



City of Cambridge

CALENDAR ITEM # 10
28.

IN CITY COUNCIL

December 14, 1992
December 21, 1992

COUNCILLOR WALSH

WHEREAS: At the November 23rd meeting of the City Council a discussion occurred regarding the so called Midas matter; and

WHEREAS: The City Solicitor informed the Council that the City had participated in litigation brought by certain alleged Plaintiffs who were disputing certain action of the City; and

WHEREAS: The City Solicitor further informed the Council that he had learned that many of these Plaintiffs had never given permission to have their names entered into the litigation; and

WHEREAS: The City Solicitor also stated that the Planning Board intervened in the case; and

WHEREAS: The taxpayers of the City had to pay for the City Solicitor's Office to be involved in this matter; and

WHEREAS: It has subsequently been learned that the attorney for the Plaintiffs is the spouse of a member of the Planning Board; and

WHEREAS: This issue is not whether or not the Midas addition should have been allowed, but whether or not taxpayers money was misused by a conflict between a member of the Planning Board with the endeavors of her husband as an attorney representing the interests of certain parties; now therefore be it

RESOLVED: That the City Manager be and hereby is requested to report back to the City Council within 30 days specifically addressing the issue of whether or not a conflict of interest existed between Carolyn Meath as a member of the Planning Board and her husband Richard Cleary as attorney for the Plaintiffs and whether or not Richard Cleary, in the filing of a suit against the City without permission of the Plaintiffs is liable to the City for the costs incurred by the City in defending this action and what if any action has been taken by the City to report the conduct of Attorney Cleary to the appropriated agency governing the conduct of attorneys.

In City Council December 21, 1992.

Failed of adoption by a yea and nay vote:

Yeas 2; Nays 6; Absent 0; Present 1.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
D. Margaret Drury, City Clerk

Berlin, Clarey, Axten & Levee

ATTORNEYS AT LAW

50 STANIFORD STREET, BOSTON, MASSACHUSETTS 02114-2517

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RICHARD D. CLAREY
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ALVIN LEVIN
1924-1987
OF COUNSEL
JOEL Z. EIGERMAN

December 21, 1992

BY HAND

The Honorable City Council
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

RE: Midas Special Permit Report

Dear Councillors:

At the conclusion of the initial hearing on this matter on Monday, December 14, I asked for permission to comment on Solicitor Higley's report.

Briefly, the report is not a report at all, but a collection of documents, some of them with portions missing (e.g., Exhibits 3 and 12), and some of them missing altogether (e.g., Exhibit 35), which seem principally designed to support the accusations made against me in the non-consent agenda, item 28. Wholly absent is an explanation of the central role that the City Solicitor's office played from the outset in the subversion of the Council's policy as expressed in the North Massachusetts Avenue Overlay District Ordinance.

It is my understanding that the City Solicitor's office actually drafted the offending BZA opinion at a time when they knew of the fundamental flaw in it. The Solicitor's office also:

- (1) Litigated vigorously to abort the citizens' appeal from the BZA decision;
- (2) Stood silently when in Court some plaintiffs claimed they were intimidated into dropping the suit; and
- (3) Most importantly, aggressively objected to the attempt of the Planning Board to enter litigation and protect the ordinance. (See Exhibit 31.)

December 21, 1992

This sent a clear signal to the trial judge that the official representative of the City did not think the ordinance important enough to be defended, and thus the judge found it relatively simple to deny the Planning Board entry into the case. I am sure that if the City Solicitor had not so vigorously opposed the Planning Board and the intervenors who wished to protect the ordinance, the judge would have gotten a very different signal, and would have taken the Planning Board's position more seriously. The hostile attitude of the Solicitor thus undid years of work by the Council, the Community Development Department, and scores of citizens who worked with the Council on this ordinance.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Richard D. Clarey".

Richard D. Clarey

RDC:emc

cc: Russell Higley
City Solicitor

4277S

City of Cambridge

MASSACHUSETTS

C. Toomey. Motion to
 Substitute for both C.R. #10 In City Council 12/21 1992
 and Unv. #17 - That an outside mediator be apptd to examine all
 facts + procedures, legal + non, for the 3 sites ~~of the~~ the Mielas site,
 the Donut Maker site, and the fast food site in the garage in Harvard Square

YEA	NAY	ABSENT	PRESENT	
	✓			Mr. Ed Cyr
	✓			Mr. Francis H. Duehay
	✓			Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
✓				Mr. Walter J. Sullivan
✓				Mr. Timothy J. Toomey, Jr.
✓				Mr. William H. Walsh
	✓			Ms. Alice K. Wolf
	✓			Mayor Kenneth E. Reeves

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City of Cambridge

MASSACHUSETTS

Reconsider of All 3
 OK 10, Order 17
 Substit

In City Council

12/21

1992

YEA	NAY	ABSENT	PRESENT	
	✓			Mr. Ed Cyr
	✓			Mr. Francis H. Duehay
	✓			Mr. Jonathan S. Myers
	✓			Mrs. Sheila T. Russell
	✓			Mr. Walter J. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
	.		✓	Mr. William H. Walsh
	✓			Ms. Alice K. Wolf
	✓			Mayor Kenneth E. Reeves
0	8	0	1	

City of Cambridge

MASSACHUSETTS

Sharp on all 3
C R #16
Ord # 17
Subst. motion

In City Council

12/21

1992

YEA	NAY	ABSENT	PRESENT	
✓				Mr. Ed Cyr
✓				Mr. Francis H. Duehay
✓				Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
			✓	Mr. Walter J. Sullivan
✓				Mr. Timothy J. Toomey, Jr.
			✓	Mr. William H. Walsh
✓				Ms. Alice K. Wolf
✓				Mayor Kenneth E. Reeves
7	0	0	2	

City of Cambridge

C. R. # 10

MASSACHUSETTS

In City Council 12/21 1992

YEA	NAY	ABSENT	PRESENT	
	✓			Mr. Ed Cyr
	✓			Mr. Francis H. Duehay
	✓			Mr. Jonathan S. Myers
	✓			Mrs. Sheila T. Russell
✓				Mr. Walter J. Sullivan
			✓	Mr. Timothy J. Toomey, Jr.
✓				Mr. William H. Walsh
	✓			Ms. Alice K. Wolf
	✓			Mayor Kenneth E. Reeves
2	6	0	1	



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RESOLVED: That the City Manager be and hereby is requested to report back to the City Council within 30 days specifically addressing the issue of whether or not a conflict of interest existed between Carolyn Meath as a member of the Planning Board and her husband Richard Cleary as attorney for the Plaintiffs and whether or not Richard Cleary, in the filing of a suit against the City without permission of the Plaintiffs is liable to the City for the costs incurred by the City in defending this action and what if any action has been taken by the City to report the conduct of Attorney Cleary to the appropriated agency governing the conduct of attorneys.

**CHARTER RIGHT EXERCISED BY COUNCILLOR WOLF AT THE RECONVENED
CITY COUNCIL MEETING ON DECEMBER 16, 1992.**

City of Cambridge

C. Cyr moved

MASSACHUSETTS

Suspension to take by
for #28 order

In City Council

12/16

1992

YEA	NAY	ABSENT	PRESENT	
✓				Mr. Ed Cyr
✓				Mr. Francis H. Duehay
✓				Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
			✓	Mr. Walter J. Sullivan
✓				Mr. Timothy J. Toomey, Jr.
			✓	Mr. William H. Walsh
✓				Ms. Alice K. Wolf
✓				Mayor Kenneth E. Reeves

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**CHARTER RIGHT EXERCISED BY COUNCILLOR WOLF AT THE RECONVENED
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City of Cambridge

IN CITY COUNCIL

December 9, 1992

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F-550

Councillor Walsh re: Question of conflict
of interest in regards to the Midas
Muffler site.

In City Council,

December 14, 1992

Charter Right exercised
by Councillor Wolf at
the reconvened meeting
of December 14, 1992
12/21/92 Order failed of
Adoption

2-6-0-1