

**RICHARD D. DIONNE
ELIZABETH A. DIONNE
88 ELLERY STREET
CAMBRIDGE, MASSACHUSETTS 02138**

October 26, 2000

Honorable Members of the City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Legal Constraints to Expansion of Main Library on Broadway

Dear Members of the City Council:

We are the owners of 88 Ellery Street, which is directly across the street from the tennis courts which abut the field house at Cambridge Rindge and Latin School. We are writing this letter in connection with your deliberations for the selection of a site for the new Main Library. One of the two plans under consideration is the substantial expansion of the current Main Library on Broadway, approximately tripling its current floor space, and the construction of an underground parking garage.

The most current conceptual design for this expansion of which we are aware is the one presented by Carlone & Associates at a City Council Meeting several months ago (the "Carlone Plan"). The Carlone Plan would expand the footprint primarily to the east of the existing building, with an additional smaller wing to the west of the existing building. The major part of the expansion, if undertaken according to this plan, would encompass the existing surface parking area, a portion of the tennis court area (where the doors to the field house lead to the tennis court surface), the current walkway that leads from Joan Lorentz Park to the CRLS entrance on Cambridge Street, as well as the current amphitheater between the back of the existing Library and the Field House. That part of the expansion would butt up against a portion of the westerly and southerly walls of the Field House, and would directly block the southerly windows of the Arts Building at CRLS. An approximate overlay showing the footprint of the expansion as proposed by the Carlone Plan is attached for your reference.

We have previously written to the City Manager, with copies to all City Councilors, on September 22, 1998 commenting on the conceptual design presented by Sasaki Associates in 1998 (the "Sasaki Plan") for the expansion of the current Main Library on Broadway. The Carlone Plan appears to be an attempt to address some of the more objectionable design elements of the Sasaki Plan, which involved the construction of a structured parking garage where the tennis courts are located and relocating the tennis courts to the roof of that structure. However, many of our objections and comments regarding the Sasaki Plan, particularly those relating to safety, parking and accessibility considerations, as well as adverse impact on the adjacent residential

neighborhood and on the high school, are equally applicable to the Carlone Plan. These objections and comments will not be repeated in this letter, as these issues appear to be part of the public dialogue regarding the site selection process and have found ample articulation from various sources.

This letter will confine itself to what we believe are the legal constraints imposed upon the City in any attempt to expand the current Main Library on Broadway, and will focus on the Carlone Plan in that regard. These constraints have nothing to do with the Zoning Ordinance, but result from the findings and decision of the Superior Court in 1977 in the litigation involving the expansion of the high school (Carmean et al. v. City of Cambridge et al., Superior Court No. 76-4960). This letter is not intended nor should it be taken as a technical legal brief, but rather as a discussion of the issues which present difficulties in expanding the current Main Library and which should be considered in connection with the current siting decision.

1. The Carmean Case

The Carmean case involved an unsuccessful challenge by several citizens to the then expansion of the high school. It was decided primarily on the basis of facts stipulated by the plaintiffs and the City, which was embodied in an "Agreed Statement of Material Facts" adopted by the Court and incorporated by reference in its Opinion. Attached to the Agreed Statement of Material Facts as exhibits are numerous plans and layouts of the park, which were supplied by the City. The Agreed Statement of Material Facts was a direct outgrowth of the City's campaign to win neighborhood acceptance of the CRLS expansion project, and memorializes the City's assurances to the neighborhood regarding Library Park and its continued maintenance.

One of the major arguments made by the City in the Carmean case, as set forth in its trial brief and amply corroborated by the above-referenced materials, involved the expansion of open space at the project site, its use as a park, and the planting and maintenance of trees in that space. As a result of the written submissions, as well as evidence produced at trial and representations made by the City in its trial brief and oral arguments, the Superior Court made the following relevant findings of fact:

"1. The Agreed Statement of Material Facts is hereby adopted and incorporated by reference...

"7. The high school project includes...an even more substantial expansion of open area south of the Library. As a result of the project...a portion of the new area will be specifically used as a park by the City." (Emphasis added).

The area to be "specifically used as a park by the City" is clear from a review of the exhibits to the Agreed Statement of Material Facts, as it is clearly shown on the various plans, including a full landscaping plan, prepared on behalf of the City and submitted as part of the Statement.

The representations to the courts of the Commonwealth of Massachusetts made by the City regarding Library Park were not confined to the Superior Court in the Carmean case. In a prior procedural appeal to the Appeals Court in the same action, Justice Keville issued an order enjoining the City from commencing with construction of the CRLS expansion. That order was appealed by the City to the Supreme Judicial Court. In its briefs to the Appeals Court and then to the Supreme Judicial Court, the City stated that “[a]s a result of the [high school] project...a portion of the tract will be specifically used as a park by the City.” (Emphasis added).

2. The Promise

The City’s position in these court filings was consistent with the promises and assurances it was contemporaneously making to the Mid-Cambridge neighborhoods to gain acceptance of the high school reconstruction. In essence, the deal is memorialized in the Agreed Statement of Material Facts adopted by the Superior Court in its Opinion in the Carmean case. Many neighborhood residents remember those assurances, and understood at the time that the reconstructed CRLS was to be the final construction in the CRLS/Library/Library Park block bordered by Broadway, Felton Street, Cambridge Street and Ellery Street.

The area to be “specifically used as a park by the City” is readily ascertainable from the plans and materials constituting the exhibits to the Statement. That area includes the westerly portion of the existing tennis courts and the more or less triangular grassy area surrounding the southwest corner of the Field House, all of which would be proposed to be included in the footprint of the Main Library expansion under the Carlone Plan. The relocated roadway/driveway shown on the Carlone Plan also encroaches on the area to be “specifically used as a park by the City,” locating a circular turn-around where the current tot lot is situated.

There can be no doubt that the City fully understood its promise to the surrounding Mid-Cambridge neighborhoods and that its representations to the courts in the Carmean case were knowingly made. In a non-confidential letter dated March 14, 1996 to Hon. Frank Duehay, apparently in response to inquiries by Mr. Duehay regarding the Carmean case, Attorney John H. Henn, who represented the City in the litigation, advised as follows:

“Among the points we made to convince the judge that the City was not merely right on the law but that the high school project was a net plus for parkland, was that the project would create an overall increase in open space on the overall library/high school site taken as a whole, and that “a portion of the new area will be specifically used as a park by the City”. (See p. 5 of the attached [Trial Brief].) The plans and model that we showed to the judge showed this increased “park” space, and it reflects the open space that we all can now see, and that resulted from the clearing of the land under the old Cambridge High and Latin School.

“Of course, I never myself followed up to see if the City did take formal action to dedicate the area as parkland, as that was not part of our engagement.” (Emphasis added).

It is clear from this communication that the City’s attorney in the Carmean case understood the meaning and gravity of the City’s promise that “a portion of the new area will be specifically used as a park by the City,” and indeed expected that the City would take steps to formally dedicate the area as parkland. That the City failed to take such formal steps does not negate the constraints imposed upon the City by its submissions in court, as further discussed below.

3. The Constraints

The governing legal principle here is one of “estoppel,” which precludes a party from asserting a position in one legal proceeding that is contrary to a position it has previously asserted in another proceeding. In English, a party may not “play it both ways” with the judicial system.

The principle has relevance in the following circumstances: (1) the Broadway site is designated for expansion, (2) the footprint of the expansion encroaches on the area to be “specifically used as a park by the City” in its submissions in the Carmean case, and (3) that expansion is challenged in a judicial proceeding. In such a case, the City will be legally prevented from arguing that it is not bound by its earlier assertions regarding specific use of certain areas as a park.

The constraints imposed by the City’s positions in the Carmean case do not mean that the City cannot designate the Broadway site for the new Main Library, nor that the City cannot expand the current facility. For example, the area to be “specifically used as a park by the City” memorialized in the Carmean case does not appear to include the current surface parking area or the area to the west and northwest of the current Library building. It does include, as previously noted, the entire current tennis court area and the vegetated triangular area abutting the southwest corner of the Field House.

The Sasaki Plan failed to take any of these constraints into account, most likely because Sasaki Associates were unaware of the Carmean case and the undertakings by the City regarding the park areas. The Carlone Plan is more responsive to these constraints, but the footprint of the expansion impermissibly encroaches on the current tennis court area and the vegetated triangular area referred to above, as well as the tot lot, and will no doubt require the elimination of many of the trees protected by the original plans.

The above-described constraints have nothing to do with the Zoning Ordinance, as recently amended so as to eliminate the need for any variances in connection with the construction of the new Main Library, wherever located. They are rooted in principles

which prohibit "bait and switch" tactics by litigants, including municipalities, in successive court proceedings.

The real problem with the Broadway site is that, given the constraints as to the permissible envelope of expansion, it is difficult to develop a workable design that will achieve the stated objective of providing for a 100,000 square foot Library building. In that regard, the Broadway site presents design challenges that, as far as we know, do not appear to affect the Prospect Street site under consideration.

4. Conclusion

There are currently no plans or even working drawings for either the Broadway or the Prospect Street sites. There have been conceptual plans presented publicly, but these only show a particular vision of a particular designer of what might be accomplished at each of the sites now under consideration for the new Main Library.

The legal constraints discussed in this letter regarding the Broadway site affect the layout of the footprint of the expansion in the event that the Broadway site is selected by the City Council. Until such time as that layout is known and the City is prepared to proceed with construction, after design and engineering work is completed, can any appropriate legal challenge based on the Carmean case be filed.

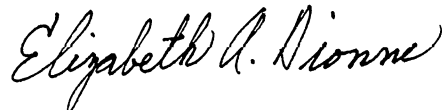
We understand that the City has sought legal advice on the issue of expansion of the Main Library at the Broadway site, as have we. We have not decided upon what legal action, if any, we would take should the Broadway site be selected and the Carlone Plan (or a similar plan with like deficiencies as discussed herein) is proposed to be constructed. However, the legal issues discussed above, and the development constraints they place on construction of a new Main Library at the Broadway site, must be considered among other relevant criteria in making a reasoned designation for the new Main Library site.

We hope that the views expressed in this letter will be helpful in your deliberations regarding site selection for the new Main Library. These views are our own. They do not necessarily reflect the views on these matters of any other person or group.

Respectfully submitted,



Richard D. Dionne



Elizabeth A. Dionne

Cambridge Rindge & Latin School

– with proposed expansion of main library

SCALE 1:1000

LEGEND

	STREET
	ASPHALT AREA
	CONCRETE AREA
	STEPS
	LAMPOST, BOULDER
	TRASH BARREL
	OTHER MAN-MADE OBJECT
	BENCH, STONE, WOOD
	FENCE
	BUILT-UP AREA
	BUILDING
	TREE, GROUP OF TREES
	OPEN AREA
	SEMI-OPEN AREA
	TREE-COVERED AREA
	VEGETATION
	THICK LOW VEGETATION
	THICK VEGETATION
	VEGETATION BOUNDARY



RECREATION MAP

MA 33 May 1991
U.S. Orienteering Federation
P.O. Box 1444
Forest Park, GA 30051



MAGNETIC NORTH

Copyright 1991, Cambridge Sports Union
23 Fayette St
Cambridge, MA 02139

Cambridge Rindge and

Latin School

Arts Building

War Memorial

Field House

Tennis Courts

Existing Main Library

Library

Expansion

Expansion Drives-Walks

ELLERY STREET

FELTON STREET

BROADWAY

Source for Library Expansion: Carlone & Associates and City Manager's Office, April 2000

S 364
Consent Communication #4

A communication was received from
Richard D. Dionne and Elizabeth A.
Dionne, transmitting legal
constraints to expansion of the
main library on Broadway.

In City Council October 30, 2000