in the Pond. A new "Home for the Aged" of Cambridge will be erected on this site. Another section of this Reservation has been sought for a golf course and playground. The Water Board gave its representatives leave to withdraw on their petition.

In October, 1927, Mr. John P. Conroy died. Although Mr. Conroy was not a member of the Board at the time of his death, having resigned because of ill health in 1925, the Board has placed upon record its appreciation of valuable services given freely from 1914 to 1925, as a member of the Cambridge Water Board.

Respectfully submitted,

JAMES J. SCULLY,
JOSEPH E. DOHERTY,
BERNARD E. McDERMOTT,
MARTIN A. FEELEY,
THOMAS E. KENNEDY.

COMMUNICATION

from the Mayor, transmitting
and from a description of land to be
released for use of the City House
on the Fred Pond Reservation
containing 359,028 sq. ft.

In City Council JAN 10 1928

Referred to the Committee on
Public Property & Public Institutions

Frederick H. Daniels City Clerk

T Skid

McDermott

Good

Colgan

Tues Jan 31

OFFICE OF THE MAYOR
CITY HALL - CAMBRIDGE

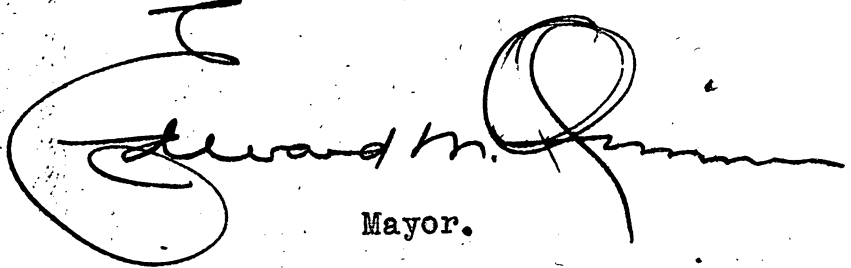
January 10, 1928.

To the Honorable City Council:

I transmit herewith a description of land to be released for use of the City Home on the Fresh Pond Reservation containing three hundred and fifty-nine thousand and twenty-eight square feet (359,028) more or less also a descriptive plan of said land entitled "Home for the Aged and Infirm of the City of Cambridge".

This is the plan as agreed upon by the Water Board of the City of Cambridge, and I respectfully recommend that action be taken at an early date looking to this proposed transfer.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to read "Edward M. Quinn". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Mayor.

City of Cambridge

January 31, 1928.

In City Council

The

on Public Property and Public
Committee Institutions

was referred a communication from the Mayor relative to a release of
to which
land by the Water Board to the Board of Public Welfare for the erection
of New City Home

Reports

Recommending the adoption of the
accompanying order transferring land from supervision of Water Board
to supervision of the Board of Public Welfare.

For the Committee.

Danut O. Leahy



City of Cambridge

In City Council

31
January 2, 1928.

WHEREAS:

By Chapter 225 of the Acts of 1925 the City of Cambridge was authorized to use for a site for a City Home a portion of land taken or acquired for water supply purposes under the provisions of Chapter 137 of the Acts of 1888 it is hereby

ORDERED:

That a certain portion of said land be transferred from the care and supervision of the Water Board to the care and supervision of the Board of Public Welfare, the same to be used as a site for a City Home. Said portion of land transferred is bounded and described as follows:-

Beginning at a point in the southeasterly line of Concord Avenue said point being at right angle to a point in the northeasterly line of Concord Avenue three hundred fifty-five and eighty-eight hundredths (355.88) feet southeasterly from the angle in the northeasterly line of Concord Avenue at Smith Place; thence southwesterly one hundred ten (110) feet, more or less, by a line making an angle of ninety (90) degrees with Concord Avenue, said line being twenty (20) feet distant southeasterly from the easterly corner of the barn of the Water Works buildings; thence westerly one hundred twenty-three (123) feet by a line to a corner, said line making an angle of one hundred thirty (130) degrees with the line above described as being one hundred ten (110) feet long; thence southwesterly two hundred sixty-eight (268) feet to the tangent point of a curve by a line, said line making an angle of one hundred twelve (112) degrees with the line above described as being one hundred twenty-three (123) feet long; thence in a general southerly direction one hundred sixteen (116) feet along a curve of one hundred (100) feet radius to its other tangent point, said tangent point being seventy-five (75) feet northeasterly from the northeasterly line of the Pond Drive; thence southeasterly along a line fifteen (15) feet to the tangent point of a curve, said line being seventy-five (75) feet distant northeasterly from and parallel to the northeasterly line of the Pond Drive; thence in a general southerly direction one hundred eighty-three (183) feet along a curve of eight hundred feet (800) feet radius to its other tangent point, said curve being seventy-five (75) feet distant easterly and parallel to the easterly line of the Pond Drive; thence southerly fifty-eight (58) feet to a corner along a line parallel to and seventy-five (75) feet distant easterly from the easterly line of the Pond Drive; thence southeasterly three hundred (300) feet to a corner, said corner being five hundred seventy-five (575) feet southwesterly from the southwesterly line of Concord Avenue; thence northeasterly five hundred seventy-five (575) feet to the southwesterly line of Concord Avenue; said line being one hundred (100) feet distant from the proposed main building; thence northwesterly along the southwesterly line of Concord Avenue six hundred twenty-two (622) feet to the point of beginning. Containing three hundred fifty-nine thousand twenty-eight (359028) square feet, more or less. All above measurements are given as being more or less.

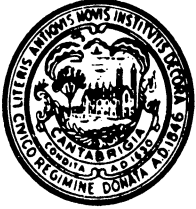
The above described parcel of land is shown upon a plan entitled "HOME FOR THE AGED AND INFIRM OF THE CITY OF CAMBRIDGE", drawn by Charles R. Greco, being Plot Plan Number 1 and on file in the office of the City Engineer of Cambridge, Mass.

FEB - 7 1928

Executive Department

Approved

14



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307



41.

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

July 27, 1998

To the Honorable, the City Council:

In response to City Council Order #48 dated June 15, 1998, I am transmitting the legal opinion of Attorney D. M. Moschos obtained by the City Solicitor's office. As indicated in Mr. Moschos' opinion and its attachments, a parcel containing approximately 359,028 square feet was transferred in 1928 from the control of the Water Board to the control of the Board of Public Welfare for purposes of operating a city home. The site has therefore not been in the control of the Water Board since 1928.

Very truly yours,

Robert W. Healy
City Manager

Consent Agenda #41

5035

Relative to Council Order No. 48, dated
June 15, 1998, regarding an outside
legal opinion as to the authority of
the Water Board to approve or disapprove
the Neville Manor project.

In City Council July 27, 1998

PLACED ON FILE