



CITY OF CAMBRIDGE

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June 23, 1994

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: *Response to City Council Order # 51, dated June 20, 1994*

Dear Mr. Healy:

I am attaching a memorandum prepared by Attorney Scott Lewis regarding the Portland Stone Ware litigation. The memo responds to City Council Order # 51 from the June 20, 1994 meeting which requested a report on the status of the litigation. This memo may be transmitted to the City Council in their regular package as a public document. As we indicated last week to the City Council, however, any discussion of the litigation by the Council relating to this litigation should take place in executive session.

Very truly yours,

Donald A. Drisdell

MEMORANDUM

To: Donald A. Drisdell
Deputy City Solicitor
CITY OF CAMBRIDGE

From: Scott P. Lewis
PALMER & DODGE

Re: Portland Stone Ware

Date: June 23, 1994

You have asked me for a brief report of the current status of the litigation between the City of Cambridge and Portland Stone Ware Co., Inc. and for my thoughts on the ability of the City to respond to continuing problems for abutters caused by the truck traffic generated by Portland. This is my response.

On April 13, 1994, Portland brought suit in federal court against the City, the City Manager and eight of the nine members of the City Council. Portland acknowledged that its business is "inherently incompatible" with the surrounding residential neighborhood. Portland claimed, however, that the defendants have schemed unlawfully to interfere with its business by denying truck access and by conducting unreasonable surveillance and inspections of its business. Portland alleged that the City was trying to force the company to leave the City. Portland sought an immediate court order (preliminary injunction) to prevent the City (a) from enforcing its existing "Do Not Enter" regulation, prohibiting all traffic from entering Middlesex Street during school crossing hours; (b) from imposing a new night-time trucking ban on Middlesex Street, and (c) from erecting a "bollard" to prevent Portland from driving trucks over the sidewalk and curb next to its curb cut. We responded by moving to dismiss Portland's suit and by opposing the preliminary injunction.

While we were awaiting a hearing in federal court, the City's Department of Inspectional Services denied Portland's application to move its curb cut, and on May 18 the Massachusetts Highway Department ruled that the City must allow every business a right of truck access by some route at all times. As a result, the MHD rejected the City's proposed night-time truck ban and ordered the City not to enforce the "Do Not Enter" regulation.

On June 2, Judge Woodlock held a hearing, determined that the suit appeared to call for the balancing of Portland's right of access against City's power to protect the safety and welfare of its residents, and concluded that the MHD and the state courts should "calibrate" this balance before the federal court would take any action. Accordingly, Judge Woodlock "abstained" from taking any action on Portland's complaint, to allow the City to appeal the

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MHD ruling, Portland to appeal the denial of its application for a new curb cut, and the City to seek a court order to prevent Portland from driving over the City's sidewalk and curbing. Pending action by the MHD or state courts, however, Judge Woodlock ordered the City to maintain the status quo, as he perceived that it existed in January 1994, by not enforcing the "Do Not Enter" regulation or the proposed night-time trucking ban against Portland, and by not erecting the "bollard," until either the MHD or the state courts allow the City to do so.

As a result, on June 10, the City filed suit against the MHD and Portland in state court, seeking a judgment that the MHD was wrong to require the City to allow Portland truck access at all times and that the City should be allowed to enforce the existing "Do Not Enter" regulation and the proposed night-time trucking ban. On June 20, the state court refused to issue a preliminary injunction for the City, but scheduled an expedited hearing on the merits of the City's claim for September 8, 1994.

We are presently awaiting a decision by the MHD whether it will "remove" the City's suit to federal court. Once the MHD makes its decision, we plan to file suit against Portland to prevent Portland from continuing to drive trucks over the City's sidewalk and curbing on Pemberton Street.

We are optimistic that when the court hears the merits of the City's position, it will rule (a) that the MHD is wrong and that Portland has no absolute right to continuous heavy truck access to its property, (b) that the City may therefore enforce the existing "Do Not Enter" regulation and the proposed night-time truck ban; (c) that the City properly denied Portland's application for a new curb cut, and (d) that Portland has no right to drive trucks outside its existing curb cut and over the City's sidewalk and curbing. Absent an agreement with Portland, these legal actions currently appear to present the best opportunity for the City to respond to the problems faced by Portland's neighbors. You should be aware that the Attorney General, representing the MHD, has urged the City and Portland to attempt to mediate their dispute. Portland has not yet given us any indication that it is prepared to make a meaningful effort to address the concerns of its neighbors or of the City.

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EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

June 27, 1994

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 36, regarding the status of litigation between the City and Portland Stoneware, received from Donald A. Drisdell, Deputy City Solicitor.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy
City Manager

RWH/mev
attachment

Consent Agenda # 39

S-331

Response to Awaiting Report Item Number
Thirty-Six regarding the status of
litigation between the City and
Portland Stoneware.

*for original order see
Order # 51 of 6/20/94*

In City Council,

June 27, 1994

Placed on file