

Cambridge Citizens for Liveable Neighborhoods

PO Box 19, Cambridge, MA 02238 • 354-5670

1988 NOV 18 PM 12: 14

Friday 18 November 1988
CAMBRIDGE MA.

**Steering Committee
Pro Tem:**

Ed Cyr
Philip Dowds
Bob Edbrooke
Dan Geer
Peter Kinder
Jay Marrs
Debra McManus
Gaylen Morgan
Anne Toop
Susan Yanow

TO OUR CITY COUNCILORS:

Speaking for those of us who have filed action against the City and the developers of the Binney Street garage: We've been sued.

Specifically, we've been counter-sued by the developer for speaking out in public about the issues that concern us; for asking state and federal agencies to investigate our charges of municipal malfeasance; and for asking this City to retract actions which we believe to be illegal. We enclose a copy of the counter-suit.

We're not disturbed by the counter-suit against us. The counter-claims are simultaneously anti-democratic and idiotic.

We're disturbed by something else. Plainly, Cambridge residents are in profound disagreement with developers about the future of this City. Bad enough that citizens (your constituents and voters) now regularly take legal action to compel this City to do its job and enforce its laws. Now, disagreement has escalated to the point where developers are suing your constituents for having exercised their rights and responsibilities as citizens.

This is no way to conduct the public business, or run a City. Above all, we're disturbed by the lack of municipal leadership in the face of difficult issues. Lack of leadership has allowed conflict about development to expand to unreasonable levels which are destructive to all the parties involved.

We ask you to show us that you are neither indifferent to, nor powerless to deal with, development controversy. As a body of the whole, you, our Council, must simply do better than battle to stalemate on every possible initiative. We ask you to take charge at once. On Monday night, 21 November: Do something.

Sincerely,

CAMBRIDGE CITIZENS FOR LIVEABLE NEIGHBORHOODS



R PHILIP DOWDS
Co-Chairman Pro Tem

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 88-6603

DEBRA McMANUS, RALPH CHADIS,
 ANN W. CURBY, R. PHILIP DOWDS,
 SUSAN DOWDS, ROBERT OWEN
 EDBROOKE, JR., DeCOORSEY FALES,
 JR., ITEN N. FALES, THOMAS J.
 FITZGERALD, ELENA GARDYNA, HENRY
 A. GARDYNA, DANIEL E. GEER, JR.
 PAUL W. GUGLIETTI, JR. BERNARD
 GUNTHER, NANCY HAUSMAN, ANTHONY
 J. KEBER, J.O. MARRS, RICHARD
 G. McMANUS, PRISCILLA J.
 McMILLAN, JOHN R. MOOT, GAYLEN
 MORGAN, MARYBETH NOONAN, SUSAN
 F. SCHWAB, JUDITH A. SEALEY, LISA
 A. SEALEY, THEODORE H. SUTTON,
 MEHMET TONER, AMPORO VAZQUEZ,
 RICARDO H. VAZQUEZ, and SARAH A.
 WOLFINSOHN,

Plaintiffs,

vs.

GEORGE TESO, THE ATHENAEUM GROUP
 OLD BINNEY REALTY TRUST, AND
 MULACH PARKING STRUCTURES
 CORPORATION.

Defendants.

ANSWER & COUNTERCLAIM
OF THE ATHENAEUM GROUP

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The Athenaeum Group, a defendant in the within action,
hereby answers the Verified Complaint as follows:

1. No response is required to paragraph 1.
2. Paragraph 2 is admitted on information and belief.
3. It is admitted that George Teso is the Director of
Traffic and Parking for the City of Cambridge. The remainder

of paragraph 3 states a legal conclusion and accordingly no answer is required.

4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted but it is denied that Old Binney Realty Trust is a proper party to this suit..
6. Paragraph 6 is admitted.
7. It is admitted that an attorney directed a letter to certain individuals and corporations on August 9, 1988..
8. It is admitted that regulations now appearing at 40 CFR §52.1135 were published in the Federal Register on June 12, 1975. It is denied that those regulations became effective on that date.
9. Paragraph 9 is admitted.
10. Paragraph 10 is denied.
11. Paragraph 11 is denied.
12. Paragraph 12 calls for a legal conclusion and, accordingly, no answer is required.
13. The quoted document speaks for itself.
14. The Athenaeum Group is without sufficient information to admit or deny paragraph 14.
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18. It is admitted that Mr. Teso executed a letter

containing the quoted language.

19. The Athenaeum Group is without sufficient information to admit or deny paragraph 19.

20. The Athenaeum Group is without sufficient information to admit or deny paragraph 20.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. It is admitted that construction of the garage has begun. The remainder of paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

28. The Athenaeum Group is without sufficient information to admit or deny paragraph 28.

29. Paragraph 29 calls for a legal conclusion and, accordingly, no answer is required.

30. The Athenaeum Group is without sufficient information to admit or deny paragraph 30.

31. Paragraph 31 is denied.

32. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.
35. Paragraph 35 is admitted.
36. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
37. The referenced document speaks for itself.
38. Paragraph 38 is denied.
39. Paragraph 39 is unintelligible and the Athenaeum Group is unable to admit or deny its provisions.
40. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
41. It is denied that there is any controversy between the Athenaeum Group and either Old Binney Realty Trust, George Teso or Mulach Parking Structures Corporation. Answering further it is said that this matter is not cognizable under the provisions of G.L. c. 231A and that plaintiffs have failed to include necessary parties under the provisions of G.L. c. 231A §8.

COUNTERCLAIM

1. Plaintiff in Counterclaim, The Athenaeum Group ("Athenaeum") is a Massachusetts business corporation with principal offices at 215 First Street and is the holder of a valid building permit for the construction of a parking garage at 355 Binney Street.
2. Defendants in Counterclaim, Debra McManus, Ralph Chadis, Ann W. Curby, R. Philip Dowds, Susan Dowds, Robert Owen

Edbrooke, Jr., DeCoorse Fales, Jr., Iten N. Fales, Thomas J. Fitzgerald, Elena Gardyna, Henry A. Gardyna, Daniel E. Geer, Jr., Paul W. Guglietti, Jr. Bernard Gunther, Nancy Hausman, Anthony J. Keber, J.O. Marrs, Richard G. McManus, Priscilla J. McMillan, John R. Moot, Gaylen Morgan, Marybeth Noonan, Susan F. Schwab, Judith A. Sealey, Lisa A. Sealey Theodore H. Sutton, Mehmet Toner, Amporo Vazquez, Ricardo H. Vazquez, and Sarah A. Wolfensohn ("the neighbors") are individuals residing in various locations in Cambridge Massachusetts.

FACTUAL BACKGROUND

3. On March 10, 1988, the Athenaeum Group and Mulach Parking Structures Corp. entered into a contract for the construction of a 1530 car parking garage at 355 Binney Street in Cambridge, Massachusetts (the "garage"). Construction began under the contract on April 5, 1988. Both parties are and remain ready, willing and able to carry out the terms of the contract.

4. On January 30, 1988, Athenaeum applied for a building permit in order to construct the garage in a heavy industrial zone in East Cambridge. Said garage use was permitted of right under the applicable zoning by-laws.

5. On February 10, 1988, the City of Cambridge duly issued the permit. On or about April 5, 1988, construction of the garage began in accordance with the building permit and the

plans submitted to the Inspectional Services Department of the City of Cambridge.

6. The neighbors then undertook as a common enterprise to carry out an intentional plan and scheme to interfere with 1) scheduled plans to close financing on the garage, 2) the contract between Mulach and Athenaeum, and 3) Athenaeum's and Old Binney's use of their land and the benefit of their building permit.

7. In the furtherance of their plan, scheme and wrongful common enterprise, the neighbors, personally or through their agents:

- a) Addressed threats and allegations in letters to Athenaeum, its officers, and employees, and the Attorney General of the Commonwealth of Massachusetts demanding a cessation of construction and alleging various violations of law;
- b) Addressed letters to municipal, state and federal officials falsely indicating that Athenaeum's building permit was invalid and the garage construction in violation of law;
- c) Addressed letters to municipal officials demanding the revocation of the building permit and falsely alleging that Athenaeum was proceeding on the garage in violation of law;
- d) Contacted numerous members of the news media and thereafter disseminated materially false and misleading information concerning the garage and the validity of the building permit;

e) Demanded and received a hearing before the City Council for the purpose of demanding the revocation of the building permit despite the fact that the City Council has no authority to revoke or interfere with a validly issued building permit;

f) Disseminated at the City Council hearing materially false information concerning the status of the garage and the present position of the United States Environmental Protection Agency ("EPA") on matters relevant to the validity of the garage and building permit.

g) On information and belief contacted the Massachusetts Department of Environmental Quality Engineering ("DEQE") and the EPA seeking their involvement with the neighbors' attempt to interfere with the continuation of the garage.

8. Despite the fact that they knew, or should have known, that their position was wrong as a matter of law, and despite a) the refusal of every local, state and federal agency which the contacted to cooperate and b) upon information and belief, their having been informed by the majority of the agencies contacted that their legal position was incorrect and untenable, the neighbors continued to disseminate factually and legally inaccurate material to citizens, the media and state and local officials.

9. Due to the false and misleading information disseminated by the neighbors, and repeated by the media,

numerous potential tenants of the adjacent One Kendall Square Development delayed or refused to execute leases.

10. Due to the false and misleading information disseminated by the neighbors, and repeated by the media, a scheduled closing for a loan was jeopardized and postponed resulting in great damage to Athenaeum and its principals. Further, Athenaeum was forced to fund the garage through alternative methods of short term financing, all to the severe damage of Athenaeum.

11. At all times material the neighbors employed tactics of threats, intimidation and coercion in the attempt to interfere with Athenaeum's legally protected rights.

12. Said threats, intimidation and coercion had the effect of resulting in severe damage to Athenaeum through the loss of lessees, financing and reputation and constituted interference with rights protected under the Constitution and laws of the United States and the Commonwealth.

13. On October 25, 1988 a joint opinion of DEQE and EPA was issued conclusively establishing that it was the position of those agencies that plaintiff in counterclaim's building permit and garage were in full compliance with those aspects of the law which the neighbors had raised as a bar to the validity of the garage. As of that date, every agency of any level of government remotely involved with the issues raised by the neighbors had officially rebuked their position. Upon

information and belief, the neighbors or their attorney was aware of the existence and content of that letter. The next day the neighbors filed this suit and sought to enjoin the garage.

COUNT I

14. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

15. The actions of the neighbors constitute an intentional interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

COUNT II

16. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

17. The actions of the neighbors constitute a negligent interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

COUNT III

18. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

19. The actions of the neighbors constitute an intentional interference with Athenaeum's advantageous relationship with

Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT IV

20. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

21. The actions of the neighbors constitute a negligent interference with Athenaeum's advantageous relationship with Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT V

22. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

23. The actions of the neighbors constitutes a slander of Athenaeum's title.

COUNT VI

24. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

25. The action of the neighbors constitutes the interference or attempted interference, through threats, intimidation or coercion with rights secured by the Constitution and laws of the United States and the Commonwealth in violation of G.L. c. 12 § 11I.

COUNT VII

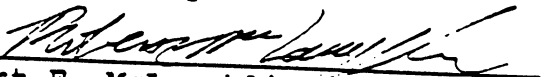
26. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

27. The actions of the neighbors in bringing this action and purporting to employ and invoke environmental laws for the ulterior motive of denying and interfering with Athenaeum's rightful improvement of its property was malicious and constitutes an abuse of process.

WHEREFORE, the Athenaeum Group as defendant and plaintiff in Counterclaim demands that the Court:

1. Dismiss the Complaint against it;
2. Enter judgment on all seven counts of the counterclaim against the neighbors, jointly and severally as Defendants in Counterclaim;
3. Grant Plaintiff in Counterclaim its costs and expenses, including attorneys fees;
4. Grant such other relief as is just.

The Athenaeum Group
By its Attorneys


Robert E. McLaughlin
David L. Klebanoff
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
(617) 482-1900

0936K

CERTIFICATE OF SERVICE

I, David L. Klebanoff, hereby certify that I have served the within Answer and Counterclaim of The Athenaeum Group by mailing, first class, postage prepaid a copy of the same to J. Raymond Miyares, Esq. 47 Winter Street, Suite 800, Boston, Massachusetts and Donald A. Drisdell, Esq., City Hall, Cambridge, Massachusetts 02139.

Signed under the pains and penalties of perjury this 10th day of November, 1988


David L. Klebanoff

Commonwealth of Massachusetts

MIDDLESEX, ss.

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 10:00 clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of PRISCILLA J. McMILLAN

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts.

cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

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Commonwealth of Massachusetts

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Court

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DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

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To: J. Raymond Miyares, Esq.

Please take notice that at 11:30 o'clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by J.O. MARRS (its) attorney(s), will take the deposition upon oral examination of

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

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I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts

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Commonwealth of Massachusetts

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DEBRA MCMANUS et al

Plaintiff(s)

GEORGE TESO, et al

Defendant(s)

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To: J. Raymond Miyares, Esq.

Please take notice that, at 2:00'clock p.m, on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of JOHN R. MOOT

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

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Respectfully

David L. Klebanoff Attorney(s) for The Athenaeum Group

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cc. Donald A. Drisdell, Esq.

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Commonwealth of Massachusetts

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Docket No. 88-6603

DEBRA MCMANUS et al

Plaintiff(s)

GEORGE TESO, et al

Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 3:30 o'clock P.M., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of Mary Beth Noonan

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

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Respectfully,

David L. Klebanoff Attorney(s) for The Athenaeum Group

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Specifically, we've been counter-sued by the developer for speaking out in public about the issues that concern us; for asking state and federal agencies to investigate our charges of municipal malfeasance; and for asking this City to retract actions which we believe to be illegal. We enclose a copy of the counter-suit.

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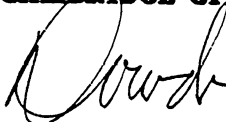
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- b) Addressed letters to municipal, state and federal officials falsely indicating that Athenaeum's building permit was invalid and the garage construction in violation of law;
- c) Addressed letters to municipal officials demanding the revocation of the building permit and falsely alleging that Athenaeum was proceeding on the garage in violation of law;
- d) Contacted numerous members of the news media and thereafter disseminated materially false and misleading information concerning the garage and the validity of the building permit;

e) Demanded and received a hearing before the City Council for the purpose of demanding the revocation of the building permit despite the fact that the City Council has no authority to revoke or interfere with a validly issued building permit;

f) Disseminated at the City Council hearing materially false information concerning the status of the garage and the present position of the United States Environmental Protection Agency ("EPA") on matters relevant to the validity of the garage and building permit.

g) On information and belief contacted the Massachusetts Department of Environmental Quality Engineering ("DEQE") and the EPA seeking their involvement with the neighbors' attempt to interfere with the continuation of the garage.

8. Despite the fact that they knew, or should have known, that their position was wrong as a matter of law, and despite a) the refusal of every local, state and federal agency which they contacted to cooperate and b) upon information and belief, their having been informed by the majority of the agencies contacted that their legal position was incorrect and untenable, the neighbors continued to disseminate factually and legally inaccurate material to citizens, the media and state and local officials.

9. Due to the false and misleading information disseminated by the neighbors, and repeated by the media,

numerous potential tenants of the adjacent One Kendall Square Development delayed or refused to execute leases.

10. Due to the false and misleading information disseminated by the neighbors, and repeated by the media, a scheduled closing for a loan was jeopardized and postponed resulting in great damage to Athenaeum and its principals. Further, Athenaeum was forced to fund the garage through alternative methods of short term financing, all to the severe damage of Athenaeum.

11. At all times material the neighbors employed tactics of threats, intimidation and coercion in the attempt to interfere with Athenaeum's legally protected rights.

12. Said threats, intimidation and coercion had the effect of resulting in severe damage to Athenaeum through the loss of lessees, financing and reputation and constituted interference with rights protected under the Constitution and laws of the United States and the Commonwealth.

13. On October 25, 1988 a joint opinion of DEQE and EPA was issued conclusively establishing that it was the position of those agencies that plaintiff in counterclaim's building permit and garage were in full compliance with those aspects of the law which the neighbors had raised as a bar to the validity of the garage. As of that date, every agency of any level of government remotely involved with the issues raised by the neighbors had officially rebuked their position. Upon

information and belief, the neighbors or their attorney was aware of the existence and content of that letter. The next day the neighbors filed this suit and sought to enjoin the garage.

COUNT I

14. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

15. The actions of the neighbors constitute an intentional interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

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COUNT IV

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22. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

23. The actions of the neighbors constitutes a slander of Athenaeum's title.

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25. The action of the neighbors constitutes the interference or attempted interference, through threats, intimidation or coercion with rights secured by the Constitution and laws of the United States and the Commonwealth in violation of G.L. c. 12 § 11I.

COUNT VII

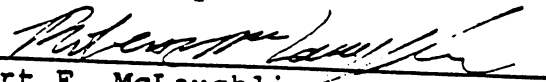
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WHEREFORE, the Athenaeum Group as defendant and plaintiff in Counterclaim demands that the Court:

1. Dismiss the Complaint against it;
2. Enter judgment on all seven counts of the counterclaim against the neighbors, jointly and severally as Defendants in Counterclaim;
3. Grant Plaintiff in Counterclaim its costs and expenses, including attorneys fees;
4. Grant such other relief as is just.

The Athenaeum Group
By its Attorneys


Robert E. McLaughlin
David L. Klebanoff
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
(617) 482-1900

0986K

CERTIFICATE OF SERVICE

I, David L. Klebanoff, hereby certify that I have served the within Answer and Counterclaim of The Athenaeum Group by mailing, first class, postage prepaid a copy of the same to J. Raymond Miyares, Esq. 47 Winter Street, Suite 800, Boston, Massachusetts and Donald A. Drisdell, Esq., City Hall, Cambridge, Massachusetts 02139.

Signed under the pains and penalties of perjury this 10th day of November, 1988



David L. Klebanoff

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 10:00 clock a.m., on 21st, November, 19 88, at the offices of Gilman, McLaughlin & Hanrahan, 470 Atlantic Avenue, Boston, Massachusetts, the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of PRISCILLA J. McMILLAN

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff, Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts.

cc. Donald A. Drisdell, Esq.

David L. Klebanoff, Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

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Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 11:30 o'clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of J.O. MARRS

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Attorney(s) for THE ATHENAEUM GROUP

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 11:30 o'clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by J.O. MARRS (its) attorney(s), will take the deposition upon oral examination of

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR

Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 2:00'clock p.m, on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by ~~his~~(its) attorney(s), will take the deposition upon oral examination of JOHN R. MOOT

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts

cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR

Court

Docket No. 88-6603

DEBRA MCMANUS et al

Plaintiff(s)

GEORGE TESO, et al

Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 3:30'clock P.M., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by ~~his/her~~ (its) attorney(s), will take the deposition upon oral examination of Mary Beth Noonan

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Cambridge Citizens for Liveable Neighborhoods

PO Box 19, Cambridge, MA 02238 • 354-5670

1988 NOV 18 PM 12: 14

Friday 18 November 1988
CAMBRIDGE MA.

Steering Committee
Pro Tem:

Ed Cyr
Philip Dowds
Bob Edbrooke
Dan Geer
Peter Kinder
Jay Marrs
Debra McManus
Gaylen Morgan
Anne Toop
Susan Yanow

TO OUR CITY COUNCILORS:

Speaking for those of us who have filed action against the City and the developers of the Binney Street garage: We've been sued.

Specifically, we've been counter-sued by the developer for speaking out in public about the issues that concern us; for asking state and federal agencies to investigate our charges of municipal malfeasance; and for asking this City to retract actions which we believe to be illegal. We enclose a copy of the counter-suit.

We're not disturbed by the counter-suit against us. The counter-claims are simultaneously anti-democratic and idiotic.

We're disturbed by something else. Plainly, Cambridge residents are in profound disagreement with developers about the future of this City. Bad enough that citizens (your constituents and voters) now regularly take legal action to compel this City to do its job and enforce its laws. Now, disagreement has escalated to the point where developers are suing your constituents for having exercised their rights and responsibilities as citizens.

This is no way to conduct the public business, or run a City. Above all, we're disturbed by the lack of municipal leadership in the face of difficult issues. Lack of leadership has allowed conflict about development to expand to unreasonable levels which are destructive to all the parties involved.

We ask you to show us that you are neither indifferent to, nor powerless to deal with, development controversy. As a body of the whole, you, our Council, must simply do better than battle to stalemate on every possible initiative. We ask you to take charge at once. On Monday night, 21 November: Do something.

Sincerely,

CAMBRIDGE CITIZENS FOR LIVEABLE NEIGHBORHOODS


R PHILIP DOWDS
Co-Chairman Pro Tem

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 88-6603

DEBRA McMANUS, RALPH CHADIS,)
 ANN W. CUREY, R. PHILIP DOWDS,)
 SUSAN DOWDS, ROBERT OWEN)
 EDBROOKE, JR., DeCOORSEY FALES,)
 JR., ITEN N. FALES, THOMAS J.)
 FITZGERALD, ELENA GARDYNA, HENRY)
 A. GARDYNA, DANIEL E. GEER, JR.)
 PAUL W. GUGLIETTI, JR. BERNARD)
 GUNTHER, NANCY HAUSMAN, ANTHONY)
 J. KEBER, J.O. MARRS, RICHARD)
 G. McMANUS, PRISCILLA J.)
 McMILLAN, JOHN R. MOOT, GAYLEN)
 MORGAN, MARYBETH NOONAN, SUSAN)
 F. SCHWAB, JUDITH A. SEALEY, LISA)
 A. SEALEY, THEODORE H. SUTTON,)
 MEHMET TONER, AMPORO VAZQUEZ,)
 RICARDO H. VAZQUEZ, and SARAH A.)
 WOLFINSOHN,)
 Plaintiffs,)
 vs.)
 GEORGE TESO, THE ATHENAEUM GROUP)
 OLD BINNEY REALTY TRUST, AND)
 MULACH PARKING STRUCTURES)
 CORPORATION.)
 Defendants.)

ANSWER & COUNTERCLAIM
OF THE ATHENAEUM GROUP

RECEIVED BY
MIDDLESEX COUNTY CLERK
NOV 18 PM 12:14
CAMBRIDGE MA.

The Athenaeum Group, a defendant in the within action,
hereby answers the Verified Complaint as follows:

1. No response is required to paragraph 1.
2. Paragraph 2 is admitted on information and belief.
3. It is admitted that George Teso is the Director of
Traffic and Parking for the City of Cambridge. The remainder

of paragraph 3 states a legal conclusion and accordingly no answer is required.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted but it is denied that Old Binney Realty Trust is a proper party to this suit..

6. Paragraph 6 is admitted.

7. It is admitted that an attorney directed a letter to certain individuals and corporations on August 9, 1988..

8. It is admitted that regulations now appearing at 40 CFR §52.1135 were published in the Federal Register on June 12, 1975. It is denied that those regulations became effective on that date.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. Paragraph 12 calls for a legal conclusion and, accordingly, no answer is required.

13. The quoted document speaks for itself.

14. The Athenaeum Group is without sufficient information to admit or deny paragraph 14.

15. The referenced document speaks for itself.

16. The referenced regulation speaks for itself.

17. The referenced regulation speaks for itself.

18. It is admitted that Mr. Teso executed a letter

containing the quoted language.

19. The Athenaeum Group is without sufficient information to admit or deny paragraph 19.

20. The Athenaeum Group is without sufficient information to admit or deny paragraph 20.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. It is admitted that construction of the garage has begun. The remainder of paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

28. The Athenaeum Group is without sufficient information to admit or deny paragraph 28.

29. Paragraph 29 calls for a legal conclusion and, accordingly, no answer is required.

30. The Athenaeum Group is without sufficient information to admit or deny paragraph 30.

31. Paragraph 31 is denied.

32. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.
35. Paragraph 35 is admitted.
36. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
37. The referenced document speaks for itself.
38. Paragraph 38 is denied.
39. Paragraph 39 is unintelligible and the Athenaeum Group is unable to admit or deny its provisions.
40. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
41. It is denied that there is any controversy between the Athenaeum Group and either Old Binney Realty Trust, George Teso or Mulach Parking Structures Corporation. Answering further it is said that this matter is not cognizable under the provisions of G.L. c. 231A and that plaintiffs have failed to include necessary parties under the provisions of G.L. c. 231A §8.

COUNTERCLAIM

1. Plaintiff in Counterclaim, The Athenaeum Group ("Athenaeum") is a Massachusetts business corporation with principal offices at 215 First Street and is the holder of a valid building permit for the construction of a parking garage at 355 Binney Street.
2. Defendants in Counterclaim, Debra McManus, Ralph Chadis, Ann W. Curby, R. Philip Dowds, Susan Dowds, Robert Owen

Edbrooke, Jr., DeCoorsey Fales, Jr., Iten N. Fales, Thomas J. Fitzgerald, Elena Gardyna, Henry A. Gardyna, Daniel E. Geer, Jr., Paul W. Guglietti, Jr. Bernard Gunther, Nancy Hausman, Anthony J. Keber, J.O. Marrs, Richard G. McManus, Priscilla J. McMillan, John R. Moot, Gaylen Morgan, Marybeth Noonan, Susan F. Schwab, Judith A. Sealey, Lisa A. Sealey Theodore H. Sutton, Mehmet Toner, Amporo Vazquez, Ricardo H. Vazquez, and Sarah A. Wolfensohn ("the neighbors") are individuals residing in various locations in Cambridge Massachusetts.

FACTUAL BACKGROUND

3. On March 10, 1988, the Athenaeum Group and Mulach Parking Structures Corp. entered into a contract for the construction of a 1530 car parking garage at 355 Binney Street in Cambridge, Massachusetts (the "garage"). Construction began under the contract on April 5, 1988. Both parties are and remain ready, willing and able to carry out the terms of the contract.

4. On January 30, 1988, Athenaeum applied for a building permit in order to construct the garage in a heavy industrial zone in East Cambridge. Said garage use was permitted of right under the applicable zoning by-laws.

5. On February 10, 1988, the City of Cambridge duly issued the permit. On or about April 5, 1988, construction of the garage began in accordance with the building permit and the

plans submitted to the Inspectional Services Department of the City of Cambridge.

6. The neighbors then undertook as a common enterprise to carry out an intentional plan and scheme to interfere with 1) scheduled plans to close financing on the garage, 2) the contract between Mulach and Athenaeum, and 3) Athenaeum's and Old Binney's use of their land and the benefit of their building permit.

7. In the furtherance of their plan, scheme and wrongful common enterprise, the neighbors, personally or through their agents:

- a) Addressed threats and allegations in letters to Athenaeum, its officers, and employees, and the Attorney General of the Commonwealth of Massachusetts demanding a cessation of construction and alleging various violations of law;
- b) Addressed letters to municipal, state and federal officials falsely indicating that Athenaeum's building permit was invalid and the garage construction in violation of law;
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e) Demanded and received a hearing before the City Council for the purpose of demanding the revocation of the building permit despite the fact that the City Council has no authority to revoke or interfere with a validly issued building permit;

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g) On information and belief contacted the Massachusetts Department of Environmental Quality Engineering ("DEQE") and the EPA seeking their involvement with the neighbors' attempt to interfere with the continuation of the garage.

8. Despite the fact that they knew, or should have known, that their position was wrong as a matter of law, and despite a) the refusal of every local, state and federal agency which the contacted to cooperate and b) upon information and belief, their having been informed by the majority of the agencies contacted that their legal position was incorrect and untenable, the neighbors continued to disseminate factually and legally inaccurate material to citizens, the media and state and local officials.

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COUNT VII

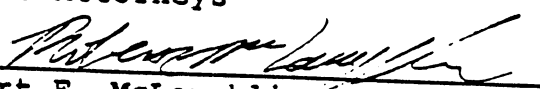
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WHEREFORE, the Athenaeum Group as defendant and plaintiff in Counterclaim demands that the Court:

1. Dismiss the Complaint against it;
2. Enter judgment on all seven counts of the counterclaim against the neighbors, jointly and severally as Defendants in Counterclaim;
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4. Grant such other relief as is just.

The Athenaeum Group
By its Attorneys


Robert E. McLaughlin
David L. Klebanoff
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
(617) 482-1900

0986K

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Signed under the pains and penalties of perjury this 10th day of November, 1988



David L. Klebanoff

Commonwealth of Massachusetts

MIDDLESEX

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Docket No. 88-6603

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GEORGE TESO, et al Defendant(s)

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

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To: J. Raymond Miyares, Esq.

Please take notice that, at 10:00 clock a.m., on 21st, November, 19 88, at the offices of Gilman, McLaughlin & Hanrahan, 470 Atlantic Avenue, Boston, Massachusetts, the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of PRISCILLA J. McMILLAN

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts

cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

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Cambridge Citizens for Liveable Neighborhoods

PO Box 19, Cambridge, MA 02238 • 354-5670

1988 NOV 18 PM 12: 14

CAMBRIDGE Friday 18 November 1988

Steering Committee

Pro Tem:

Ed Cyr
Philip Dowds
Bob Edbrooke
Dan Geer
Peter Kinder
Jay Marrs
Debra McManus
Gaylen Morgan
Anne Toop
Susan Yanow

TO OUR CITY COUNCILORS:

Speaking for those of us who have filed action against the City and the developers of the Binney Street garage: We've been sued.

Specifically, we've been counter-sued by the developer for speaking out in public about the issues that concern us; for asking state and federal agencies to investigate our charges of municipal malfeasance; and for asking this City to retract actions which we believe to be illegal. We enclose a copy of the counter-suit.

We're not disturbed by the counter-suit against us. The counter-claims are simultaneously anti-democratic and idiotic.

We're disturbed by something else. Plainly, Cambridge residents are in profound disagreement with developers about the future of this City. Bad enough that citizens (your constituents and voters) now regularly take legal action to compel this City to do its job and enforce its laws. Now, disagreement has escalated to the point where developers are suing your constituents for having exercised their rights and responsibilities as citizens.

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We ask you to show us that you are neither indifferent to, nor powerless to deal with, development controversy. As a body of the whole, you, our Council, must simply do better than battle to stalemate on every possible initiative. We ask you to take charge at once. On Monday night, 21 November: Do something.

Sincerely,

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MIDDLESEX, ss.

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 EDBROOKE, JR., DeCOORSEY FALES,
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 F. SCHWAB, JUDITH A. SEALEY, LISA
 A. SEALEY, THEODORE H. SUTTON,
 MEHMET TONER, AMPORO VAZQUEZ,
 RICARDO H. VAZQUEZ, and SARAH A.
 WOLFINSOHN,
 Plaintiffs,
 vs.
 GEORGE TESO, THE ATHENAEUM GROUP
 OLD BINNEY REALTY TRUST, AND
 MULACH PARKING STRUCTURES
 CORPORATION.
 Defendants.

ANSWER & COUNTERCLAIM
OF THE ATHENAEUM GROUP

RECEIVED BY
OFFICE OF CLERK
1988 NOV 18 PM 12:14
CAMBRIDGE MA.

The Athenaeum Group, a defendant in the within action,
hereby answers the Verified Complaint as follows:

1. No response is required to paragraph 1.
2. Paragraph 2 is admitted on information and belief.
3. It is admitted that George Teso is the Director of
Traffic and Parking for the City of Cambridge. The remainder

of paragraph 3 states a legal conclusion and accordingly no answer is required.

4. Paragraph 4 is admitted.

5. Paragraph 5 is admitted but it is denied that Old Binney Realty Trust is a proper party to this suit..

6. Paragraph 6 is admitted.

7. It is admitted that an attorney directed a letter to certain individuals and corporations on August 9, 1988..

8. It is admitted that regulations now appearing at 40 CFR §52.1135 were published in the Federal Register on June 12, 1975. It is denied that those regulations became effective on that date.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. Paragraph 12 calls for a legal conclusion and, accordingly, no answer is required.

13. The quoted document speaks for itself.

14. The Athenaeum Group is without sufficient information to admit or deny paragraph 14.

15. The referenced document speaks for itself.

16. The referenced regulation speaks for itself.

17. The referenced regulation speaks for itself.

18. It is admitted that Mr. Teso executed a letter

containing the quoted language.

19. The Athenaeum Group is without sufficient information to admit or deny paragraph 19.

20. The Athenaeum Group is without sufficient information to admit or deny paragraph 20.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. It is admitted that construction of the garage has begun. The remainder of paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

28. The Athenaeum Group is without sufficient information to admit or deny paragraph 28.

29. Paragraph 29 calls for a legal conclusion and, accordingly, no answer is required.

30. The Athenaeum Group is without sufficient information to admit or deny paragraph 30.

31. Paragraph 31 is denied.

32. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.
35. Paragraph 35 is admitted.
36. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
37. The referenced document speaks for itself.
38. Paragraph 38 is denied.
39. Paragraph 39 is unintelligible and the Athenaeum Group is unable to admit or deny its provisions.
40. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
41. It is denied that there is any controversy between the Athenaeum Group and either Old Binney Realty Trust, George Teso or Mulach Parking Structures Corporation. Answering further it is said that this matter is not cognizable under the provisions of G.L. c. 231A and that plaintiffs have failed to include necessary parties under the provisions of G.L. c. 231A §8.

COUNTERCLAIM

1. Plaintiff in Counterclaim, The Athenaeum Group ("Athenaeum") is a Massachusetts business corporation with principal offices at 215 First Street and is the holder of a valid building permit for the construction of a parking garage at 355 Binney Street.
2. Defendants in Counterclaim, Debra McManus, Ralph Chadis, Ann W. Curby, R. Philip Dowds, Susan Dowds, Robert Owen

Edbrooke, Jr., DeCoorse Fales, Jr., Iten N. Fales, Thomas J. Fitzgerald. Elena Gardyna, Henry A. Gardyna, Daniel E. Geer, Jr., Paul W. Guglietti, Jr. Bernard Gunther, Nancy Hausman, Anthony J. Keber, J.O. Marrs, Richard G. McManus, Priscilla J. McMillan, John R. Moot, Gaylen Morgan, Marybeth Noonan, Susan F. Schwab, Judith A. Sealey, Lisa A. Sealey Theodore H. Sutton, Mehmet Toner, Amporo Vazquez, Ricardo H. Vazquez, and Sarah A. Wolfensohn ("the neighbors") are individuals residing in various locations in Cambridge Massachusetts.

FACTUAL BACKGROUND

3. On March 10, 1988, the Athenaeum Group and Mulach Parking Structures Corp. entered into a contract for the construction of a 1530 car parking garage at 355 Binney Street in Cambridge, Massachusetts (the "garage"). Construction began under the contract on April 5, 1988. Both parties are and remain ready, willing and able to carry out the terms of the contract.

4. On January 30, 1988, Athenaeum applied for a building permit in order to construct the garage in a heavy industrial zone in East Cambridge. Said garage use was permitted of right under the applicable zoning by-laws.

5. On February 10, 1988, the City of Cambridge duly issued the permit. On or about April 5, 1988, construction of the garage began in accordance with the building permit and the

plans submitted to the Inspectional Services Department of the City of Cambridge.

6. The neighbors then undertook as a common enterprise to carry out an intentional plan and scheme to interfere with 1) scheduled plans to close financing on the garage, 2) the contract between Mulach and Athenaeum, and 3) Athenaeum's and Old Binney's use of their land and the benefit of their building permit.

7. In the furtherance of their plan, scheme and wrongful common enterprise, the neighbors, personally or through their agents:

- a) Addressed threats and allegations in letters to Athenaeum, its officers, and employees, and the Attorney General of the Commonwealth of Massachusetts demanding a cessation of construction and alleging various violations of law;
- b) Addressed letters to municipal, state and federal officials falsely indicating that Athenaeum's building permit was invalid and the garage construction in violation of law;
- c) Addressed letters to municipal officials demanding the revocation of the building permit and falsely alleging that Athenaeum was proceeding on the garage in violation of law;
- d) Contacted numerous members of the news media and thereafter disseminated materially false and misleading information concerning the garage and the validity of the building permit;

e) Demanded and received a hearing before the City Council for the purpose of demanding the revocation of the building permit despite the fact that the City Council has no authority to revoke or interfere with a validly issued building permit;

f) Disseminated at the City Council hearing materially false information concerning the status of the garage and the present position of the United States Environmental Protection Agency ("EPA") on matters relevant to the validity of the garage and building permit.

g) On information and belief contacted the Massachusetts Department of Environmental Quality Engineering ("DEQE") and the EPA seeking their involvement with the neighbors' attempt to interfere with the continuation of the garage.

8. Despite the fact that they knew, or should have known, that their position was wrong as a matter of law, and despite a) the refusal of every local, state and federal agency which they contacted to cooperate and b) upon information and belief, their having been informed by the majority of the agencies contacted that their legal position was incorrect and untenable, the neighbors continued to disseminate factually and legally inaccurate material to citizens, the media and state and local officials.

9. Due to the false and misleading information disseminated by the neighbors, and repeated by the media,

numerous potential tenants of the adjacent One Kendall Square Development delayed or refused to execute leases.

10. Due to the false and misleading information disseminated by the neighbors, and repeated by the media, a scheduled closing for a loan was jeopardized and postponed resulting in great damage to Athenaeum and its principals. Further, Athenaeum was forced to fund the garage through alternative methods of short term financing, all to the severe damage of Athenaeum.

11. At all times material the neighbors employed tactics of threats, intimidation and coercion in the attempt to interfere with Athenaeum's legally protected rights.

12. Said threats, intimidation and coercion had the effect of resulting in severe damage to Athenaeum through the loss of lessees, financing and reputation and constituted interference with rights protected under the Constitution and laws of the United States and the Commonwealth.

13. On October 25, 1988 a joint opinion of DEQE and EPA was issued conclusively establishing that it was the position of those agencies that plaintiff in counterclaim's building permit and garage were in full compliance with those aspects of the law which the neighbors had raised as a bar to the validity of the garage. As of that date, every agency of any level of government remotely involved with the issues raised by the neighbors had officially rebuked their position. Upon

information and belief, the neighbors or their attorney was aware of the existence and content of that letter. The next day the neighbors filed this suit and sought to enjoin the garage.

COUNT I

14. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

15. The actions of the neighbors constitute an intentional interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

COUNT II

16. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

17. The actions of the neighbors constitute a negligent interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

COUNT III

18. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

19. The actions of the neighbors constitute an intentional interference with Athenaeum's advantageous relationship with

Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT IV

20. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

21. The actions of the neighbors constitute a negligent interference with Athenaeum's advantageous relationship with Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT V

22. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

23. The actions of the neighbors constitutes a slander of Athenaeum's title.

COUNT VI

24. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

25. The action of the neighbors constitutes the interference or attempted interference, through threats, intimidation or coercion with rights secured by the Constitution and laws of the United States and the Commonwealth in violation of G.L. c. 12 § 11I.

COUNT VII

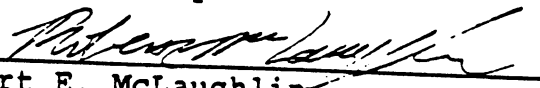
26. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

27. The actions of the neighbors in bringing this action and purporting to employ and invoke environmental laws for the ulterior motive of denying and interfering with Athenaeum's rightful improvement of its property was malicious and constitutes an abuse of process.

WHEREFORE, the Athenaeum Group as defendant and plaintiff in Counterclaim demands that the Court:

1. Dismiss the Complaint against it;
2. Enter judgment on all seven counts of the counterclaim against the neighbors, jointly and severally as Defendants in Counterclaim;
3. Grant Plaintiff in Counterclaim its costs and expenses, including attorneys fees;
4. Grant such other relief as is just.

The Athenaeum Group
By its Attorneys


Robert E. McLaughlin
David L. Klebanoff
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
(617) 482-1900

0986K

CERTIFICATE OF SERVICE

I, David L. Klebanoff, hereby certify that I have served the within Answer and Counterclaim of The Athenaeum Group by mailing, first class, postage prepaid a copy of the same to J. Raymond Miyares, Esq. 47 Winter Street, Suite 800, Boston, Massachusetts and Donald A. Drisdell, Esq., City Hall, Cambridge, Massachusetts 02139.

Signed under the pains and penalties of perjury this 10th day of November, 1988


David L. Klebanoff

Commonwealth of Massachusetts

MIDDLESEX, ss.

SUPERIOR Court

Docket No. 88-6603

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RECEIVED
PO Box 19, Cambridge, MA 02238 • 354-5670

1988 NOV 18 PM 12: 15

CAMBRIDGE MA Friday 18 November 1988

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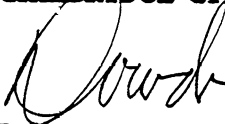
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Traffic and Parking for the City of Cambridge. The remainder

of paragraph 3 states a legal conclusion and accordingly no answer is required.

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7. It is admitted that an attorney directed a letter to certain individuals and corporations on August 9, 1988..

8. It is admitted that regulations now appearing at 40 CFR §52.1135 were published in the Federal Register on June 12, 1975. It is denied that those regulations became effective on that date.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. Paragraph 12 calls for a legal conclusion and, accordingly, no answer is required.

13. The quoted document speaks for itself.

14. The Athenaeum Group is without sufficient information to admit or deny paragraph 14.

15. The referenced document speaks for itself.

16. The referenced regulation speaks for itself.

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18. It is admitted that Mr. Teso executed a letter

containing the quoted language.

19. The Athenaeum Group is without sufficient information to admit or deny paragraph 19.

20. The Athenaeum Group is without sufficient information to admit or deny paragraph 20.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. It is admitted that construction of the garage has begun. The remainder of paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

28. The Athenaeum Group is without sufficient information to admit or deny paragraph 28.

29. Paragraph 29 calls for a legal conclusion and, accordingly, no answer is required.

30. The Athenaeum Group is without sufficient information to admit or deny paragraph 30.

31. Paragraph 31 is denied.

32. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.
35. Paragraph 35 is admitted.
36. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
37. The referenced document speaks for itself.
38. Paragraph 38 is denied.
39. Paragraph 39 is unintelligible and the Athenaeum Group is unable to admit or deny its provisions.
40. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
41. It is denied that there is any controversy between the Athenaeum Group and either Old Binney Realty Trust, George Teso or Mulach Parking Structures Corporation. Answering further it is said that this matter is not cognizable under the provisions of G.L. c. 231A and that plaintiffs have failed to include necessary parties under the provisions of G.L. c. 231A §8.

COUNTERCLAIM

1. Plaintiff in Counterclaim, The Athenaeum Group ("Athenaeum") is a Massachusetts business corporation with principal offices at 215 First Street and is the holder of a valid building permit for the construction of a parking garage at 355 Binney Street.
2. Defendants in Counterclaim, Debra McManus, Ralph Chadis, Ann W. Curby, R. Philip Dowds, Susan Dowds, Robert Owen

Edbrooke, Jr., DeCoorse Fales, Jr., Iten N. Fales, Thomas J. Fitzgerald, Elena Gardyna, Henry A. Gardyna, Daniel E. Geer, Jr., Paul W. Guglietti, Jr. Bernard Gunther, Nancy Hausman, Anthony J. Keber, J.O. Marrs, Richard G. McManus, Priscilla J. McMillan, John R. Moot, Gaylen Morgan, Marybeth Noonan, Susan F. Schwab, Judith A. Sealey, Lisa A. Sealey Theodore H. Sutton, Mehmez Toner, Amporo Vazquez, Ricardo H. Vazquez, and Sarah A. Wolfensohn ("the neighbors") are individuals residing in various locations in Cambridge Massachusetts.

FACTUAL BACKGROUND

3. On March 10, 1988, the Athenaeum Group and Mulach Parking Structures Corp. entered into a contract for the construction of a 1530 car parking garage at 355 Binney Street in Cambridge, Massachusetts (the "garage"). Construction began under the contract on April 5, 1988. Both parties are and remain ready, willing and able to carry out the terms of the contract.

4. On January 30, 1988, Athenaeum applied for a building permit in order to construct the garage in a heavy industrial zone in East Cambridge. Said garage use was permitted of right under the applicable zoning by-laws.

5. On February 10, 1988, the City of Cambridge duly issued the permit. On or about April 5, 1988, construction of the garage began in accordance with the building permit and the

plans submitted to the Inspectional Services Department of the City of Cambridge.

6. The neighbors then undertook as a common enterprise to carry out an intentional plan and scheme to interfere with 1) scheduled plans to close financing on the garage, 2) the contract between Mulach and Athenaeum, and 3) Athenaeum's and Old Binney's use of their land and the benefit of their building permit.

7. In the furtherance of their plan, scheme and wrongful common enterprise, the neighbors, personally or through their agents:

- a) Addressed threats and allegations in letters to Athenaeum, its officers, and employees, and the Attorney General of the Commonwealth of Massachusetts demanding a cessation of construction and alleging various violations of law;
- b) Addressed letters to municipal, state and federal officials falsely indicating that Athenaeum's building permit was invalid and the garage construction in violation of law;
- c) Addressed letters to municipal officials demanding the revocation of the building permit and falsely alleging that Athenaeum was proceeding on the garage in violation of law;
- d) Contacted numerous members of the news media and thereafter disseminated materially false and misleading information concerning the garage and the validity of the building permit;

e) Demanded and received a hearing before the City Council for the purpose of demanding the revocation of the building permit despite the fact that the City Council has no authority to revoke or interfere with a validly issued building permit;

f) Disseminated at the City Council hearing materially false information concerning the status of the garage and the present position of the United States Environmental Protection Agency ("EPA") on matters relevant to the validity of the garage and building permit.

g) On information and belief contacted the Massachusetts Department of Environmental Quality Engineering ("DEQE") and the EPA seeking their involvement with the neighbors' attempt to interfere with the continuation of the garage.

8. Despite the fact that they knew, or should have known, that their position was wrong as a matter of law, and despite a) the refusal of every local, state and federal agency which the contacted to cooperate and b) upon information and belief, their having been informed by the majority of the agencies contacted that their legal position was incorrect and untenable, the neighbors continued to disseminate factually and legally inaccurate material to citizens, the media and state and local officials.

9. Due to the false and misleading information disseminated by the neighbors, and repeated by the media,

numerous potential tenants of the adjacent One Kendall Square Development delayed or refused to execute leases.

10. Due to the false and misleading information disseminated by the neighbors, and repeated by the media, a scheduled closing for a loan was jeopardized and postponed resulting in great damage to Athenaeum and its principals. Further, Athenaeum was forced to fund the garage through alternative methods of short term financing, all to the severe damage of Athenaeum.

11. At all times material the neighbors employed tactics of threats, intimidation and coercion in the attempt to interfere with Athenaeum's legally protected rights.

12. Said threats, intimidation and coercion had the effect of resulting in severe damage to Athenaeum through the loss of lessees, financing and reputation and constituted interference with rights protected under the Constitution and laws of the United States and the Commonwealth.

13. On October 25, 1988 a joint opinion of DEQE and EPA was issued conclusively establishing that it was the position of those agencies that plaintiff in counterclaim's building permit and garage were in full compliance with those aspects of the law which the neighbors had raised as a bar to the validity of the garage. As of that date, every agency of any level of government remotely involved with the issues raised by the neighbors had officially rebuked their position. Upon

information and belief, the neighbors or their attorney was aware of the existence and content of that letter. The next day the neighbors filed this suit and sought to enjoin the garage.

COUNT I

14. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

15. The actions of the neighbors constitute an intentional interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

COUNT II

16. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

17. The actions of the neighbors constitute a negligent interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

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18. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

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Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT IV

20. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

21. The actions of the neighbors constitute a negligent interference with Athenaeum's advantageous relationship with Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT V

22. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth hereir..

23. The actions of the neighbors constitutes a slander of Athenaeum's title.

COUNT VI

24. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

25. The action of the neighbors constitutes the interference or attempted interference, through threats, intimidation or coercion with rights secured by the Constitution and laws of the United States and the Commonwealth in violation of G.L. c. 12 § 11I.

COUNT VII

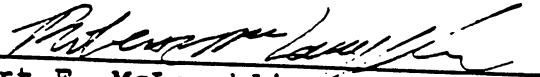
26. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

27. The actions of the neighbors in bringing this action and purporting to employ and invoke environmental laws for the ulterior motive of denying and interfering with Athenaeum's rightful improvement of its property was malicious and constitutes an abuse of process.

WHEREFORE, the Athenaeum Group as defendant and plaintiff in Counterclaim demands that the Court:

1. Dismiss the Complaint against it;
2. Enter judgment on all seven counts of the counterclaim against the neighbors, jointly and severally as Defendants in Counterclaim;
3. Grant Plaintiff in Counterclaim its costs and expenses, including attorneys fees;
4. Grant such other relief as is just.

The Athenaeum Group
By its Attorneys


Robert E. McLaughlin
David L. Klebanoff
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
(617) 482-1900

0986K

CERTIFICATE OF SERVICE

I, David L. Klebanoff, hereby certify that I have served the within Answer and Counterclaim of The Athenaeum Group by mailing, first class, postage prepaid a copy of the same to J. Raymond Miyares, Esq. 47 Winter Street, Suite 800, Boston, Massachusetts and Donald A. Drisdell, Esq., City Hall, Cambridge, Massachusetts 02139.

Signed under the pains and penalties of perjury this 10th day of November, 1988


David L. Klebanoff

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)
GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 10:00 clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts the defendant in this action, by PRISCILLA J. McMILLAN oral examination of PRISCILLA J. McMILLAN

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before s other officer authorized by law to administer oaths. The oral examination will continue from day to until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above no the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prep his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Stre Suite 800 Boston, Massachusetts

cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Gr

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 10:00 clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of PRISCILLA J. McMILLAN

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts

cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that at 11:30 o'clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of J.O. MARRS

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully, David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts

cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR

Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 2:00'clock p.m, on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of JOHN R. MOOT

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully

David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 19 88, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to his (her) (its) counsel of record, J. Raymond Miyares, 47 Winter Street, Suite 800 Boston, Massachusetts

cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR

Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 3:30'clock p.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan 470 Atlantic Avenue, Boston, Massachusetts

the defendant in this action, by ~~his/her~~(its) attorney(s), will take the deposition upon oral examination of Mary Beth Noonan

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully,

David L. Klebanoff Attorney(s) for The Athenaeum Group

CERTIFICATE OF SERVICE

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Cambridge Citizens for Liveable Neighborhoods

PO Box 19, Cambridge, MA 02238 • 354-3670

1988 NOV 18 PM 12: 15

CAMBRIDGE MA. Friday 18 November 1988

Steering Committee Pro Tem:

Ed Cyr
Philip Dowds
Bob Edbrooke
Dan Geer
Peter Kinder
Jay Marrs
Debra McManus
Gaylen Morgan
Anne Toop
Susan Yanow

TO OUR CITY COUNCILORS:

Speaking for those of us who have filed action against the City and the developers of the Binney Street garage: We've been sued.

Specifically, we've been counter-sued by the developer for speaking out in public about the issues that concern us; for asking state and federal agencies to investigate our charges of municipal malfeasance; and for asking this City to retract actions which we believe to be illegal. We enclose a copy of the counter-suit.

We're not disturbed by the counter-suit against us. The counter-claims are simultaneously anti-democratic and idiotic.

We're disturbed by something else. Plainly, Cambridge residents are in profound disagreement with developers about the future of this City. Bad enough that citizens (your constituents and voters) now regularly take legal action to compel this City to do its job and enforce its laws. Now, disagreement has escalated to the point where developers are suing your constituents for having exercised their rights and responsibilities as citizens.

This is no way to conduct the public business, or run a City. Above all, we're disturbed by the lack of municipal leadership in the face of difficult issues. Lack of leadership has allowed conflict about development to expand to unreasonable levels which are destructive to all the parties involved.

We ask you to show us that you are neither indifferent to, nor powerless to deal with, development controversy. As a body of the whole, you, our Council, must simply do better than battle to stalemate on every possible initiative. We ask you to take charge at once. On Monday night, 21 November: Do something.

Sincerely,

CAMBRIDGE CITIZENS FOR LIVEABLE NEIGHBORHOODS



R PHILIP DOWDS
Co-Chairman Pro Tem

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 88-6603

DEBRA McMANUS, RALPH CHADIS,
 ANN W. CURBY, R. PHILIP DOWDS,
 SUSAN DOWDS, ROBERT OWEN
 EDBROOKE, JR., DeCOORSEY FALES,
 JR., ITEN N. FALES, THOMAS J.
 FITZGERALD, ELENA GARDYNA, HENRY
 A. GARDYNA, DANIEL E. GEER, JR.
 PAUL W. GUGLIETTI, JR. BERNARD
 GUNTHER, NANCY HAUSMAN, ANTHONY
 J. KEBER, J.O. MARRS, RICHARD
 G. McMANUS, PRISCILLA J.
 McMILLAN, JOHN R. MOOT, GAYLEN
 MORGAN, MARYBETH NOONAN, SUSAN
 F. SCHWAB, JUDITH A. SEALEY, LISA
 A. SEALEY, THEODORE H. SUTTON,
 MEHMET TONER, AMPORO VAZQUEZ,
 RICARDO H. VAZQUEZ, and SARAH A.
 WOLFINSOHN,
 Plaintiffs,
 vs.
 GEORGE TESO, THE ATHENAEUM GROUP
 OLD BINNEY REALTY TRUST, AND
 MULACH PARKING STRUCTURES
 CORPORATION.
 Defendants.

ANSWER & COUNTERCLAIM
OF THE ATHENAEUM GROUP

RECEIVED BY
OFFICE OF CLERK
NOV 18 PM 12:15
CAMBRIDGE MA.

The Athenaeum Group, a defendant in the within action,
hereby answers the Verified Complaint as follows:

1. No response is required to paragraph 1.
2. Paragraph 2 is admitted on information and belief.
3. It is admitted that George Teso is the Director of
Traffic and Parking for the City of Cambridge. The remainder

of paragraph 3 states a legal conclusion and accordingly no answer is required.

4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted but it is denied that Old Binney Realty Trust is a proper party to this suit..
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21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. It is admitted that construction of the garage has begun. The remainder of paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

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25. The action of the neighbors constitutes the interference or attempted interference, through threats, intimidation or coercion with rights secured by the Constitution and laws of the United States and the Commonwealth in violation of G.L. c. 12 § 11I.

COUNT VII

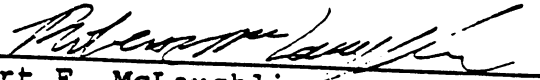
26. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

27. The actions of the neighbors in bringing this action and purporting to employ and invoke environmental laws for the ulterior motive of denying and interfering with Athenaeum's rightful improvement of its property was malicious and constitutes an abuse of process.

WHEREFORE, the Athenaeum Group as defendant and plaintiff in Counterclaim demands that the Court:

1. Dismiss the Complaint against it;
2. Enter judgment on all seven counts of the counterclaim against the neighbors, jointly and severally as Defendants in Counterclaim;
3. Grant Plaintiff in Counterclaim its costs and expenses, including attorneys fees;
4. Grant such other relief as is just.

The Athenaeum Group
By its Attorneys


Robert E. McLaughlin
David L. Klebanoff
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
(617) 482-1900

0986K

CERTIFICATE OF SERVICE

I, David L. Klebanoff, hereby certify that I have served the within Answer and Counterclaim of The Athenaeum Group by mailing, first class, postage prepaid a copy of the same to J. Raymond Miyares, Esq. 47 Winter Street, Suite 800, Boston, Massachusetts and Donald A. Drisdell, Esq., City Hall, Cambridge, Massachusetts 02139.

Signed under the pains and penalties of perjury this 10th day of November, 1988



David L. Klebanoff

Commonwealth of Massachusetts

MIDDLESEX

SUPERIOR

Court

Docket No. 88-6603

DEBRA MCMANUS et al Plaintiff(s)

GEORGE TESO, et al Defendant(s)

NOTICE OF TAKING DEPOSITION

To: J. Raymond Miyares, Esq.

Please take notice that, at 10:00 clock a.m., on 21st, November 19 88, at the offices of Gilman, McLaughlin & Hanrahan, 470 Atlantic Avenue, Boston, Massachusetts, the defendant in this action, by his (her) (its) attorney(s), will take the deposition upon oral examination of PRISCILLA J. McMILLAN

pursuant to the applicable provisions of the Massachusetts Rules of Civil Procedure, before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully,

David L. Klebanoff Attorney(s) for The Athenaeum Group

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

Commonwealth of Massachusetts

MIDDLESEX, ss.

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David L. Klebanoff Attorney(s) for The Athenaeum Group

Cambridge Citizens for Liveable Neighborhoods

OFFICE OF CITY CLERK PO Box 19, Cambridge, MA 02238 • 354-5670

1988 NOV 18 PM 12:14

CAMBRIDGE MA.

Friday 18 November 1988

**Steering Committee
Pro Tem:**

Ed Cyr
Philip Dowds
Bob Edbrooke
Dan Geer
Peter Kinder
Jay Marrs
Debra McManus
Gaylen Morgan
Anne Toop
Susan Yanow

TO OUR CITY COUNCILORS:

Speaking for those of us who have filed action against the City and the developers of the Binney Street garage: We've been sued.

Specifically, we've been counter-sued by the developer for speaking out in public about the issues that concern us; for asking state and federal agencies to investigate our charges of municipal malfeasance; and for asking this City to retract actions which we believe to be illegal. We enclose a copy of the counter-suit.

We're not disturbed by the counter-suit against us. The counter-claims are simultaneously anti-democratic and idiotic.

We're disturbed by something else. Plainly, Cambridge residents are in profound disagreement with developers about the future of this City. Bad enough that citizens (your constituents and voters) now regularly take legal action to compel this City to do its job and enforce its laws. Now, disagreement has escalated to the point where developers are suing your constituents for having exercised their rights and responsibilities as citizens.

This is no way to conduct the public business, or run a City. Above all, we're disturbed by the lack of municipal leadership in the face of difficult issues. Lack of leadership has allowed conflict about development to expand to unreasonable levels which are destructive to all the parties involved.

We ask you to show us that you are neither indifferent to, nor powerless to deal with, development controversy. As a body of the whole, you, our Council, must simply do better than battle to stalemate on every possible initiative. We ask you to take charge at once. On Monday night, 21 November: Do something.

Sincerely,

CAMBRIDGE CITIZENS FOR LIVEABLE NEIGHBORHOODS


R PHILIP DOWDS
Co-Chairman Pro Tem

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 88-6603

DEBRA McMANUS, RALPH CHADIS,
ANN W. CURBY, R. PHILIP DOWDS,
SUSAN DOWDS, ROBERT OWEN
EDBROOKE, JR., DeCOORSEY FALES,
JR., ITEN N. FALES, THOMAS J.
FITZGERALD, ELENA GARDYNA, HENRY
A. GARDYNA, DANIEL E. GEER, JR.
PAUL W. GUGLIETTI, JR. BERNARD
GUNTHER, NANCY HAUSMAN, ANTHONY
J. KEBER, J.O. MARRS, RICHARD
G. McMANUS, PRISCILLA J.
McMILLAN, JOHN R. MOOT, GAYLEN
MORGAN, MARYBETH NOONAN, SUSAN
F. SCHWAB, JUDITH A. SEALEY, LISA
A. SEALEY, THEODORE H. SUTTON,
MEHMET TONER, AMPORO VAZQUEZ,
RICARDO H. VAZQUEZ, and SARAH A.
WOLFINSOHN,

Plaintiffs,

vs.

GEORGE TESO, THE ATHENAEUM GROUP
OLD BINNEY REALTY TRUST, AND
MULACH PARKING STRUCTURES
CORPORATION.

Defendants.

ANSWER & COUNTERCLAIM
OF THE ATHENAEUM GROUP

RECEIVED BY
CLERK
103 NOV 18 PM 12:14
CAMBRIDGE MA.

The Athenaeum Group, a defendant in the within action,
hereby answers the Verified Complaint as follows:

1. No response is required to paragraph 1.
2. Paragraph 2 is admitted on information and belief.
3. It is admitted that George Teso is the Director of
Traffic and Parking for the City of Cambridge. The remainder

of paragraph 3 states a legal conclusion and accordingly no answer is required.

4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted but it is denied that Old Binney Realty Trust is a proper party to this suit..
6. Paragraph 6 is admitted.
7. It is admitted that an attorney directed a letter to certain individuals and corporations on August 9, 1988..
8. It is admitted that regulations now appearing at 40 CFR §52.1135 were published in the Federal Register on June 12, 1975. It is denied that those regulations became effective on that date.
9. Paragraph 9 is admitted.
10. Paragraph 10 is denied.
11. Paragraph 11 is denied.
12. Paragraph 12 calls for a legal conclusion and, accordingly, no answer is required.
13. The quoted document speaks for itself.
14. The Athenaeum Group is without sufficient information to admit or deny paragraph 14.
15. The referenced document speaks for itself.
16. The referenced regulation speaks for itself.
17. The referenced regulation speaks for itself.
18. It is admitted that Mr. Teso executed a letter

containing the quoted language.

19. The Athenaeum Group is without sufficient information to admit or deny paragraph 19.

20. The Athenaeum Group is without sufficient information to admit or deny paragraph 20.

21. Paragraph 21 is denied.

22. Paragraph 22 is denied.

23. It is admitted that construction of the garage has begun. The remainder of paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied.

27. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

28. The Athenaeum Group is without sufficient information to admit or deny paragraph 28.

29. Paragraph 29 calls for a legal conclusion and, accordingly, no answer is required.

30. The Athenaeum Group is without sufficient information to admit or deny paragraph 30.

31. Paragraph 31 is denied.

32. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied.
35. Paragraph 35 is admitted.
36. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
37. The referenced document speaks for itself.
38. Paragraph 38 is denied.
39. Paragraph 39 is unintelligible and the Athenaeum Group is unable to admit or deny its provisions.
40. The Athenaeum Group repeats its answers to paragraphs "1" through "26" as if fully set forth herein.
41. It is denied that there is any controversy between the Athenaeum Group and either Old Binney Realty Trust, George Teso or Mulach Parking Structures Corporation. Answering further it is said that this matter is not cognizable under the provisions of G.L. c. 231A and that plaintiffs have failed to include necessary parties under the provisions of G.L. c. 231A §8.

COUNTERCLAIM

1. Plaintiff in Counterclaim, The Athenaeum Group ("Athenaeum") is a Massachusetts business corporation with principal offices at 215 First Street and is the holder of a valid building permit for the construction of a parking garage at 355 Binney Street.
2. Defendants in Counterclaim, Debra McManus, Ralph Chadis, Ann W. Curby, R. Philip Dowds, Susan Dowds, Robert Owen

Edbrooke, Jr., DeCoorse Fales, Jr., Iten N. Fales, Thomas J. Fitzgerald, Elena Gardyna, Henry A. Gardyna, Daniel E. Geer, Jr., Paul W. Guglietti, Jr. Bernard Gunther, Nancy Hausman, Anthony J. Keber, J.O. Marrs, Richard G. McManus, Priscilla J. McMillan, John R. Moot, Gaylen Morgan, Marybeth Noonan, Susan F. Schwab, Judith A. Sealey, Lisa A. Sealey Theodore H. Sutton, Mehmet Toner, Amporo Vazquez, Ricardo H. Vazquez, and Sarah A. Wolfensohn ("the neighbors") are individuals residing in various locations in Cambridge Massachusetts.

FACTUAL BACKGROUND

3. On March 10, 1988, the Athenaeum Group and Mulach Parking Structures Corp. entered into a contract for the construction of a 1530 car parking garage at 355 Binney Street in Cambridge, Massachusetts (the "garage"). Construction began under the contract on April 5, 1988. Both parties are and remain ready, willing and able to carry out the terms of the contract.

4. On January 30, 1988, Athenaeum applied for a building permit in order to construct the garage in a heavy industrial zone in East Cambridge. Said garage use was permitted of right under the applicable zoning by-laws.

5. On February 10, 1988, the City of Cambridge duly issued the permit. On or about April 5, 1988, construction of the garage began in accordance with the building permit and the

plans submitted to the Inspectional Services Department of the City of Cambridge.

6. The neighbors then undertook as a common enterprise to carry out an intentional plan and scheme to interfere with 1) scheduled plans to close financing on the garage, 2) the contract between Mulach and Athenaeum, and 3) Athenaeum's and Old Binney's use of their land and the benefit of their building permit.

7. In the furtherance of their plan, scheme and wrongful common enterprise, the neighbors, personally or through their agents:

a) Addressed threats and allegations in letters to Athenaeum, its officers, and employees, and the Attorney General of the Commonwealth of Massachusetts demanding a cessation of construction and alleging various violations of law;

b) Addressed letters to municipal, state and federal officials falsely indicating that Athenaeum's building permit was invalid and the garage construction in violation of law;

c) Addressed letters to municipal officials demanding the revocation of the building permit and falsely alleging that Athenaeum was proceeding on the garage in violation of law;

d) Contacted numerous members of the news media and thereafter disseminated materially false and misleading information concerning the garage and the validity of the building permit;

e) Demanded and received a hearing before the City Council for the purpose of demanding the revocation of the building permit despite the fact that the City Council has no authority to revoke or interfere with a validly issued building permit;

f) Disseminated at the City Council hearing materially false information concerning the status of the garage and the present position of the United States Environmental Protection Agency ("EPA") on matters relevant to the validity of the garage and building permit.

g) On information and belief contacted the Massachusetts Department of Environmental Quality Engineering ("DEQE") and the EPA seeking their involvement with the neighbors' attempt to interfere with the continuation of the garage.

8. Despite the fact that they knew, or should have known, that their position was wrong as a matter of law, and despite a) the refusal of every local, state and federal agency which they contacted to cooperate and b) upon information and belief, their having been informed by the majority of the agencies contacted that their legal position was incorrect and untenable, the neighbors continued to disseminate factually and legally inaccurate material to citizens, the media and state and local officials.

9. Due to the false and misleading information disseminated by the neighbors, and repeated by the media,

numerous potential tenants of the adjacent One Kendall Square Development delayed or refused to execute leases.

10. Due to the false and misleading information disseminated by the neighbors, and repeated by the media, a scheduled closing for a loan was jeopardized and postponed resulting in great damage to Athenaeum and its principals. Further, Athenaeum was forced to fund the garage through alternative methods of short term financing, all to the severe damage of Athenaeum.

11. At all times material the neighbors employed tactics of threats, intimidation and coercion in the attempt to interfere with Athenaeum's legally protected rights.

12. Said threats, intimidation and coercion had the effect of resulting in severe damage to Athenaeum through the loss of lessees, financing and reputation and constituted interference with rights protected under the Constitution and laws of the United States and the Commonwealth.

13. On October 25, 1988 a joint opinion of DEQE and EPA was issued conclusively establishing that it was the position of those agencies that plaintiff in counterclaim's building permit and garage were in full compliance with those aspects of the law which the neighbors had raised as a bar to the validity of the garage. As of that date, every agency of any level of government remotely involved with the issues raised by the neighbors had officially rebuked their position. Upon

information and belief, the neighbors or their attorney was aware of the existence and content of that letter. The next day the neighbors filed this suit and sought to enjoin the garage.

COUNT I

14. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

15. The actions of the neighbors constitute an intentional interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

COUNT II

16. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

17. The actions of the neighbors constitute a negligent interference with Athenaeum's contractual relationship with Mulach Parking Structures Corp., and the Bank of New England.

COUNT III

18. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

19. The actions of the neighbors constitute an intentional interference with Athenaeum's advantageous relationship with

Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT IV

20. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

21. The actions of the neighbors constitute a negligent interference with Athenaeum's advantageous relationship with Mulach Parking Structures Corp., existing and potential tenant, and the Bank of New England.

COUNT V

22. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

23. The actions of the neighbors constitutes a slander of Athenaeum's title.

COUNT VI

24. Plaintiff in Counterclaim repeats and realleges paragraphs 1 through 13 of their counterclaim as though fully set forth herein.

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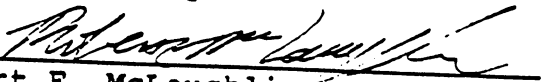
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David L. Klebanoff

Commonwealth of Massachusetts

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cc. Donald A. Drisdell, Esq.

David L. Klebanoff Attorney(s) for The Athenaeum Group

3.

S-718

Comm. from R. Philip Dowds, Co-Chairman Pro Tem,
Cambridge Citizens for Liveable Neighborhoods
Re: a counter-suit filed by the developers of
the Binney St. Garage & transmitting a copy of
same.

In City Council,

November 21, 1988

11-21-88

Referred to the City Mgr
for Report after consultation
with City Solicitor on Motion
of OR Wolf & C. Walsh

copy sent to the City Manager
11/23/88 mh