

ordinance, Cambridge Municipal Code, c. 8.44 ("Removal Permit Ordinance," Record, pp. 0149-52), and a prior declaratory judgment of this Court, Cambridge, et al. v. Cellucci, no. 87-1522. If the State Board is upheld, the Commissioner would be required to issue a demolition permit which could result in the permanent removal by demolition of twenty-two controlled rental units without a removal permit issued by the Rent Board^{1/}.

The issue before the Court is whether a Cambridge property owner may avoid the lawful procedures established by the state and the city to ensure that all city ordinances are effectuated. If the property owner prevails here, these rules will be seriously undermined. Therefore, based on the arguments made herein, plaintiffs maintain that the State Board's decision must be reversed.

^{1/} St. 1976, c. 36, as amended, ("the Rent Control Act") establishes rent and eviction regulation in the City of Cambridge. (A copy of the statute is attached hereto and incorporated by reference as Exhibit A). There is no dispute that the property which is the subject of these proceedings is within the Rent Board's jurisdiction in accordance with c. 36.

In 1989 the owner applied to the Rent Board for a removal permit to demolish the property pursuant to the Removal Permit Ordinance § 8.44.020. After hearings held pursuant to G.L. c. 30A, this application was denied. The owner then sought judicial review in the Superior Court which affirmed the Rent Board's decision. Donna Lyons, as agent for the Estate of Thomas F. Coughlin v. Cambridge Rent Control Board, Middlesex Superior Court, no. 90-1554, Memorandum of Decision, November 14, 1990, Judgment, November 15, 1990 (Connolly, J.) (copies of which are attached hereto and incorporated herein by reference as Exhibit B). The owner did not appeal from that ruling.

II. Facts

The facts found by the State Board are set forth in the Record at pp. 0256-57²/.

On July 13, 1988 the owner³/ applied to the Commissioner for a demolition permit to tear down the property which consists of two occupied buildings in Cambridge containing twenty-two rent controlled apartments and two commercial units (Record, pp. 0029, 0109-29, 0279-80). After the Commissioner refused to issue the demolition permit, the owner appealed to the State Board pursuant to G.L. c. 143 § 100. In denying the permit, the Commissioner relied upon the Removal Permit Ordinance § 8.44.020.D.2, which prohibits demolition of controlled rental units without a permit from the Rent Board (Record, p. 0149-0152); the State Building Code 780 CMR § 114.1, which requires the Commissioner to consider and apply "all pertinent laws" in the issuance of permits (Record, p. 057); and the decision of the Superior Court in Cambridge, et al. v. Cellucci, Middlesex Superior Court, no. 87-1522 (Izzo, J.), which requires the Commissioner to comply, inter alia, with the Removal Permit Ordinance regarding demolition of rent controlled buildings (Record, pp. 0168-73). Despite these legal constraints on the Commissioner, the State Board ordered

²/ The proceedings which are now under review followed a remand from the Superior Court (Record, pp. 0256, 0084-85, 0109). The State Board's prior administrative decision appears at Record, pp. 0079-82.

³/ The property was formerly owned by Thomas Coughlin, now deceased. The alleged manager of the property pursued the administrative proceedings and has intervened in this litigation.

him to issue the demolition permit upon the owner's application (Record, p. 0246).

Although evidence was introduced regarding structural problems in the buildings, the State Board made no finding that the properties posed an imminent danger to any person or that displacement of the tenants was warranted because the buildings were condemned in accordance with G.L. c. 143 § 9. The evidence showed that in 1987 the property had been the subject of a Board of Survey report (G.L. c. 143 § 8; 780 CMR § 124.1) which found that the buildings had structural problems and recommended that they be repaired at once (Record, pp. 0161-0164). Of the two buildings, 191 Hampshire Street was then found to be in need of "immediate shoring" and "dangerous" (Record, p. 0164). The other building, 189 Hampshire, was not in as serious condition (Record, p. 0162). However, as of the date of the State Board hearing in October, 1990, residential and commercial tenants were still occupying both buildings and no order from any code enforcement or other authority has ever been issued to compel them to vacate.

At the State Board hearing in October, 1990 the Commissioner testified that "the structures are in dire need of repair;" "could be repaired to a liveable state, but that economics would probably prevent this;" and "that the buildings, as they stand are probably unsafe" (Record, p. 0256, emphasis added). No evidence was introduced as to any effort by the owner to repair the buildings or to provide the tenants with temporary relocation while such repairs were undertaken.

The owner's witnesses contended "that the structures are unsound and repairs cannot be made without evacuating the building" (Record, p. 0256). The owner's representative also maintained that it was "impractical to attempt to repair the structures to an acceptably liveable state" (Record, id.).

Despite these allegations, the State Board did not find that the only reasonable alternative was demolition nor did it find that demolition was warranted to avoid imminent danger to the occupants or the public. The State Board found that there was no "dispute as to the possibility of repairing the structure ... however...the Appellant does not choose to repair the structures. Instead, he wishes to exercise his legal right to demolish the buildings" (Record, p. 0257, emphasis added). The State Board ordered the Commissioner to issue the demolition permits. In so doing, the State Board failed to apply established legal principles regarding the Commissioner's discretion and authority and failed to find any ground to justify the issuance of the demolition permit, prior to compliance with other pertinent city ordinances, other than the owner's stated desire to demolish.

The plaintiffs filed a timely complaint for judicial review of this decision and sought a stay of the State Board's order. A judge of the Superior Court granted the stay on January 18, 1991.

III. Standard of Review

The Court reviews this case upon the record of the State Board's administrative proceeding in accordance with G.L. c. 30A,

§ 14. This means that the Court's role is to primarily determine whether there is substantial evidence to support the agency decision, whether the decision is correct as a matter of law, and whether the agency properly exercised its discretionary authority. G.L. c. 30A, § 14. In conducting its review, the Court must consider the expertise, technical competence, and specialized knowledge of the agency. See, for example, Marion v. Labor Relations Commission, 7 Mass. App. Ct. 360, 361 (1979). However, these standards are ones of deference, not abdication, and the interpretation of statutes and other legal authority is for the Court upon judicial review. Vincent v. Rent Control Board of Cambridge, 23 Mass. App. Ct. 927 (1986) (rescript); Crawford v. Cambridge, 25 Mass. App. Ct. 47, 49 (1987) (agency must follow its own regulations).

The fundamental issue in the instant case is whether the State Board's decision is correct as a matter of law. Secondly, the question is whether the State Board abused its discretion in overruling the Commissioner. Although the Court must give some weight to an agency's interpretation of its governing law, such an interpretation is not binding upon the Court; and if the agency's ruling is contrary to the plain and unambiguous statutory language, the reviewing court will not hesitate to reverse it. Similarly, if an agency has abused its discretion, it will be reversed. See for example, Johnson v. Martignetti, 374 Mass. 784 (1978); Finkelstein v. Board of Registration in Optometry, 370 Mass. 476 (1976); Vincent, supra;

Board of Education v. School Committee of Amesbury, 16 Mass. App. Ct. 508 (1983).

Based on these principles, the State Board's decision here cannot stand.

V. Argument

A. Legal Background Concerning Rent Control in Cambridge.

In order for the Court to understand the particular context in which this case arises, it is necessary to explain Cambridge's rent control and removal laws.

In 1970, the Legislature recognized that the rental housing shortage in Cambridge presented a threat to the general welfare: the demand for residential premises had inflated rental housing prices causing an increasing shortage of accommodations accompanied by extraordinarily high rents. The Legislature concluded that municipal intervention into rental housing by rent and eviction regulation was necessary to stabilize this abnormal market. Marshal House, Inc. v. Rent Control Board of Brookline, 358 Mass. 686 (1971); Martin v. Rent Control Board of Cambridge, 19 Mass. App. Ct. 745, 748 (1985). The City of Cambridge therefore adopted rent and eviction control in 1970. St. 1970, c. 842.

In 1976 the law was re-enacted and continued in St. 1976, c. 36 (as amended, the "Rent Control Act"). The purpose of the Rent Control Act is set forth in its Declaration of Emergency, § 1,

which states in pertinent part:

A serious public emergency exists with respect to the housing of a substantial number of citizens of the City of Cambridge...which has resulted in a substantial and increasing shortage of decent rental housing accommodations especially for families of low and moderate income and for elderly people of fixed income...

(emphasis added). The Act was designed to retard this emergency in available housing and to stabilize sky-rocketing rents. Grace v. Brookline, 379 Mass. 43, 50-51 (1979).

However, the Rent Control Act alone proved insufficient to prevent the loss of affordable rental units from the city's housing stock. By 1979 the crisis in rental housing had "worsened... because of the removal of a substantial number of rental housing units by condominium conversion, demolition, and other causes." Removal Permit Ordinance § 8.44.101 (emphasis added)^{4/}. The City therefore promulgated the Removal Permit Ordinance which strictly regulates the removal of controlled rental units from the market by providing that a controlled rental unit may not lawfully be removed from the market unless the Board grants a permit. § 8.44.020, § 8.44.040. Among the removals expressly identified as requiring a permit is demolition. § 8.44.020.D.2. Both the Supreme Judicial Court and the Appeals Court have repeatedly recognized and enforced the importance of the Ordinance in preserving affordable housing in

^{4/} The Removal Permit Ordinance was first enacted as Ordinance 926, then amended and commonly referred to as Ordinance 966. It has now been codified into the City of Cambridge Code as c. 8.44.

Cambridge. See, for example, Flynn v. Cambridge, 383 Mass. 152, 156-7 (1981); Fragopoulos v. Rent Control Board of Cambridge, 408 Mass. 302 (1990); Lamb v. Rent Control Board of Cambridge, 17 Mass. App. Ct. 1038 (1984) (rescript); Valentine v. Rent Control Board of Cambridge, 29 Mass. App. Ct. 60, 62 (1990).

- B. The State Board's decision is incorrect as a matter of law and an abuse of its discretion.
- 1. The Commissioner properly interpreted and applied 780 CMR § 114.1.

In refusing to issue the demolition permit simply upon the owner's demand, the Commissioner correctly exercised his discretion in accordance with 780 CMR § 114.1 (Record, p. 0057)⁵/.

This section provides that the Commissioner shall issue a permit

If he is satisfied that the proposed work conforms to the requirements of this code and all pertinent law applicable thereto

(emphasis added). However,

If the application or the plans do not conform to the requirements of Section 113.0 or other related sections of this code or of all pertinent laws, he shall reject such application...

(emphasis added)⁶/.

⁵/ Although the same legal principles apply to Cambridge's historic preservation agencies (Cambridge, et al. v. Cellucci, supra, Record, pp. 0169-73), since the Cambridge Historical Commission has approved the demolition (Record, p. 0256), the arguments made herein are confined to the rent control system.

⁶/ See also, 780 CMR § 108.1.

The phrase "all pertinent law(s)" as used in this section is not restricted in any manner. It does not refer to just state law or the building code. It is plainly emphatic and inclusive in its scope and it expressly confers upon the Commissioner the responsibility to ensure that all applications he approves do not conflict with other relevant legal requirements. In applying this regulation to the facts of this case, the Commissioner thus acted well within his statutory authority in refusing to issue the demolition permit and the State Board acted well beyond its statutory authority in overruling him.

There can be no legitimate debate that the Removal Permit Ordinance is not such a "pertinent law." Numerous decisions from the Massachusetts appellate courts have sustained the Rent Board's authority to regulate removal of controlled rental units from the market and upheld the requirement that a removal permit must be obtained before such removal can occur. See, pp. 8-9, supra. If Cambridge property owners were allowed to merely go to the Commissioner and have him issue demolition permits without considering the Removal Permit Ordinance, the ordinance could, effect, be nullified. Indeed, this was precisely the problem that precipitated the litigation in Cambridge, et al. v. Cellucci (Record, pp. 0168-0173).

The facts of this case underscore the rationale for 780 CMR § 114.1. Cambridge, like all other municipalities, has a complex system of permits (including other than municipal restrictions) which must be obtained before buildings may be demolished (or

constructed). Removal regulation is merely one more such system necessitated by Cambridge's particularly acute housing crisis. However, if a property owner is allowed to circumvent this law, which is necessary to prevent the further erosion of Cambridge's limited affordable housing stock, by obtaining a demolition permit upon demand from the Commissioner, the Removal Permit Ordinance could effectively be rendered meaningless.

The correct method for proceeding, as evidenced by the procedure established by the City to ensure that "all pertinent law(s)" are complied with and which is consistent with 780 CMR § 114.1, is for an owner to obtain all of the necessary approvals from all relevant agencies before applying to the Commissioner for a demolition permit. The Commissioner is then assured that all "pertinent law(s)" have been complied with and he may lawfully issue the permit. However, where, as here, an approval has not been obtained, the Commissioner properly denied the owner's application.

The State Board, by not adhering to the requirements of 780 CMR § 114.1, has, without any authority, supplanted the Commissioner's legally imposed responsibilities. As such, the State Board's decision is incorrect as a matter of law and beyond its discretionary authority; it therefore must be reversed and the Commissioner's decision reinstated.

2. The Commissioner is bound by the decision in Cambridge, et al. v. Cellucci.

Despite the clear mandates of the Removal Permit Ordinance and 730 CMR § 114.1, in 1986 the Commissioner issued a demolition permit to an owner of rent controlled property who had not obtained a removal permit from the Rent Board or approval from the city's agencies responsible for historic preservation. As a result of this action, the City of Cambridge, the Historical Commission, the Mid-Cambridge Neighborhood Commission, the Conservation District Commission, and the Rent Board brought a declaratory judgment action alleging that the Commissioner was required to withhold a demolition permit until the historic preservation agencies had issued their approval and the Rent Board had issued a removal permit, unless the Commissioner determined that demolition was required because of an imminent danger to public health and safety. Cambridge, et al. v. Cellucci, Middlesex Superior Court, no. 87-1522 (Record, pp. 0168-73).

In ruling in favor of the plaintiffs in that case, the Superior Court found that enforcing a delay in the issuance of a demolition permit until after a removal permit was granted by the Rent Board was consistent with other state laws and that without such a procedure "the success of [the City's] ordinances will be seriously threatened" (Record, p. 0173). The Court therefore ordered the Commissioner to comply with the Removal Permit Ordinance (Record, id.).

The Commissioner in the instant case was bound by the declaration in that case and acted within his lawful authority in denying the owner a demolition permit unless and until he obtained a removal permit. The owner, by appealing that decision to the State Board, is attempting to circumvent judicially approved policy and procedure for demolishing rent controlled buildings in Cambridge. The State Board, by reversing the Commissioner, is thereby also violating these settled rules and exacerbating Cambridge's severe housing shortage.

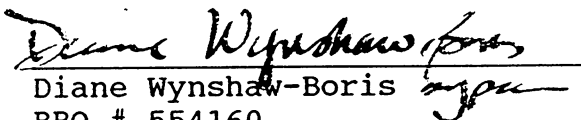
VI. Conclusion

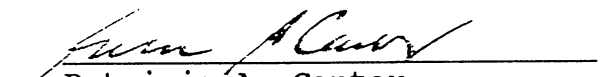
For the reasons stated herein the plaintiffs maintain that the decision of the State Building Code Appeals Board must be reversed.

Respectfully submitted,
By their attorneys,

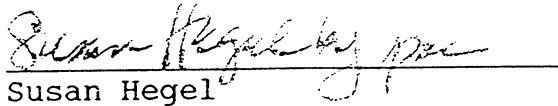
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February 7, 1991

Certificate of Service

I, Patricia A. Cantor, hereby certify that copies of Plaintiffs' Joint Memorandum in Support of Reversal of Defendant State Building Code Appeals Board's Decision, was mailed, postage prepaid, to Anthony E. Penski, Assistant Attorney General, One Ashburton Place, Room 2019, Boston, MA 02108, and to Paul J. Moriarty, 22 Washington Street, Norwell, MA 02061 on this 7th day of February, 1991.


Patricia A. Cantor

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS:

SUPERIOR COURT
CIVIL ACTION NO. 90-7561-E

JOSEPH CELLUCCI, as he is the)
Building Commissioner of the)
City of Cambridge, et al.,)
)
Plaintiffs)
v.)
)
STATE BUILDING CODE APPEALS)
BOARD, et al.,)
)
Defendants)

PLAINTIFFS' REPLY MEMORANDUM

Plaintiffs Joseph Cellucci, as he is the Building Commissioner of the City of Cambridge, ("Commissioner"), the City of Cambridge, the Cambridge Rent Control Board ("Rent Board"), and residents at 189 and 191 Hampshire Street, Cambridge, Massachusetts ("tenants") submit this memorandum in response to arguments raised by Defendants State Building Code Appeals Board ("State Board") and Donna Lyons in their memoranda.

In their complaint for judicial review, Plaintiffs seek reversal of the State Board's decision ordering the Commissioner to issue demolition permits for two rent controlled buildings where the owner has failed to obtain a removal permit from the Rent Board. Plaintiffs do not seek to forever deny the owner a demolition permit, but rather to delay the issuance of a demolition permit until the owner has complied with the requirements of the Removal Permit Ordinance.

ARGUMENT

A. The Owner Does Not Have the Option to Repair or Demolish When the Commissioner Has Ordered Repair.

In its memorandum (pp. 8, 10), the State Board argues that its decision is correct, in part, because M.G.L. c. 143, §6 and 780 C.M.R. 123.1 provide that an owner has the option to remove a building or make it safe.^{1/} The State Board's memorandum argues further that this choice of the owner is implicit in the Board of Survey's reports in the present case (p. 8) and that, therefore, the State Board was correct in deciding that if an owner chooses to demolish without a removal permit, then he may do so.

Here, however, the Commissioner has ordered the owner to repair. He did not order the owner to repair or demolish at the owner's sole discretion. The cover sheet of the Board of Survey reports list five possible recommendations (e.g. repair at once, board up until repairs are made, demolish) but only one option, i.e. "repair at once," is recommended in the instant case.

(Record, pp. 23, 25). By letter dated March 6, 1987 (Record, p. 22) and by reports dated July 11, 1988 (Record, pp. 27, 28), the Commissioner ordered compliance with these Board of Survey reports. In short, the Board of Survey recommended repair (and

^{1/} M.G.L. c. 143, §6 states that "The local inspector, immediately upon being informed by report or otherwise that a building or other structure or anything attached thereto or connected therewith in that city or town is dangerous to life or limb...shall inspect the same; and he shall forthwith in writing notify the owner, lessee or mortgagee in possession to remove it or make it safe..." The Massachusetts State Building Code (Fourth edition), at 780 C.M.R. 123.1, has a similar provision.

not demolition) and the Commissioner, accepting the Board of Survey's recommendations, ordered repair (and not demolition). Additionally, the Commissioner refused to issue demolition permits prior to the owner obtaining removal permits from the Rent Board.^{2/}

Thus, as the Commissioner properly refused to issue a demolition permit without a removal permit and ordered repair (and the State Board agreed that the buildings could be repaired), the State Board cannot now decide to allow the owner to demolish simply because he wishes to do so.

B. The State Board Did Not Grant a Variance From the Building Code.

The Massachusetts State Building Code, at 780 C.M.R. 114.1, provides that, in acting on applications for permits, the building commissioner shall reject an application for a permit if it does not conform with "Section 113.0 or other related sections of this code or of all pertinent laws" (emphasis added). As set forth in their February 7, 1991 memorandum, Plaintiffs contend that "all pertinent laws" include the Cambridge Removal Permit Ordinance and, in its memorandum, the State Board now apparently

^{2/} In her memorandum, Donna Lyons incorrectly states that "there is nothing in the record to indicate why he [the Commissioner] did not issue the [demolition] permit." (p. 4). The State Board's October 4, 1990 decision (Record, p. 256) indicates that the Commissioner refused to issue the demolition permits because the owner did not have the Rent Board's approval for removal from the controlled rental market. (See also Record, pp. 8, 81; State Board's memorandum, p. 4).

agrees with this contention.^{3/} However, the State Board, in its memorandum, argues that M.G.L. c. 143, §100, par. 9 gives it (but not the Commissioner) the authority to grant a variance from this consideration of "all pertinent law" and that "implicitly" the State Board did so in this case. (State Board's memorandum, p. 10; see also Donna Lyons' memorandum, p. 14).

This is a misstatement of the State Board's actions. It did not grant (or even consider) a variance, but rather held that the Removal Permit Ordinance was not a "pertinent law" under Section 114.1 of the Building Code. The State Board's July 25, 1989 decision clearly states that "This Board determines that the rent control board does not enforce an applicable by-law..." (Record, p. 82). Nowhere does the State Board discuss granting a variance from "pertinent law," because, under its analysis, it did not need to reach that issue.

Additionally, the State Board did not base its decision on protecting the health and safety of the tenants or the public, as it now alleges in its memorandum. (p. 10). The Board agreed with the parties that the buildings could be repaired. However, it stated that repair was "not the real issue" and that if an owner chooses to demolish, he should be allowed to do so, even without a removal permit. (Record, pp. 256-257).

^{3/} The State Board states that "We do not argue with the general proposition that in appropriate circumstances home rule legislation may be considered "pertinent law" as that term is used in Section 114.1 of the State Building Code. (State Board's memorandum, footnote 8, page 8).

Thus, in its decision, the State Board did not grant the owner a variance from the Removal Permit Ordinance's requirements based on public safety or any other concerns, and accordingly, this proposed rationale for its decision must be rejected.

C. The Cellucci decision is controlling.

In its memorandum (pp. 9-10), the State Board attempts to distinguish the Superior Court's declaratory judgment in City of Cambridge et al. v. Cellucci (Record, pp. 168-173) ("the Cellucci decision") from the present case. The distinction fails and the Cellucci decision is binding on the Commissioner's decision here.

Contrary to the State Board's assertion, the Cellucci Court did consider the relationship of the Removal Permit Ordinance and the building official's decision on an application for a demolition permit where there was a Board of Survey report^{4/}; and it then ordered that the Commissioner first comply with the Removal Permit Ordinance (by delaying issuance of a demolition permit until after a removal permit is granted by the Rent Board).

^{4/} The State Board's memorandum infers that there was no Board of Survey report in the Cellucci case, which in part, distinguishes it from the present case. Although not stated in the Cellucci decision, there was a Board of Survey report which recommended demolition. A copy of this report is attached hereto and can be found in the record in Valente et al. v. Cambridge Rent Control Board, Superior Court No. 87-2982, Appeals Court No. 89-P-489 (Record Appendix pp. 65-66), 29 Mass. App. Ct. 1117 (1991).

There is no evidence in the instant record that the City convened the February, 1987 Board of Survey on its own or at the request of the owner, in light of his January 13, 1987 engineer's report. Likewise, there is no evidence in the record that this owner's application for a demolition permit was solely his own choice or was as a result of the Commissioner's orders to repair. In any event, those facts are irrelevant. The relevant fact is that even after receiving the Board of Survey reports, the Commissioner did not determine that demolition was required because of an imminent danger to public health or safety. Instead, based on the evidence, he ordered repair of the two buildings.

Since the Commissioner's instant decision (to withhold the demolition permits for Hampshire Street until the owner has removal permits) is reasonable and required by the Cellucci decision, it should have been upheld by the State Board.

D. There is No Conflict Between Local and State Law.

In her memorandum, Donna Lyons argues that the State Building Code and the Removal Permit Ordinance conflict, and that therefore, the Code preempts the Ordinance. (pp. 9-10). Plaintiffs contend that compliance with the Ordinance is not inconsistent with state law, but rather a valid precondition to the demolition of scarce housing resources.

The strong presumption in favor of the validity of an ordinance may be overcome only if the ordinance is inconsistent

with state law. Const. Amend. Art. 89 (the Home Rule Amendment); M.G.L. c. 43B; Amherst v. Attorney General, 398 Mass. 793 (1986); Grace v. Brookline, 379 Mass. 43 (1979). Here, there is no inconsistency. There is nothing in the express language or the purpose of M.G.L. c. 143 or the State Building Code which prohibits cities from enacting ordinances regulating conditions regarding demolition as here. The main purpose of the State Building Code is to ensure that buildings are safely constructed. 780 C.M.R. 100.4. This purpose is not frustrated by imposing additional preconditions on the destruction of buildings which have not been found to pose a threat of imminent danger to public health and safety by the applicable code enforcement agencies.

A court should endeavor to cure any discrepancy by construing the state law and local ordinance together "so as to constitute a harmonious whole consistent with the legislative purposes of both." School Committee of Boston v. Boston, 383 Mass. 693 (1981). This harmonization is precisely what the Court has already done in the Cellucci case when it ordered the Commissioner to comply with the Removal Permit Ordinance in his decisions on applications for demolition permits of rent controlled housing. There, the Court concluded that the:

cooperation of the Building Commissioner to delay issuance of a demolition permit until after the removal permit is granted by the Board is necessary to keep interested parties from circumventing the Board's regulations and thereby undermining the purposes of the [Removal Permit] ordinance...Therefore, the ordinance is not in conflict with the discretionary authority provided the Building Commissioner in G.L. c. 143, §§ 3 & 3A. (Record, pp. 171-172).

Donna Lyons also argues in her memorandum (pp. 8-9) that M.G.L. c. 143, §98 provides a procedure for a city to obtain the State Board's prior approval to impose more restrictive demolition standards than those in the State Building Code and that Cambridge should have complied with this procedure in order to have its Removal Permit Ordinance govern demolition of controlled rental housing. Plaintiffs contend that, from its plain language, M.G.L. c. 143, §98 pertains only to the imposition of more restrictive standards that relate to engineering, fire prevention, and other structural safety concerns. The Removal Permit Ordinance, on the other hand, is concerned with the benefits to low and moderate income and elderly tenants, the hardships imposed on these particular tenants, and the aggravation of the affordable rental housing stock which may result from the proposed removal from the market (including removal by demolition) (Record, p. 150). Thus, M.G.L. c. 143, §98 is inapplicable and the City of Cambridge was not required to obtain the State Board's prior approval of its Removal Permit Ordinance.

CONCLUSION

For the reasons stated in their first memorandum as well as for the reasons stated above, Plaintiffs respectfully request that this Court reverse the State Board's decision. The State Board should not permit owners to circumvent the local rent control system by obtaining demolition permits upon demand and

absent the determination of imminent and serious threat to public safety by the applicable code enforcement agency.

Respectfully submitted,

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Dated: March 5, 1991

CERTIFICATE OF SERVICE

I, Susan Hegel, hereby certify that on March 5, 1991 I hand-delivered a copy of the within reply memorandum to Anthony E. Penski, attorney for Defendant State Building Code Appeals Board, at the Massachusetts Department of the Attorney General, One Ashburton Place, 20th Floor, Boston, MA and that on March 5, 1991 I also sent a copy of the within reply memorandum to Paul J. Moriarty, attorney for Defendant Donna Lyons, by fax to 1-871-2616 and by first class mail, postage prepaid to 22 Washington Street, Norwell, MA 02061.

Susan Hegel



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

OFFICE OF THE CITY ENGINEER

Joan Lastovica P.E.
City Engineer

Joseph J. Cellucci
Building Commissioner
City Hall
Cambridge, Massachusetts

Board of Survey

54-76 Burner Avenue

Dear Sir:

The above located building was inspected
on 14 September 1986 and found to be:

- a. A Fire Hazard
- b. Unfit for Human Habitation
- c. In Need of Major Repairs
- d. Structurally Unsafe
- e. Other Conditions

Report Attached

Recommendation:

- a. Repair at once.
- b. Board-Up Until Repairs are made.
- c. Demolish
- d. Board-up until Demolished.
- e. Other Recommendations.

Very truly yours,

Joan Lastovica

City Engineer

Thomas V. Smith

Fire Chief

Robert L. ...
Contractor



CITY OF CAMBRIDGE
MASSACHUSETTS
BOARD OF SURVEY

74-76 Putnam Avenue

September 19, 1986
1:30 p.m.

General Conditions: The building has suffered major fire damage. There is evidence of persons "squatting" in the building and fire setting. As the building is supposed to be vacant, fire fighting activities would not include rescue. This building is a serious fire hazard.

Basement: Major fire damage to carrying beams and first story floor girders. Masonry foundation wall in disrepair.

74 Putnam: Majority portions of all three stories are destroyed by fire - floors, walls, ceilings, stairs.

76 Putnam: All stories - walls stripped and damaged, plumbing fixtures removed. Evidence of persons using building include: dead bolts on doors, mattresses & clothing; provisional waste facilities; dated and signed wall graffiti; ritualized match-book burning with floor charring.

Conclusions: Due to the major destruction by fire, and the continued breaking and entering of the standing portions of the building, the structure known as 74-76 Putnam Ave. is a serious and dangerous fire hazard. We recommend immediate demolition of the building and the garage on this lot.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

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EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

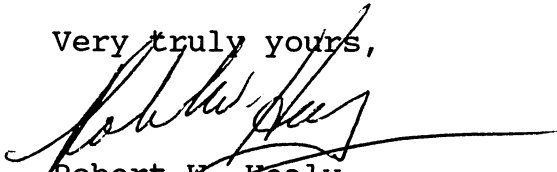
4.
April 8, 1991

To the Honorable, the City Council:

In response to Awaiting Report #9 regarding 189-191 Hampshire Street, please be advised of the following:

As you know, the above referenced property is the subject of litigation with the State Building Code Appeals Board over the issue of the building's demolition. Attached please find a legal memoranda filed on behalf of the Rent Control Board and Inspectional Services. The case was heard on March 8, 1991 in Superior Court before Judge Forte; the City is currently awaiting a decision.

Very truly yours,



Robert W. Healy
City Manager

Attachment

Consent Agenda # 4

S-493

Awaiting Report Item Number 9 regarding
the property located at 189-191 Hampshire
Street.

In City Council,

April 8, 1991

Placed on file