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CAMBRIDGE MA.

348 Franklin Street
Cambridge, MA 02139
617-491-7181
November 23, 1992

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

The city solicitor has once again repeated his position of many years that the city manager has no power to appeal actions of the Board of Zoning Appeals to the courts. I stated to the contrary.

For the information of the city council, enclosed is a copy of the most recent edition (1992 pocket part) of West's Massachusetts General Laws Annotated, chapter 40A, section 17, enlarged to the maximum extent possible while keeping the paragraph on one sheet of paper.

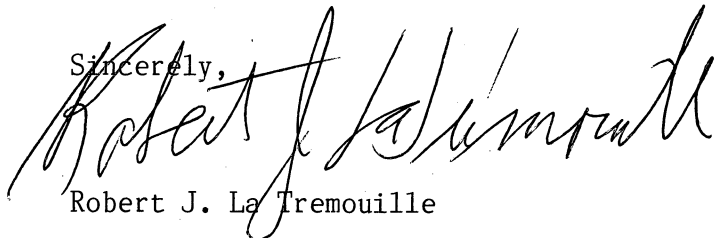
This provision, concerning "judicial review" a "decision of the board of appeals or any special permit granting authority . . ." states:

"any municipal officer or board may appeal".

In addition to maximum enlargement, I have enclosed this language in a block.

I would suggest that the city council ask the city solicitor, in the light of this very explicit language, how he has been telling the city council for at least eight years, that the City Manager has no power to appeal actions of the Board of Zoning Appeals to court.

Sincerely,



Robert J. La Tremouille

§ 17. Judicial review

Any person aggrieved by a decision of the board of appeals or any special permit granting authority or by the failure of the board of appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior court department in which the land concerned is situated or, if the land is situated in Hampden county, either to said superior court department or to the division of the housing court department for said county, or if the land is situated in a county, region or area served by a division of the housing court department either to said superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county, by bringing an action within twenty days after the decision has been filed in the office of the city or town clerk. If said appeal is made to said division of the district court department, any party shall have the right to file a claim for trial of said appeal in the superior court department within twenty-five days after service on the appeal is completed, subject to such rules as the supreme judicial court may prescribe. Notice of the action with a copy of the complaint shall be given to such city or town clerk so as to be received within such twenty days. The complaint shall allege that the decision exceeds the authority of the board or authority, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed.

5.

5-1084

Comm. from Robert J. LaTremouille, 348
Franklin Street, regarding the right of
appeal to the courts of a Board of Zoning
Appeal decision by the City Manager.

In City Council,

December 14, 1992

*Charter Right exercised
by Councilman Duchay
at the reconvened
meeting held on Dec. 16,*

1992.

12/21/92 Placed in file