Noble Petition

ECC

original noble

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR ALFRED E. VELLUCCI

2/25/1985
Date

Councillor Vellucci has notified the City Clerk of his intention to move Reconsideration of the vote of the City Council taken on Monday, February 25, 1985, failing to table the petition of William S. Noble, et al, to create a new Section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development".

Alfred Vellucci
Signature

Received by City Clerk at Boston on 2/25/85

March 4, 1985

— Calendar #15 —

Reconsideration
By Councillor
Vellocci —

March 4, 1985

Reconsideration moved
By Councillor Vellocci
Chair ruled the motion
out of order
On appeal of the
Ruling of the Chair
The ruling of the
Chair was sustained
Place on file with
Petition.

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DA won't file criminal charge on house razing

By Anthony Baldo
Staff writer

Middlesex District Attorney Scott Harshbarger's office last week cleared developers of 1564 Massachusetts Ave. of any criminal wrongdoing regarding the controversial demolition of an historic building on the site.

"Our investigation of the facts surrounding both certification and permit applications for the demolition and development of the property have uncovered no evidence of criminal wrongdoing on the part of any of the parties involved in this controversy," reads a letter from Assistant District Attorney Thomas Reilly to Charles Sullivan, the executive director of the Cambridge Historic Commission.

The historic Francis-Allyn House, which was located at the site, was almost completely demolished by developers on June 14. The developers want to build condominiums on the site.

The developer of the property, Conal Doyle, and the owner of the property, Stephen Bell, have contended that they stayed within the scope of the commission's certificate of appropriateness for the project.

The commission, however, ruled that Doyle and Bell exceeded the scope of the certificate and placed a two-year ban on construction at the site.

The commission also sent the matter to Harshbarger's office so the criminal investigation could be made.

Bell's attorney, John Mirick, this week applauded the results of that investigation. "We were very confident that the investigation would confirm that there was no wrongdoing and it's nice to be vindicated," Mirick said. "We also hope that this puts to rest some of the insinuations that have been made and that people will look at the merits of our proposals for the site."

But not everyone was pleased with the conclusions of the investigation.

Cambridge City Councillor David Sullivan said the conclusions reached by Harshbarger's office only note that no criminal statute was violated.

The decision, though, does not clear the developers of any civil wrongdoing, he added.

Charles Sullivan, too, said the investigation's conclusions have no effect on the case. The results, he explained, are a separate development from the commission's actions.

Nevertheless, Mirick feels his clients have been thoroughly cleared by the investigation and by a ruling by the state Building Code Appeals Board.

That board's ruling, he said, found the developer's demolition to be within the scope of what was proposed.

"The independent bodies who have looked at this have said we're right," he added.

The remainder of the house has been demolished for public safety reasons. Moreover, the matter is being fought extensively in the courts.

Currently, Bell is suing the commission, Cambridge Inspectional Services Commissioner Joseph Cellucci, and David Sullivan.

Meanwhile, Sullivan is countersuing the developers, and the city is appealing the decision of the state Building Appeals Board.


DEDICATION—Cambridge officials joined with veterans organizations in ceremonies on Sunday to dedicate Rep. John J. Toomey Park in Kendall Square to honor the late city councillor and state representative. (Photo by Maclone Studio)

600 to become citizens Friday

Some 600 men, women and children will become United States citizens at a mass naturalization ceremony at 12 noon, Friday, November 16, in Kresge Auditorium at the Massachusetts Institute of Technology.

Chief Judge Andrew A. Caffrey of the U.S. District Court in Boston will preside at the naturalization hearing, during which the auditorium officially becomes a court.

Dr. Walter A. Rosenblith of M.I.T., Institute Professor, former provost and foreign secretary of the National Academy of Sciences, will welcome the new citizens, their families and guests. Dr. Rosenblith, who was born in Austria, is a naturalized citizen.

Several members of the M.I.T. community will be among those who take the oath of citizenship.

The M.I.T. Marching Band will play before and after the ceremony, and the National Anthem will be played at the proceedings on the Kresge Auditorium organ by Institute organist James, D. Christie. Lillian H. Whelpley of M.I.T. will lead the audience in singing the Anthem.

M.I.T. made the 1,200-seat auditorium available in response to a request from the Boston office of the Immigration and Naturalization Service, which has been seeking larger halls for the hearings in order to process more applicants at one time.

Park dedicated to memory of late Rep. John Toomey

The triangular plot of land at the apex of Kendall Square is now John J. Toomey Park.

It was dedicated, at Sunday morning exercises, to the memory of the late city councillor and state representative who served for 34 consecutive years on Beacon Hill, becoming chairman of the powerful House Ways and Means Committee.

Speakers recalled that he used to drive regularly by the park area on his way to and from the State House.

As a city councillor, he won headlines in 1938 by proposing that Harvard be severed from Cambridge and set up as a separate city. One of the legislative feats in which he took great pride was the maneuver by which he and Senator Francis X. McCann obtained a veto power for Cambridge over a proposed 8-lane Inner Belt Highway which would have divided the city and forced about 4,500 persons out of their homes.

John J. Carver, retired telephone company executive and himself a former city councillor, described Toomey as "a Democrat from the soles of his feet to the top of his head," but as being so careful in spending public funds that he was hailed by both Democrat and Republican leaders as being one of the best of all Ways and Means chairmen.

"He stood tall in the community," Carver said, "and was always prepared and ready to act."

Thomas McLaughlin, retired FBI agent and former Grand Knight of Cambridge Council, K. of C. said Toomey was "a doer," one of those responsible persons who was never too busy to heed calls for helping good causes, and as "an uncommon man who left a memory of service which enriches us all."

Mayor Leonard Russell said Toomey always gave him the best advice, such as to "make your decision, stick to it and don't flinch."

Clerk of Courts and former Mayor Edward Sullivan presided. Prayers were by the Rev. Stephen Brennick, Knights of Columbus chaplain. (Toomey was elected Grand Knight of its Cambridge Council when only 23 years old), and by the Rev. Simeon Saullenas of Immaculate Conception Church. Cambridge veterans' posts were represented by a Color Guard.

Members of the Toomey family present included the late representative's widow, Alice; a daughter, Patricia Mahoney and husband Paul; a son, John Jr. and wife Debbie; and a brother, Joseph Toomey and wife, Sally.

Oldest person attending was Dr. S. Edward Chaflen, 92, father of the city's health commissioner, who told this reporter, "John Toomey was one of my first patients to run for political office. I gave him a $20 campaign contribution."

—E.B.S.

COMMONWEALTH OF MASSACHUSETTS
Middlesex, ss. Probate and Family Court
No. 84P6015E

NOTICE OF
Probate of Will
Without Surety
Estate of **Helen Bielinski**
late of **Cambridge**
in the County of **Middlesex**

NOTICE

A petition has been presented to the above-captioned matter praying that **Michael H. Bell** also known as **Michael Bell** of Cambridge in the County of Middlesex and **William J. Bielinski** also known as **William Bielinski** of Arlington in the County of Middlesex, be appointed executors without giving surety on their bond.

If you desire to object to the allowance of said petition, you or your attorney should file a written appearance in said Court, at Cambridge, on or before 10:00 in the forenoon on December 19, 1984. You must in addition to filing a written appearance as aforesaid, file within thirty (30) days after said return day a written statement of objections to the petition, giving a specific grounds therefor.

Witness, Sheila E. McGovern, Esquire, First Judge of said Court at Cambridge, the thirty-first day of October in the year of our Lord one thousand nine hundred and eighty-four.

Paul J. Cavanaugh
Register of Probate

(C)Nov.15

MORTGAGEE'S NOTICE OF SALE OF REAL ESTATE

By virtue and in execution of the Power of Sale contained in a certain mortgage given by **Samuel P. Cruz** to **Baybank Harvard Trust Company,** dated August 17, 1981 and recorded with the Middlesex County (Southern District) Registry of Deeds, Book 14620, Page 573, of which mortgage the undersigned is the present holder, for breach of the conditions of said mortgage and for the purpose of foreclosing, the same will be sold at public auction sale at 10:00 AM on the 11th day of December, 1984 at the mortgaged premises; being all and singular the premises described in said mortgage, to wit:

A certain parcel of land with the buildings thereon now numbered 325 Western Avenue in Cambridge in the County of Middlesex and Commonwealth of Massachusetts, being part of lots 16 and 17 on a plan of lots in Cambridge owned by John and Horace Hews, W.A. Mason and Sons, Surveyors, dated August 28, 1855, recorded with Middlesex South District Deeds Plan Book 6, Plan 39 and described as follows:

Beginning at a point on the Northerly line of said Western Avenue distant 55 feet, 2 inches, Westerly from the point of intersection of the Westerly line of Hews Street with said Northerly line of Western Avenue and from said point running

Westerly on said Western Avenue, 30 feet to a point in said Northerly line of Western Avenue, which is a distant Easterly about 4 feet, 4 inches, from the Easterly line of Lot 1 on said plan, thence running

Northeasterly 67 feet, 1 inch, more or less, to the Southeasterly corner of lot 2 on said plan, thence running

Northeasterly by said lot 2, 10 feet, to land now or late of **Thomas G. Kenney,** thence turning and running

Southeasterly by said land now or late of Kenney, about 29½ feet to a line drawn parallel with said first mentioned Northeasterly bound; thence turning and running

Southwesterly on said parallel line of land now or late of **Charles** and **Edward P. Moore** to the point of beginning.

Subject to and together with all easements, restrictions, covenants and takings of record, if any.

Being the same premises to the Mortgagor by deed of **Ivan C. Dottin** recorded herewith.

The premises are to be sold subject to and with the benefit of all easements, restrictions, building and zoning laws, unpaid taxes, tax titles, water bills, municipal liens and assessments, rights of tenants and parties in possession, existing encumbrances and all other claims in the nature of liens, having priority over the mortgage, if any there be. The premises are also to be sold subject to the right of redemption of the United States of America, if any there be.

TERMS OF SALE: A deposit of $5,000.00 shall be required to be made to the Mortgagee in cash, by certified check or by Bank Cashier's check at the time and place of sale. The balance of the purchase price is to be paid to the Mortgagee in cash, by certified check or by Bank Cashier's check in or within twenty (20) days from the date of sale. The deed shall be delivered within ten (10) days after the date of the approval of the sale by the Land Court. In the event that approval of the deed is not obtained from the Land Court within sixty (60) days after the delivery of the balance of the purchase price to the Mortgagee (or such longer time as the parties may agree) the entire purchase price shall be returned to the purchaser without interest.

Other terms, if any, to be announced at the sale.

Federal Home Loan Mortgage Corporation
Present Holder of said Mortgage
By its Agent
Baybank Harvard Trust Company
By: Robert W. Pierce
Vice President
By its Attorney
David S. Berman, Esquire
Riemer & Braunstein
Three Center Plaza
Boston
Massachusetts 02108
617-523-9000
Date: November 8, 1984

AA1.09
(C)Nov.15,22,29

COMMONWEALTH OF MASSACHUSETTS
Middlesex, ss. Probate Court
No. 519240

NOTICE OF
FIDUCIARY'S ACCOUNT

To all persons interested in the estate of **Alice Lewis** late of Cambridge, in said County, deceased.

You are hereby notified pursuant to Mass. R.Civ.P. Rule 72 that the first and final account of **Samuel Beransky** as Executor and Fiduciary of the will of said deceased has been presented to said Court for allowance.

If you desire to preserve your right to file an objection to said account, you or your attorney must file a written appearance in said Court at Cambridge on or before the 30th day of November, 1984, the return day of this citation. You may upon written request by registered or certified mail to the Fiduciary, or to the attorney for the fiduciary, obtain without cost a copy of said account. If you desire to object to any item of said account, you must, in addition to filing a written appearance as aforesaid, file within thirty days after said return day or within such other time as the Court may allow, may order a written statement of each such item together with the grounds for each objection thereto, a copy to be served upon the Fiduciary pursuant to Mass. R.Civ.P. Rule 5.

Witness, Sheila E. McGovern, Esquire, First Judge of said Court, this 5th day of November, 1984.

Paul J. Cavanaugh
Register

(C)Nov.15

COMMONWEALTH OF MASSACHUSETTS
Plymouth, ss. Probate Court
No. 84D1811-D1

Summons by Publication
James E. Parker,
Plaintiff
vs.
Virginia M. Parker
Defendant

To the above-named Defendant:

A complaint has been presented to this Court by your spouse, James E. Parker, seeking to dissolve the bonds of matrimony, and for alimony and for custody of and allowance for minor child and for conveyance of real or personal property located within the Commonwealth.

You are required to serve upon Kevin P. Phillips plaintiff's attorney, whose address is McGee & Phillips, Attys., 1952 Ocean St., Marshfield, MA 02050 your answer on or before December 31, 1984. If you fail to do so, the Court will proceed to the hearing and adjudication of this action. You are also required to file a copy of your answer in the office of the Register of this Court at Plymouth.

Witness, James R. Lawton, Esq., First Judge of said Court at Plymouth.
October 29, 1984

John J. Daley
Register of Probate

(C)Nov.8,15,22

CITY OF CAMBRIDGE
PURCHASING DEPARTMENT

Sealed proposals will be received at the Office of the Purchasing Agent, Room 303. City Hall, Cambridge, Mass., until 11:00 o'clock A.M. Wednesday, November 29, 1984 at which time and place they will be publicly opened and read for furnishing the following to the City of Cambridge:

Liquid Caustic Soda
Unit Dose Envelopes
Sale of Used Equipment (CH)
Prepared Tubed Media
Surgical Staples

See proposal for bid deposit.

The City of Cambridge reserves the right to waive any informalities or to reject any or all proposals.

Specifications may be obtained at the Office of the Purchasing Agent, Room 303, City Hall, Cambridge, Mass.

Each proposal must be in a sealed envelope plainly marked "Proposal for 'Designate Item' ", and addressed to Barbara L. Duffy, Purchasing Agent, City Hall, Cambridge, Massachusetts.

Barbara L. Duffy
Purchasing Agent

(C)Nov.15,22

CITY OF CAMBRIDGE
PURCHASING DEPARTMENT

Sealed proposals will be received at the Office of the Purchasing Agent, Room 303. City Hall, Cambridge, Mass., until 11:00 o'clock A.M. Friday, November 23, 1984 at which time and place they will be publicly opened and read for furnishing the following to the City of Cambridge:

Liquid Caustic Soda
Unit Dose Envelopes
Sale of Used Equipment (CH)
Prepared Tubed Media
Surgical Staples

See proposal for bid deposit.

The City of Cambridge reserves the right to waive any informalities or to reject any or all proposals.

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Barbara L. Duffy
Purchasing Agent

(C)Nov.8,15

MASSACHUSETTS
DEPARTMENT OF
ENVIRONMENTAL
QUALITY ENGINEERING
DIVISION OF
WATER POLLUTION CONTROL
One Winter Street
Boston, Massachusetts 02108
Tel. (617) 292-5673

Pursuant to Chapter 21, section 43 of the General Laws, and 314 CMR 7.00 and 2.06, notice is given of the following applications for sewer extension or connection permits and proposed actions thereon:

City of: Cambridge
Applicant: The Congress Group Location: One Memorial Drive
Purpose: **Connection of an office building and restaurant to the City of Cambridge Sewer System.**
Proposed Action: **Tentative Determination to Issue.**

The above applications, and applicable laws, regulations and procedures are available for inspection at the above address. Comments on the proposed actions or requests for a public hearing on the proposed actions must be sent to the above address within 30 days of this notice.

Thomas C. McMahon
Director

(C)Nov.15

COMMONWEALTH OF MASSACHUSETTS
Middlesex, ss. Probate Court

To **Thomas F. Franklin** of Littleton, **East Cambridge Savings Bank** of Cambridge, **Kathleen Ernst** and **Douglas D. Ernst** of Tewksbury, all in the county of Middlesex and to all other persons interested.

A petition has been presented to said Court by Paul C. Conley of Medford, in the County of Middlesex representing that he holds as tenant in common one undivided half of certain land lying in Cambridge in said County Middlesex and briefly described as follows: a certain parcel of land with buildings thereon situated in Cambridge, Middlesex County, Massachusetts, now numbered 343 and 343½ Broadway, bounded and described as follows:

Southerly by Broadway, 60 feet;
Westerly by land now or formerly of Simoes, 90 feet;
Northerly by land now or formerly of Crosby, 60 feet; and
Easterly by Inman Street, 90 feet.

Being shown as Lot A (No. 343) and Lot B (No 343½) on plan dated January 4, 1947, recorded Book 7091, Page 341, and containing 2,880 sq. ft. (Lot A) and 2,520 sq. ft. (Lot B) according to said plan.

For title see deed of How-Ming Liow, Trustee of Kuma Realty Trust dated July 10, 1979 in the Southern Middlesex Registry of Deeds at Book 13735, Page 100. setting forth that he desires that all of said land may be sold at private sale for not less than two hundred and fifty thousand-dollars, and praying that partition may be made of all the land aforesaid according to law, and to that end that a commissioner be appointed to make such partition and be ordered to make sale and conveyance of all, or any part of said land which the Court finds cannot be advantageously divided either at private sale or public auction, and be ordered to distribute the net proceeds thereof.

If you desire to object thereto you or your attorney should file a written appearance in said Court at Cambridge before ten o'clock in the forenoon on the twenty-first day of November 1984, the return day of this citation.

Witness, Sheila E. McGovern, Esquire, First Judge of said Court, this twelfth day of October 1984.

Paul J. Cavanaugh
Register

(C)Nov.1,8,15

REQUEST FOR PROPOSAL
CITY OF CAMBRIDGE
COMPUTERIZED HOSPITAL
INFORMATION SYSTEM
FOR CAMBRIDGE HOSPITAL

Sealed proposals will be received at the Office of the Purchasing Agent, Room 303, City Hall, 795 Mass. Avenue, until 2:00 P.M., Friday, December 7, 1984 at which time and place they will be publicly opened and read aloud for furnishing the following to the City of Cambridge:

a)an integrated, adaptable computer system configuration, (Hardware & Software)
b) cost estimates and proposed financing structure
c) detailed implementation plans for: the automation of the Admitting, Registration, Medical Records, Billing and Personnel Management function of Cambridge Hospital

A pre-bid conference will be held at 8:30 A.M., on Wednesday, November 21, 1984, in the Lecture Hall, Cambridge Hospital, 1493 Cambridge Street, Cambridge, Mass.

Copies of the Request for Proposal may be obtained at the Office of the Purchasing Agent on and after November 19, 1984, between the hours of 8:30 A.M. and 5:00 P.M.

The City of Cambridge reserves the right to reject any and all proposals, waive any informalities in the proposal process, or accept the proposal deemed to be in the best interest of the City.

The successful offeror must be an Equal Opportunity Employer.

Each proposal must be delivered, along with seven (7) additional proposal summaries, in a sealed package, plainly marked "Proposal for Computerized Hospital Information System for Cambridge Hospital", and addressed to Barbara L. Duffy, Purchasing Agent, Room 303, City Hall, 795 Mass. Avenue, Cambridge, Mass. 02139.

Barbara L. Duffy
Purchasing Agent

(C)Nov.15,22

CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS

Notice is hereby given to all persons interested that a hearing will be accorded before the License Commission of this City, in the Barbara Ackermann Room, Room 200, City Hall, on Tuesday evening, November 27, 1984 at 6:30, on the petition of **Edgewater Piece Limited Partnership,** at 10 Cinal Park, Commercial Ave., Cambridge for a license for a parking garage for 40 cars and for the keeping and storage of 800 gallons of gasoline restricted as follows: in tanks of cars only.

By order of Board of License Commissioners

Mary E. Colnon
Anthony G. Pacillo
Thomas V. Scott

(C)Nov.15

CITY OF CAMBRIDGE
BOARD OF
BUILDING CODE APPEAL

Notice is hereby given by the Board of Building Code Appeal that it will hold a public hearing on November 29, 1984, at 4:00 o'clock in the afternoon in the Ackerman Room (200), Second Floor, City Hall, Cambridge, Massachusetts on the written appeal and petition of **Robert E. Sullivan** to vary the application of the Building Code of the City of Cambridge insofar as it pertains to the premises known as: **4-4½ Centre Street** seeking Occupancy Permits for each building:

VIOLATION: Article 9, Section 907 of the Commonwealth of Massachusetts State Building Code, Fourth Edition.

Theresa A. Plante
Secretary

Case No. 29 BC
(C)Nov.15

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
Middlesex Division
Docket No. 84P1006GI

NOTICE OF
SALE OF REAL ESTATE
GUARDIAN - MAINTENANCE

NOTICE

To all persons interested in **Rita Langley** of Cambridge in said County, a mentally ill person.

A petition has been presented in the above-captioned matter praying that for license to sell at private sale certain real estate of said Rita Langley for her maintenance and praying that the petitioner may become the purchaser of said real estate.

If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said Court at Cambridge on or before December 3, 1984.

Witness, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, the thirty-first day of October in the year of our Lord one thousand nine hundred and eighty-four.

Paul J. Cavanaugh
Register of Probate

(C)Nov.15

CAMBRIDGE HOUSING AUTHORITY
OFFICE OF PLANNING
AND DEVELOPMENT
INVITATION TO BID

The Cambridge Housing Authority, Cambridge, Massachusetts (Owner) will receive sealed bids for **security services to the Washington Elms Comprehensive Modernization Project,** a 7.5 acre site containing 15 newly renovated, unoccupied townhouse buildings, and a new community building, in accordance with the Request for Proposal documents prepared by the Office of Planning and Development, Cambridge Housing Authority.

The Request for Proposal (RFP) will be available after 2:00 p.m., Wednesday, November 7, 1984, at the Cambridge Housing Authority, Office of Planning and Development (address below) between the hours of 9:00 a.m. and 5:00 p.m. any business day. RFP's will not be mailed.

Bids shall be received from qualified security services no later than **10:00 a.m., Tuesday, November 20, 1984.**

Bids shall be received at the Office of Planning and Development, Cambridge Housing Authority, 678 Massachusetts Avenue, 9th floor, Room 907, Central Square, Cambridge at the time designated above. Bids may be mailed to Cambridge Housing Authority, 270 Green Street, Cambridge, MA 02139, Attn: Office of Planning and Development. The CHA

Editorial

Ten years after

It began a decade ago with a shoestring budget and a generalized goal of enhancing the cultural life of the city.

Today, the Cambridge Arts Council is not only a vital force for the arts in all parts of the community, it is also considered simply one of the best and most active municipal arts councils in the state.

To many Cantabrigians, the council is probably synonymous with the Cambridge River Festival, that cultural bacchanalia which has heralded the arrival of spring for the past eight years. While there can be no doubt that the river festival is the council's most visible success story, it isn't its only one.

More than fulfilling its goal of enriching the cultural life of the community, the arts council's activism and hard work have brightened the city's physical landscape through the Public Art program. You may wonder how those whimsical murals suddenly appear on the exterior walls of fire stations and private buildings, or how sculptures are created to enhance a public park or courtyard of a new building. Of course, it's because of the council's public art program, whose success is in evidence throughout the city.

Equally successful has been the council's ArtVentures (formerly Community Arts) programs, which actively reach throughout the community to fund singing groups for senior citizens, African drumming at the Margaret Fuller House and music programs for city children at the New School of Music, to name but a few of the program's many activities.

When the new Red Line stations open in Cambridge and Somerville in the weeks ahead, passengers will be greeted with the fruits of another council success story, the Arts on the Line program, co-sponsored by the MBTA. It was not a coincidence that Cambridge council was chosen to coordinate the arts program for the regional transit system. The MBTA knew the Cambridge council was singularly qualified to undertake the massive project.

A few people still think that the arts council uses tax dollars to fund the river festival and to provide grants to individual artists, but that isn't the case. Most of the council's funding comes from Megabucks lottery proceeds, private contributions and foundation grants. And no matter how good or bad times may be, funding is a constant pursuit for the Cambridge Arts Council.

This year, the council is making a renewed effort to involve the city's business community in cultural actvities and that effort shows early signs of paying off. The businesses already participating — like the Royal Sonesta and Polaroid — are not merely looking for tax write-offs; instead, they understand that by supporting the cultural life of their city, they are actually helping to foster an improved business climate in Cambridge. While Cambridge may have many attractions for new businesses, certainly its cultural vitality is among the most significant.

The Cambridge Arts Council has accomplished much in its first decade and, with the highly professional group of paid staff members and tireless volunteers whom Executive Director Chris Connaire has assembled, there is every reason to hope for even greater success in the council's second decade.

Our purpose here is not only to congratulate the Cambridge Arts Council on its 10th anniversary, but, more important, to thank the council members, staff and volunteers for what they have done to make Cambridge a better place to live.

If we were to ask, to paraphrase Ronald Reagana's famous campaign line, if we are better off today in Cambridge than we were ten years ago, the answer would have to be "yes", thanks in large part to the Cambridge Arts Council.

Open forum

Local educator tours USSR with family

The decision to tour three major cities in the USSR this summer with Mom and my son, Alex, was probably based just as much upon nostalgia for long-lost East European roots as upon the intense peace concerns that I shared with the Cambridge Peace Commission's USSR Sister City Project. However, knowing that the City had endorsed a resolution in 1982 of intent to establish bridges of East/West understanding, I began to research possible tours. Any "iron curtain" reservations I held soon diminished when friends praised my intention as a noble adventure, and my brother responded with a generous graduation gift for half of Alex's fare. I joined a three-week tour from the New York Metropolitan Region sponsored by Educator's For Social Responsibility (a national peace organization).

ELLEN MASS

The old Czarist Russia had shaped my Bylorussian and Ukranian grandparents and influenced the early years of my parents; and I was sure that their history had subsequently touched some hidden part of me.

When our Air France jet crossed the border into the USSR, we began to turn our attention away from chatty conversations about ourselves, and push aside preconceived notions about the country and people of Russia, including childhood images of puffy-nosed peassants, suspicious and drab people always waiting in long lines, a'la "Moscow on the Hudson." We soon disembarked at a seemingly abondoned Moscow Airport, and fell silent with culture shock. Lacking any language or cultural rapport, embedded perceptions of hostile territory returned. A quiet, dimly lit airport with somber officials who glared at our passport, and then into our eyes, hardly put us at ease. We felt intimidated by baggage searches for what might be "undesirable" books or magazines. After random sampling of bags, a dissident newspaper was discovered with poor Russian Author, a teacher from New Orleans, who tried to learn the Russian alphabet with the only Russian paper he could locate. He was politely asked to discard it and did. I was relieved that my own carrying case went untouched. It was full of classic paperbacks brought as mementoes to future Russian acquaintances. Never quite sure whether I was lucky or the censorship was loose.

When 28 year-old Tanya arrived, group confidence returned. She was our charming Muscovite hostess, translator and guide throughout. Wearing lavender slacks with colored plastic hair clips, brightly smiling, and speaking cheery English, she assured us that everything at the airport would be brought to our hotelroom, and we would be well cared for. Initially leaving bags unattended was high anxiety-producing, but once accustomed, we urban-dwellers felt very relieved.

"Law and order" is common rhetoric in the USA, but in the Soviet Union, my family was given a graphic illustration. One day in Leningrad, a potential catastrophe arose concerning the whereabouts of my son's constant companion — his Uncle Wiggley skate board, the loss of which, would have ended any further pleasure-seeking. Our hotel waiter informed us of its location in a storeroom, but an empty space is all we found. Immediately my mother (who never departed from her sense of propriety on the trip), summoned a cop or "militia". Within minutes of the mention of the word, Alex's precious mode of transportation reappeared, accompanied with profuse apologies. Having had two hard-earned bikes stolen in Cambridge, he was overjoyed to see Uncle Wiggley.

Moscow skate-boarding was confined to giant circular gardens which surround the City in seven large rings. In Gorky Park, Alex skated with blue-jeaned teens (girls included) working on the same balancing and jumping skills seen so often in Cambridge. His fiberglass board created youth's appreciative glances most everywhere. Common values shared create memorable bonds, it seems, no matter the degree of materialism involved.

While strolling in Gorky Park with what seemed like thousands of Moscovites and their families, we met "Nick" our first black marketeer. He asked for something to trade, preferably jeans. Far from impressing me as a sinister character, I saw immediate use for him as a guide. As enticement for the job, I pulled out my Beatles "Yellow Submarine" paperback. Nick's smile confirmed that the illicit trade was successful. After drinking some Pepsi, he showed us to our destination, the video games, which consisted of outdated World War II submarine battles, and games scooping up pieces of gum with miniature bull-dozers, which seemed to attract the largest group of teens.

Friendship games

The "Druzba" or Friendship games, were spectacular and colorful, meticulously skilled gymnasts of all age groups, including nursery school performed; teens somersaulted, and youth groups wove long material strips into a large checkered patch to represent the textile workers and others. We were most enthused when hundreds of peace doves flew from the stadium and peace signs appeared in the opposite stands in many languages.

Beautiful parks, birch forests and balconies filled with vines and flowers dotted our way. I felt familiar with this land, and warmed to know that the same hosta, zenias or marigolds that I saw in Leningrad, would be flowering in my own yard when I returned to Cambridge. Even my favorite wildflower, deadly nightshard, appeared. Strategically planted trees of beech, oak, poplar, Norwegian spruce, chestnut, Russian olive abounded.

Smokestack and chemical pollutants do exist, but appear minimal. Unfortunately, natural food consciousness, also seemed minimal. For many reasons, Soviets eat a high starch diet of bread, potatoes, some meat, heavy soup or borscht. They have little fear of sugar. As tourists, we were served abundant meat, delicious sturgeon, and our vegetarians were eventually pacified.

Even without knowledge of Russian history, all felt the devastating effects of three "Great Patriotic" Wars which created disaster for hundreds of millions, leaving indelible scars on the lives of Soviets. We understood the tragedy and heroism of the Soviet people visiting monuments, listening to oral testimony from school children, or watching older war veterans decorated with honors. We understood by observing the fastidious work of historical reconstruction. Walking between the graves of 650,000 at Piscamemorial I recalled the words of poetess, Olga Bergholtz;

So many from our midst have disappeared; But we don't weep; folk truthfully are saying The cold has frozen Leningraders' tears

Overlooking the great Dneiper River in Kiev, stands a 200 foot mother victory monument, similar to our Statue of Liberty. Above our path, 20 feet high, block-long bronze statues of children, workers,

(Continued on page 17)

PoliTalks

Seeking roots

Following the Nov. 6 general election, many voters may be thinking of changing their party affiliation and joining the Republican camp. If so, the Cambridge Republican City Committee invites the public to attend their next meeting on Monday, Nov. 19, at 7:45 pm. Guest speaker will be Vince Dixon, freelance writer and political worker in Cambridge campaigns for the last ten years. He will speak on the topic, "Replanting the Republican Grass Roots." The meeting will be held at St. James Episcopal Church, 1999 Mass. Ave., just north of Porter Square.

Correction

In last week's edition, PoliTalks incorrectly reported that former City Councillor Cornelia Wheeler had addressed the Cambridge Civic Association recently on the history of the city's Plan E form of government. In fact, Wheeler delivered her talk to the Cambridge Historical Society. PoliTalks regrets the error.

Letters to the editor

Report on the schools

Now that our search process (which occupied much of my first ten months in office) is over, and our new superintendent installed - and quickly getting to know our schools; some of you have asked about current issues and events that concern the school committee. I would like to respond to these questions by passing along some good news about our schools and some information.

Sometimes I meet parents whose children are approaching high school age and who understandably seem unsure about how to decide whether our comprehensive high school, with more than 2,600 students, will be good for their child. Recently, I met a parent who had tackled this problem by arranging for his son and his wife to visit the school. The information nights for prospective high school parents allow parents to do this formally but I would like others to know that many children and parents do visit the school in the year prior to a student's entry.

For another group of parents with children about to enter kindergarten, I would like to emphasize the importance of our registration process which began this week and continues next week. Many parents who have not registered youngsters in the Cambridge Schools before still believe they can register their children in the fall. I would like to remind parents that registration in our schools has begun in November to allow us to attempt to balance our schools in accordance with our desegregation plan. If your child will be entering school in September, don't wait. Register him or her now! Call the Parent information center at 491-6200 for information about where you can register your kindergarten age child between November 8th and 16th. On the 9th, 12th, and 16th, you may register your child at the Parent Information Center in the Kennedy School until 4 pm.

For parents and interested members of the community, I would like to recommend the Link line as a way to keep abreast of school happenings. By calling 498-9239, you can hear a summary of the action taken at the regular meetings of the school committee on the first and third Tuesdays of the month. Any upcoming events will also be listed on the Link line. You can call this number after office hours.

On October 17, Superintendent Peterkin proposed a list of school system goals for the approval of the school committee. We are presently commenting on these goals.

I am convinced that having a clear mission and goals statement for the Cambridge Public Schools will be helpful to us in setting priorities and developing the budget for 1986. On November 13th at 7:30 pm, the school committee will hold a hearing to receive comments on the proposed goals from parents, community and staff. You can receive a copy of the proposed goals by contacting a principal or by contacting Bert Giroux at 498-9237.

These goals will determine the direction of the schools for the next two years. I hope many of you will review them and give members of the school committee your comments at the hearing on November 13th or by phone.

Fran Cooper
Cambridge School Committee

Information, please

I am writing this letter to solicit your help in locating a first cousin of mine. The main reason I want to locate her is that I have a small amount of money which belongs to her.

My cousin's name is Patricia Ramos. She was born in Falmouth, Mass. and lived there with her father (my uncle) until around 1956 or '57. When she left Falmouth she lived at 311 Concord Ave., Cambridge, until around 1963. The family she lived with had the last name of Ambush. In checking with the Boston Public Library and the Malboro Public Library, I was advised that when Pat lived in Cambridge, she was listed in the Marlboro directory in 1963 as having lived at West Main street in Marlboro. The only other information I have is that she had moved to either Cambridge or Somerville and that she had married a doctor. If one of your readers can help me, it would be appreciated as I need to get in touch with her. Patricia, or your readers can write to me at the address below.

Frank Mirand
PO Box 7313
Albuquerque, New Mexico 87194

Hole-punching

On coming to vote in Cambridge this morning I was appalled to be treated to a lesson on how to use a new punch-card voting machine. Now that I've used it I want to object strongly.

Here we are, trying to get out the vote, all of it, including people who aren't in the habit for one reason or another, who may need to be persuaded, or who encounter real difficulties in voting: the aged, the poor, the disabled, the poorly educated, those who have touble with English, with reading, with hearing. For all such persons, starting with directions on how to use a voting machine is a barrier.

My 91-year-old mother-in-law shortly afterward came to vote. She is keen as a whip, very well-informed, deeply interested. But she is deaf: how tell her what to do? -how take the time, while others are waiting? And she is shaky, as are many older persons, myself included: how get that stylus into the right, tiny hole?

If you make a mistake, there's nothing to show it, and no way to correct it but to start over on a new ballot.

And when you're finished you have punched a few holes in a card having 35 places to punch. There is nothing whatever that shows what you have done.

I am told that this system will speed up counting the ballots. That's a lot less important than managing to vote.

Back to a readable ballot, and marking X's where one wants them.

George Wald
Lakeview Avenue

'Disgrace'

A short time ago, I was a paitent in the Cambridge Hospital. While there, my niece, who lives outside Cambridge, visited me. Due to the parking lot being filled, she couldn't get a space so parked in front of the hospital. Not realizing she needed a Cambridge parking sticker, she found to her amazement a $5 parking ticket on her car.

I think this is very unfair to the patient, who is lonely, and also any visitors who come from outside of Cambridge. I am sure the visitor would never be tempted to go to Cambridge Hospital again thus depriving the patient of a few pleasant moments. Seems to me some kind of an arrangement could be made so outside of Cambridge visitors could visit a relative or friend without being fined. I think it is a disgrace.

Dorothy Roblee
Jay street

dole publishing

Cambridge Chronicle

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Merchandise or service advertised in the Cambridge Chronicle is expected to be accurately described and readily available at the advertised price. Deceptive or misleading advertising is never knowingly accepted. Complaints regarding advertising should be directed in writing to the advertising manager, Cambridge Sun Publishing Co., 145 Elm Street, Somerville, Massachusetts, 02144.

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MORE for your dollar
DeMoulas MARKET BASKET
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Smoked Shoulder FULLY COOKED Picnic 79¢ lb.
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Boneless Turkey GOLD STAR 1.59 lb.
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Turkey Pan Roast 2.19 lb. PKG.
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Meat Hot Dogs 1.39 LB. PKG.
Beef Hot Dogs ARMOUR 1.49 LB. PKG.
Pan Size Bacon ARMOUR 1.39 12 oz. PKG.
ARMOUR
Sliced Bacon 1.59 LB. PKG.
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Russian journey

(Continued from page 4)

peasants and partisans depict suffering and anguish. The museum is constructed in beautiful red marble, showing a panorama of the war where so many Russians and Americans were killed. How quickly we forget the life-giving bonds once shared to defeat a real enemy - Hitler. Kiev's Babi Yar is the monument for 65,000 Soviets, mostly Jews, who were rounded up and massacred under Nazi occupation. We showed our reverence by placing flowers there.

School girls in brown and white laced pinafored uniforms, and boys in short pants and jackets, shared this reverence with us after the opening of school on September 1, which is a national holiday. On that day, each student brings gigantic mums, asters or gladiolas to lavish upon teachers: and on this day, to the American guests of the opening ceremonies. "Learning" and "peace" were emphasized on permanent posters and speeches. Their secondary school system has graduated 90 percent of the labor force. In the classroom, the first lesson included asking students the meaning of "peace". Students replied, that Peace is when a friend visits, sunshine in the park and no more war. Over the summer, the students had read, Huck Finn, Treasure Island and Pinnochio. In bookstores in Lenigrad, I saw Katharine Anne Porter, Sherwood Anderson, William Faulkner, Ernest Hemingway, and many others.

With the "English School" so heavily weighted in basic academics I was ambivalent about sharing "Kids Book of Divorce," written by students at the Cambridge Fayerweather Street School. The book, autographed by the authors, describes coping with family strife. However, the Deputy Advisor of "Upbringing" surprised me by literally embracing it, saying "How wonderful, just what I need this year." They are beginning a course in which preparations for marriage and the family will be discussed, including the alcohol problem.

At the Soviet Women's Commission in Moscow, we also shared our common problem of high divorce rates. In the cities, theirs is every other family. Similar to American feminists, they also attribute friction in the family to traditional roles changing too slowly to meet the needs of both partners (90 percent of the women work). After a hard day, women do not like to assume full responsibility for house and family.

At the folk dance festival, brilliantly costumed Caucus couples stomped like American southern mountain cloggers and leaped high into the air. Incongruous as it seemed, a feminist theme developed. Men began to relax and make merry, while women grew more adament that they help. Washboards were soon thrust into their hands. This theme received the most applause and laughter.

Far from a place where plots are devised by despots to overthrow the world, the "Kremlin" contains cathedrals, gardens and classical European palaces for heads of state. 17th and 18th century church frescoes and giant towers are the pride of the walled city. Red Square is mind-boggling. ("Red" in old Russian — "Krasnaya" — means "beautiful".) Directly across from Lenin's Tomb, where his body lies visible in a crystal sarcophagus, stands the block-long Victorian GUM Department Store. A window display of sardines matches one of rare wines or sables. Next door is the Byzantine Magic Kindom of St. Basil's Cathedral with its brilliant swirling pear-shaped domes. Just as all roads lead to Rome; for centuries, all main arteries in USSR lead to Red Square.

Equaling the spectacle of Versaille with 1000 rooms is the Hermitage. Dozens of gilded marbled columned rooms with parquet floors contain some of the greatest treasures of the world, collected by Peter and Catherine the Great. Later, we stood in the Winter Palace courtyard where, after Sunday church, Russians begged for work and bread. Instead of a hearing, they were mowed down by Nicholas' bullets, sparking the first uprising in 1905 against

(Continued on back page)

Draper aids CVNA program

Harriet Rosen, Executive Director of the VNA of Cambridge has announced the receipt of a $500.00 check from C.S. Draper Laboratories for the funding of their Health Corners Program.

This program provides a preventive health and maintenance program to many of the elderly in the community's senior housing developments. The purpose of the program is to prevent institutional placement and help the elderly to avoid possible emergency situations.

The Health Corners sites have had over 1,700 visits from elderly clients in 1984

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All Season two plus two

size	also fits	w/w
P175/80B-13	B78-13	$31
P185/75B-14	C78-14	$33
P195/75B-14	D/E78-14	$37
P205/75B-14	F78-14	$38
P215/75B-14	G78-14	$40
P225/75B-14	H78-14	$42
P215/75B-15	G78-15	$42
P225/75B-15	H/L78-15	$43
P235/75B-15	L78-15	$47

$34 P155/80R-13
All Season Steel Belted Radial

size	also fits	w/w
P165/80R-13	AR78-13	$37
P185/80R-13	CR78-13	$40
P185/75R-14	CR78-14	$44
P195/75R-14	DR/ER78-14	$45
P205/75R-14	FR78-14	$48
P205/75R-15	FR78-15	$49
P215/75R-15	GR78-15	$51
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Miller Lite Loose cans 9.99 & dep.
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C. C. 106

City of Cambridge

PETITION OF William S. Noble, et al - Law and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development

Petition filed with the City Clerk November 5, 1984

(all hearing to be completed 65 days from filing date with the City Clerk)

25 days November
31 days December
9 days January
65 days = January 9, 1985 - all hearings

In City Council November 5, 1984

Referred to the Planning Board for report November 5, 1984

Planning Board Hearing December 18, 1984

(CITY COUNCIL must act within 90 days of the Planning Board's hearing which would be March 4, 1985.)

27 days December
31 days January
28 days February
4 days March
90 days = March 4, 1985

City Council hearing published - Chronicle - November 15, 1984 and November 22, 1984

Hearing before the City Council December 4, 1984 at 6:00 p.m.

Report to the City Council December 10, 1984

Passed to a second reading - January 21, 1985
published - Chronicle - January 24, 1985

Ready for Ordination
published

COMPLETION DATE: March 4, 1985

3/4/85 Placed on file due to expiration of time limit

C. C. 106

City of Cambridge

PETITION OF William S. Noble et al Housing Low and Moderate Income Household Inclusionary Requirements for Residential, Commercial and Institutional Development

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(all hearing to be completed 65 days from filing date with the City Clerk)

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31 days Jan
28 days Feb
18 days March
90 days = March 18, 1985

City Council hearing published - November 15, 1984 - Chronicle
& November 22, 1984 "

Hearing before the City Council December 4, 1984 at 6:00 p.m.

Report to the City Council December 10, 1984 - Tabled.

Passed to a second reading
published

Ready for Ordination
. published

COMPLETION DATE: March 18, 1985

CITY OF CAMBRIDGE
PUBLIC NOTICE

The City Council of the City of Cambridge will conduct a public hearing on February 4, 1985 in the City Council Chamber, City Hall, Cambridge at 6:00 p.m. for the purpose of discussing a petition of the City Council entitled "**Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development**" and a second petition submitted by William S. Noble on behalf of the Cambridge Rent Control Coalition entitled "**Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.**"

All interested persons are invited to attend and be heard at this time.

By order of the City Council,
Paul E. Healy, City Clerk.

(C)Jan.24,31

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OFFICE OF CITY CLERK
FEB 28 8 19 AM '85
CAMBRIDGE, MASS.

348 Franklin Street
Cambridge, MA. 02139-3731
Telephone 491-7181/523-2621
February 27, 1985

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

The City Council took very strange actions on the issue of inclusionary zoning/linkage on February 25.

A city council working group spent months trying to turn Development Department language into a workable ptoposal on the subject. The working group produced a document which had a lot of merit. This document is presently before the council.

The working group document, because of its reliance on the Development Department, also contained loopholes, omissions and illegalities. The C.R.C.C. submitted a proposal which cleaned up the remnants of staff work, and which made the concept meaningful. This document is before the council.

On February 4, the Development Department, in the person of Ms. Spiegelman, submitted to the city council language on inclusionary zoning/linkage which ignored months of work by the working group and C.R.C.C. The latest staff document, as is common on staff documents regulating developers, was notable for loopholes, omissions and illegalities. This document is now before the council.

On February 25, the city council rejected a request by the C.R.C.C. to consider improvements to the C.R.C.C. draft. These improvements included meaningful concessions, and included legal changes to conform the document to a recent Appeals Court decision. The swing votes were Duehay and Wolf.

The city council then took action to consider the Spiegelman draft. David Sullivan cast the swing vote this time. The City Council spent hours discussing and modifying the document which was the least likely to produce inclusionary zoning/linkage of the three documents before them. The document which the councillors chose to work on contained omissions, loopholes, and illegalities corrected in the others.

The council action is reminscent of action two years ago when Councillor Wylie pushed a Development Department draft for Simplex which did exactly the opposite of what he claimed it did. The situation now is essentially the same. Passage of a document based on the Spiegelman language will be meaningless, but its presence on the zoning books will prevent meaningful action in the near future.

I firmly hope that the city council will pass meaningful inclusionary zoning/linkage legislation. I therefor oppose the passage of any document which has a name and nothing else.

Respectfully submitted,

Robert J. La Trémouille

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CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

Alice K. Wolf
City Councillor

TO: City Councillors
Robert W. Healy, City Manager
Cambridge Rent Control Coalition
Kathy Spiegelman, Asst. City Manager for Community Development
Planning Board

FROM: Alice K. Wolf, City Councillor

DATE: February 26, 1985

RE: LINKAGE AND INCLUSIONARY ZONING

While the City Council meeting of February 25 is still fresh in my mind, I am cataloging my impressions of the discussion and motions with regard to the linkage and inclusionary zoning petitions. My purpose is to lend support to a renewed and successful effort to have such a petition passed in the near future.

Where this discussion talks about "consensus," it means a consensus of the Councillors who have indicated their general support of the linkage idea. Although several Councillors have so far opposed the idea, I would hope that in future discussion their concerns could be addressed and that they will reconsider this opposition.

HOUSING

It is my impression that there is a consensus that the inclusionary zoning formula require approximately 25% low and moderate units. However, some have a concern that it is not economically feasible for all housing projects, particularly small ones, or moderate priced ones, to support that level without substantial subsidies whose availablity is unclear. Several approaches tried to address that issue, but none adequately thought through to be clear that they would result in adequate subsidies at that right time. These approaches were the CRCC swapping notion, my suggestion for the use of subsidy or linkage money, and the Community Development Department proposal to subsidize a portion of the 25% be geared to "middle income" people resulting in a break even rather than subsidy situation for the developer.

An additional concern expressed was the need to find a way to fund, through inclusionary zoning, additional housing for middle income people who would need their rents written down, but would not need the deep subsidies that poor people need.

COMMERCIAL DEVELOPMENT

It is my impression that there is a consensus that large-scale commercial development does impact housing stock and should support the building of low and moderate income housing. There is a consensus that a cash payment should be able to be a substitute for the building of the actual units.

There was too little discussion on the linkage formula to be clear about exactly what the consensus on the appropriate magnitude of the exemption level, and the appropriate payment beyond that exemption. I believe we may need to gather more information to come to consensus on these issues. Our object should be to have a formula that will closely reflect what the cost of the development is in housing pressure terms, mitigated, if necessary, to the extent that feasibility of development is truly overbeleagured.

There was a suggestion that non-profit hospitals be excluded from linkage, but it was unclear that a distinction could or should be made between this non-profit institutional use and others.

The concern was also raised that formulas must be carefully assessed to ensure that "as of right" development does not exclude all major developments and apply only to the smaller ones.

ADMINISTRATION

Given the options of a totally separate Housing Trust or total Community Development Department administration, the discussion of the appropriate administration of these programs did not reach a consensus. There seemed to be agreement that there should be a "policy board" to set specific policy for the use of cash, but whether the final decisions on placement of units and other housing decisions should rest with a trust board or the Community Development Department.

There was no consensus on the membership of such a Board either, the options being either basically a board of consumers or a majority board of housing producers. There did seem to be consensus that the Community Development Department should be staff to a Board, but disagreement about what that role really means.

From the discussion it seemed to me that there needs to be a structure that:

1. Gives the housing expertise in the City clear input into the process. If we lose that expertise, it will be difficult and much too expensive to build the housing.

2. Gives consumers a real say.

3. Has representation of the financing and business community to provide that expertise.

The Board or Trust needs to be staffed by the Community Development Department, so that this activity compliments other housing and development activity going on in Cambridge and decisions are not made in a vacuum.

A piece that may be missing is that this has the potential of a large project that some full-time staff will be needed. The relationship of that staff to the Board and to the Community Development Department needs to be specified.

The policy of the City Council in relation to this Board or Trust also needs to be addressed.

USE OF THE CASH PAYMENTS

It seems to be the clear consensus that the major portion of the linkage cash payments be used for building of new units for low and moderate income people.

Several issues and other possible minor use of the money have been mentioned over the months of discussion. There has been some concern about whether over the years there will be adequate land on which to place this housing. Because of this and with the enormous cost of new construction, a small portion of this money, let's say not more than 20 or 25%, could be used to rehabilitate existing run-down housing for low and moderate income people.

The need for community residences that serve almost exclusively low/moderate income people who have special difficulties has been raised.

Lately the issue of whether small sums of money for other purposes, such as education, has been suggested.

LEGALITY

It is the consensus that the City Council must pass a linkage and inclusionary zoning petition that is highly likely to stand up in court, if challenged. Not only is that the Council's legal obligation, but that will at least reduce the possibility of a court challenge although a challenge from someone seems likely in any case.

The Community Development Department and CRCC proposed an approach to earlier objections of illegality that may be adequate to meet the legal requirements. More study needs to be completed on this, to ensure a sound legal approach.

In addition, the requirements for 6 versus 7 votes should be pursued. The LaTremouille analysis needs to be analyzed carefully as it may well have merits. But it was not really possible to be clear about that in the short time available.

FUTURE ACTION

There seems to be a consensus position we should now put together a process to develop a petition that meets the needs and objections expressed by all the participants. A great deal of work and thought was put in by City Councillors, the Working Group, CRCC, and the Community Development Department, and the Planning Board. Because of the complexity of the subject and politics of this issue, this work just did not jell in time into a whole.

There now seems to be a consensus position that we should regroup, and develop an effective way of dealing with the issues raised. Councillor Velllucci's suggestion of having a full-time person assigned to this project by the City to bring it all together is, I think, very important to success.

In addition, we should try again to involve the development and business institutional community in discussions. Although there is little evidence so far that they are willing to take other than a negative stance, we should try again to awaken their sense of responsibility to the City which they impact so heavily and out of what they stand to make a good deal of money. If their cooperation is unobtainable on this basis, we must make the success of the petition so likely that is is in their self-interest to participate.

AKW/smc

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AKW/smc

Robert J. La Trémouille
ATTORNEY AT LAW

131 State Street, Suite 201
Boston, Massachusetts 02109-3201

Telephone
(617) 523-2621

RECEIVED BY
OFFICE OF CITY CLERK
FEB 25 12 37 PM '85
CAMBRIDGE, MASS.

February 25, 1985

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

RE: Petition of William S. Noble, et al. on behalf of the Cambridge Rent Control Coalition, November 5, 1984, concerning inclusionary zoning and linkage

I have been requested by the Cambridge Rent Control Coalition to provide you a more detailed legal analysis of our petition in response to the City Solicitor's letter of January 31, 1985.

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The downzoning portion of our proposal comes under the normal powers of a community to change its zoning ordinance. General Laws, c. 40A, s.5. Within the Sturges analysis, extremely severe downzonings have been found legal. Note in particular, the analysis in Turnpike Realty, Inc., cited in Sturges. This zoning case concerned wetlands regulations which, for the good of the community, denied certain properties almost all their speculative value. The regulations were found legal. The property owner attempted, but was unable, to obtain United States Supreme Court review. Our proposal is much more moderate than the Turnpike Realty zoning. Other major downzonings are also cited in that case.

While we propose to allow a reasonable amount of development as of right, we also propose a special permit process to exceed that base up to the present very generous maximums. This special permit process is proposed in accordance with General Laws, chapter 40A, section 9, which reads in relevant part:

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissable density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide . . . housing for persons of low or moderate income . . .

The reason why we propose this combination of changes is straight-forward. Cambridge is the fourth most densely populated city in the country. In 1980 we had more jobs than the average community our size. In the past three years we have increased our office space by 32%. We are making tremendous increases in jobs for upper income people in our community. The side-effects are seen in extreme demands upon our housing stock.

High paid office employees are displacing low and moderate income people from their homes. New market-rate housing is completely unavailable for low and moderate income people. We are rapidly becoming an upper income community.

In order that we obey state policy concerning housing opportunities for all income groups we must take action. We can no longer afford such massive development if it only exacerbates a bad situation. We propose that such development continue to be allowed at a reasonable level as-of-right. We require that larger development take action to offset its negative impact on our community's housing stock. Separate requirements are made for housing construction and for non-housing developments, reflecting practical differences in regulatory needs. Fully exempt from these zoning changes are uses which normally provide meaningful job opportunities for low and moderate income people.

Enclosed is a summary of the cases cited by the City Solicitor. The reasonable interpretation of these cases is that the Massachusetts Supreme Judicial Court would tell us to obey chapter 40A and Sturges. We have done so.

One case cited by the solicitor is of particular importance in the present discussion. That is S.C.T.T., Inc. v. Planning Board of Braintree, 19 Mass.App. 101, 472 N.E.2d 269, decided December 21, 1984. We have reviewed this decision closely, and have modified our proposal to ensure that it fulfills the criteria established by the Appeals Court.

The Braintree ordinance allowed no uses in its business district except by special permit. Special permit criteria were inadequate so uses allowed were not uniform from property to property. Provisions were internally contradictory because they lacked cross-references.

Our proposal always has had a meaningful base zone. We are modifying it to increase as-of-right development on larger lots, subject to F.A.R. and intensity of use limits. We are adding cross-references elsewhere in the ordinance as appropriate. All changes are less restrictive than what was advertised or are neutral. All possible questions raised by S.C.I.T. Inc. have been resolved.

Respectfully submitted,

Robert J. La Tremouille
Attorney at Law

APPENDIX

Summary Analysis of City Solicitor's Cited Cases

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Robert J. La Trémouille
ATTORNEY AT LAW

131 State Street, Suite 201
Boston, Massachusetts 02109-3201

Telephone
(617) 523-2621

CITY CLERK
FEB 25 12 07 PM '85
CAMBRIDGE, MASS.

February 25, 1985

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

RE: Petition of William S. Noble, et al. on behalf of the Cambridge Rent Control Coalition, November 5, 1984, concerning inclusionary zoning and linkage

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CITY OF CAMBRIDGE

INTEROFFICE CORRESPONDENCE

To : Mr. Robert W. Healy
City Manager

Date : February 11, 1985

From : Joan Lastovica JL.
City Engineer

Reference

Subject : Calculations of Land for Inclusionary Zoning

Based on further refinement, verification and updating of land areas calculated for inclusionary zoning, and land owned by registered objectors, (see memo dated February 1, 1985) the following re-calculated areas are presented for consideration.

These re-calculated areas do not significally change the areas identified in memo of 2/1/85. The land owned by registered objectors tallied to date (777.56 acres), exceed twenty percent (20%) of land area subject to inclusionary zoning (2617.96 acres).

These re-calculated areas resulted as we were unable to verify the MDC Land Area of 322.59 acres, from either documents of records or the Commonwealth of Massachusetts. Therefore, using a conservative approach we scaled the MDC Land Areas off of plans on file, and determined these areas to be 186± acres. These areas are: MDC Rights-of-Ways, bank of the Charles River, and MDC Park lands. This figure does not include the Alewife Reservation. The Alewife Reservation is counted under Zoned Open Space.

Additionally, we added the Old Burying Ground Cemetery to the list, and updated the Public Ways area. These additions represent a 4.5 percent increase in the land area subject to inclusionary zoning, and a corresponding 4.5 percent increase in the twenty percent figure from 497.92 acres to 523.59 acres. See Table One A.

The land area owned by registered objectors reached 777.56 acres as of 12:00 PM, February 11, 1985 with 47 more petitioners to count. See Table Two.

Conclusions

1) Re-calculated land area subject to inclusionary zoning equals 2617.96 acres

2) Twnety percent of this figures equals 523.59 acres

3) As of 12:00 PM, February 11, 1985, the land owned by registered objectors equals 777.56 acres

4) Land area owned by registered objectors exceeds 20 percent of land area subject to inclusionary zoning.

TABLE ONE A

CALCULATION OF LAND SUBJECT TO INCLUSIONARY ZONING (in acres)

Total area of the City		4486.40
Water Area		
Charles River	305.57	
Fresh Pond	166.47	
Lechmere Canal	2.07	
Total Water Area		474.11
Zoned Open Space		
Fresh Pond Land Area	158.32	
Alewife Reservation	50.±	
City Dump	74.81	
Russell Field	11.±	
Maple Avenue	0.13	
Total Zoned Open Space		294.26
Cemeteries		
Cambridge	64.25	
Mt. Auburn	11.65	
Old Burying Ground	1.97	
Total Cemeteries		77.87
Public Ways	681.67	
MDC Land Area	186.±	
City Parks & Playgrounds	154.53	
TOTAL AREA EXEMPT FROM INCLUSIONARY ZONING		1868.44
LAND AREA SUBJECT TO INCLUSIONARY ZONING		2617.96
TWENTY PERCENT (20%)		523.59

TABLE TWO

CALCULATIONS OF LAND OWNED BY REGISTERED OBJECTORS (in acres)

(PARTIAL LIST)

OBJECTOR	ACRES
Harvard University	199.20
MIT	199.14
Radcliffe	20.86
Commonwealth Gas Co.	3.75
Cambridge Electric Light Co.	33.83
Petitions dated 12/4/85 & 1/4/85	66.95
Petitions dated 12/17/84, 1/14/85 & 1/21/85, 1/19/85	253.83
Petitions dated 2/4/85 not included	
Total	777.56

Stephen H. Baird
P.O. Box 570
Cambridge, MA 02238
617/864-2970
February 11, 1985

RECEIVED IN OFFICE OF CITY CLERK
FEB 13 2 22 PM '85
CAMBRIDGE, MASS.

Councillor David Sullivan
City Council Offices
City Hall
Cambridge, MA 02139

Dear Councillor David Sullivan:

I have enclosed a proposed draft of a new revised Regulation of Street Performances. I hope this can be enacted before the sunny and warmer weather appears this spring.

The following are reasons I feel this new revised regulation should be enacted:

1. Street performers have become an important asset to the City of Cambridge since the original regulations were enacted.

2. The Eastern Federal District Court in Goldstein v. Nantucket, 477 F. Supp., 606, (1979), has ruled that street performances are a protected First Amendment right.

3. The Fourth Circuit US Court of Appeals has ruled limitation of street performances to designated areas as an unconstitutionally overbroad criteria (Davenport v. Alexandria, 710 F.2d, 148, (1983); CA #81-709-A; #83222).

4. The new revised regulation is more in line with regulations passed in Chicago, and those presently under consideration in Hartford, Connecticut.

5. The many new construction projects in Cambridge have greatly increased the number of appropriate areas for street performers.

6. The Cambridge Arts Council has worked extensively with street performers, including a street performers' festival as part of the River Festival.

7. Street performers in Cambridge have been featured numerous times on WBZ, WGBH, WCVB, The Boston Herald, The Boston Globe, TAB newspapers, The Cambridge Chronicle, and many other media outlets, increasing visibility and attracting tourists for the City of Cambridge.

In conclusion, I feel the new revised Street Performers Regulation will enhance both the City of Cambridge and the street performers' best interests in making the city's streets some of the most creative, safe, colorful, and exciting streets in the country. I hope the new regulations will be swiftly enacted.

Sincerely,

Stephen H. Baird

DRAFT

Regulation of Street Performances

Sec. 1 Definitions

The following terms are defined for the purpose of this regulation as follows:

(a) "Perform" includes, but is not limited to, the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing and reciting.

(b) "Performer" means an individual who owns a permit issued pursuant to the provisions of this Regulation.

(c) "Public Areas" includes sidewalks, parks, playgrounds, and all other public ways located in the City of Cambridge.

Sec. 2 Prohibition

(a) No person may perform in a public area without having obtained a permit issued under Section 3 of this Regulation.

(b) Any person who performs in a public area without a permit issued under Section 3 of this Regulation shall be fined not more than $25. The proceeds of any such fine shall be directed to the Cambridge Arts Council and used in its administration of this Regulation. Any person paying such a fine in excess of $5 may obtain a permit under Section 3 of this Regulation without paying a fee therefor if application for such permit is made within 30 days of such payment.

Sec. 3 Permit

(a) A permit shall be issued by the Cambridge Arts council to each applicant therefor in exchange for a completed application and a fee of $5, subject to the provisions of Section 8 of this Regulation.

(b) A completed application for a permit shall contain the applicant's name, address, and telephone number and shall be signed by the applicant.

(c) A permit shall be valid from the date on which it is issued through December 31 of the year in which it is issued; provided, however, that a permit issued in 1984 shall be valid through December 31, 1985.

(d) A permit shall contain the name and permit number of the applicant plus the year in which the permit is valid and any special allowance made by the Cambridge Arts Council pertaining to the permit.

(e) A permit shall be non-transferable.

(f) Upon issuing a permit, the Cambridge Arts Council shall also issue the performer a printed copy of this Regulation.

Sec. 4 Display of Permit

A performer shall carry a permit on his or her person while performing and shall show it to any police officer of the City of Cambridge upon request.

Sec. 5 Permitted Performances

(a) Performances may take place in the following

locations:

in public areas, except those excluded by the City Council or the Chief of Police pursuant to Section 7 of this Regulation;

on private property, if the performer has obtained the written permission of the owner of such property or other person with authority to grant such permission with respect to such property; and

in a public area where an authorized fair or public festival is being conducted, if the performer has obtained the written permission of the sponsor of such fair or festival.

(b) Performances may take place between 10:00 a.m. and 11:00 p.m. unless otherwise allowed by the Cambridge Arts Council.

(c) A performer may not use electric or electronic amplification except as otherwise allowed by the Cambridge Arts Council.

(d)A performer may not block the passage of the public through a public area except as permitted by the sponsor of an event under paragraph (a) of this Section or otherwise allowed by the Director of Traffic and Parking. If a sufficient crowd gathers to see or hear a performer such that the passage of the public through a public area is blocked, a police officer may

disperse the portion of the crowd that is blocking the passage of the public, but said police officer shall not cause the performer to leave the location.

(e) No performer or group of performers shall perform at a distance of less than 50 feet from another performer or group of performers that already is performing.

Sec. 6 Legal Conduct

(a) A performer may accept contributions of money or property at a performance, provided that no sign requesting contributions shall exceed 12" by 18" in size. Contributions may be received in any receptacle.

(b) A performer who performs and accepts contributions under the provisions of this Regulation shall not be committing disorderly conduct by virtue of those acts.

(c) A performer who performs under the provisions of this Regulation shall be presumed not to constitute a disturbance of the peace or quiet.

Sec. 7 Exclusion of Public Areas

(a) Upon the written recommendation of the Chief of Police or the Director of Traffic and Parking, the City Council or any committee thereof to which responsibility is delegated may conduct a public hearing to determine whether a designated public area shall be excluded from further performances.

(b) No public area shall be excluded from performances except;

by majority decision of City Council or its designated committee pursuant to paragraph (a) hereof; or

by decision of the Chief of Police in the case of an emergency; provided that no public area may be excluded from performances by the Chief of Police under this subparagraph for more than 7 days.

(c) No exclusion of public areas, except as decided by the Chief of Police in an emergency, shall be effective until seven days after written notice of said exclusion has been mailed by the Cambridge Arts Council to each performer.

(d) Upon issuing a permit, the Cambridge Arts Council shall also issue to the performer a current and complete list of all public areas in the City of Cambridge that have been excluded from performances.

Sec. 8 Revocation of Permit

(a) The Cambridge Arts Council may suspend a permit for not more than 30 days if any information contained in the application therefor is found to be false.

(b) The Cambridge Arts Council may suspend a permit for not more than 60 days or revoke a permit if a performer violates any of the provisions of this Regulation.

(c) After revocation of a permit, the former performer may not obtain a new permit until such date as the Cambridge Arts Council may determine, provided that such date shall not be more than one year after the date of revocation.

(d) No permit may be suspended or revoked unless the Cambridge Arts Council holds a public hearing concerning that suspension or revocation, written notice of which has been given to the performer not less than 7 days prior to said public hearing. Such notice shall set forth the facts constituting the basis for the proposed suspension or revocation.

The Cambridge Arts Council

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

617) 498-9033

July 1, 1984

Mr. Stephen Baird
Folk Arts Network
P.O. Box 867
Cambridge, MA 02138

Dear Steve,

I am very pleased to have the opportunity to support your newly drafted ordinance for the regulation of street performers.

The Cambridge Arts Council welcomes the possibility of becoming the department responsible for licensing street performers. We have worked with a wide variety of street perfomers since the beginning of the Council in 1974 -- in the River Festival, other public celebrations and, most recently in the very successful Street Perfomers' Festival on Cambridge Commons. We know the artists and have built up a good rapport with them over the years. We are currently engaged in negotiations to bring street performers to Central Square (at the pressing request of the local merchants) and to improve performing conditions in Harvard Square, at the request of the performers.

Your proposed ordinance does, indeed, sensibly regulate -- as opposed to discourage -- street performing.

The street performers are a valuable asset to this city -- as witnessed by the enthusiasm in Central Squre for such performers -- and a well drafted ordinance is very welcome in order to regulate in the public and performers' interest.

After ten years' experience in working with the street performers, with the public, with the city departments responsible for public safety and convenience, and with the businesses of Cambridge the Cambridge Arts Council is in an ideal position to become the licensing department. We hope that such authority will be established by the passage of this ordinance.

Sincerely,

Christine K. Connaire
Executive Director

CKC:es

ester Preston Lee, Chairman/ Judith Contrucci, Mark Favermann, Mark Murphy, Vice Chairmen/ Herbert Agoos/ Roswell Angier/
Martha Cain/ Eliza Collins/ John Constable M.D./ Jack Dyer/ Ronald Lee Fleming/ Willie Hills/ Faith Moore/
Michael Padnos, Esq./ Eduard Franz Sekler/ David J. Steinberg/ David Vickery/ Chris Connaire, Executive Director

corcoran's
615 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139 • (617) 864-3000

July 13, 1984

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P.O. Box 867
Cambridge, MA 02238

Dear Mr. Baird:

I have recently received a copy of the proposed regulation governing street performers in the City of Cambridge. I have read it and, as a Cambridge businessman, I fully support this proposal. I wish you and the Cambridge Arts Council success in having this proposal enacted into law.

Sincerely,

Paul R. Corcoran, Jr.
President

dations had possession of the raw data requested, and the 13 recipients of research grants that did were not themselves an "agency," no "agency record" existed for purposes of FOIA. *Id.* 190 U.S.App.D.C. at 238–239, 587 F.2d at 1135–36.

The decision in *Forsham* does not disturb this Court's prior holding. The Circuit Court's primary line of reasoning, concerning the degree of federal involvement necessary to transform data into "agency records," need not be reached if the possessor and producer of the data is itself an agency. NCMF undisputedly possesses and controls the production of all relevant documents here; moreover, it satisfies the test for agency status previously promulgated by this Circuit and endorsed in *Forsham*. To qualify as an agency under FOIA, 5 U.S.C. § 552(e), an organization must exercise substantial independent authority in performing its particular functions, *Washington Research Project, Inc. v. Department of HEW*, 164 U.S.App.D.C. 169, 179, 504 F.2d 238, 248 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963, 95 S.Ct. 1951, 44 L.Ed.2d 450 (1975); *Soucie v. David*, 145 U.S.App.D.C. 144, 152, 448 F.2d 1067, 1075 (D.C. Cir. 1971), and it must be sufficiently controlled by government to justify attributing governmental character to its operations. *Rocap v. Indiek*, 176 U.S. App.D.C. 172, 175, 539 F.2d 174, 177 (D.C. Cir. 1976). *See* H.R.Rep.No.876, 93d Cong., 2d Sess. 8 (1974), *reprinted in* [1974] U.S. Code Cong. & Admin.News, pp. 6267, 6274; S.Rep.No.1200, 93d Cong., 2d Sess. 9 (1974) (Conf.Report), *reprinted in* [1974] U.S.Code Cong. & Admin.News, pp. 6285, 6293.

The holding in *Forsham* that private medical centers receiving pure research grants lack the independent decisional authority to qualify as an agency is clearly distinguishable from the facts of this case. As noted above, NCMF has statutory authority to make final, binding decisions, and it exercises such authority on a regular basis just as Congress intended. The conclusion that the 13 medical centers in *Forsham* are not sufficiently subject to day-to-day federal control must also be distinguished here. The PSRO statute established pervasive procedural requirements for virtually every phase of PSRO activities, and organizational requirements governing selection of the PSRO entity and its members. These statutory obligations are supplemented extensively by HEW regulations and by the PSRO Transmittals and Program Manual which are binding on each PSRO. *See* NCMF Contract, Art. XIV, (July 1, 1977), attached to defendants' Affidavit of Michael Goran. In short, PSROs such as NCMF perform a characteristically governmental function and are subject to detailed government control in their program planning and implementation.

Defendants have failed to establish the applicability of any exemptions claimed. Accordingly, plaintiff's motion for summary judgment is hereby granted and defendants' motion for reconsideration or summary judgment is hereby denied. The Court in entering its earlier decision that NCMF is an "agency," felt that an immediate appeal would not materially advance the ultimate termination of the litigation. It denied NCMF's request for an interlocutory appeal, but assured defendants that a stay would be entered upon resolution of the entire controversy. All further proceedings in this action are now stayed for 30 days, to allow defendants to seek a stay pending appeal in the United States Court of Appeals for the District of Columbia Circuit.

SO ORDERED.



Robert GOLDSTEIN

v.

TOWN OF NANTUCKET et al.

Civ. A. No. 79–1455–Z.

United States District Court,
D. Massachusetts.

Sept. 25, 1979.

Professional musician brought action for declaratory and injunctive relief, alleg-

ing that enforcement by town of its transient vendor bylaw deprived him of rights secured by the First Amendment. The District Court, Zobel, J., held that transient vendor bylaw, as applied to troubadour, was constitutionally deficient.

Judgment to be entered.

1. Constitutional Law ⇐90(1)

By its terms, the First Amendment forbids infringement of right of free speech and this constitutional protection of free speech, moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. U.S.C.A.Const. Amend. 1.

2. Constitutional Law ⇐90.1(6)

Troubador's public performance of Nantucket's traditional folk music was clearly within scope of protected First Amendment expression. U.S.C.A.Const. Amend. 1.

3. Constitutional Law ⇐90(3)

Constitutional guarantee of the First Amendment does not confer absolute protection from government regulation of public expression; states may impose reasonable and impartial regulations upon the time, place and manner of public expression. U.S.C.A.Const. Amend. 1.

4. Constitutional Law ⇐90.1(4)

Nantucket's bylaws setting standards for licensing of entertainers, including plaintiff troubador, and which included broad licensing criteria of financial responsibility of applicant, effect on neighboring properties, and opinion of town merchants, did not pass constitutional muster as applied to plaintiff troubador, whose contemplated activity of performing in tradition of balladeers, on the street, enjoyed First Amendment protection. U.S.C.A.Const. Amend. 1.

5. Constitutional Law ⇐90.1(4)

Fact that plaintiff troubador accepted contributions of passersby during his public performances would not dilute his protection under the First Amendment and would not broaden town's narrow mandate to exercise impartial regulation upon use of sidewalks for public expression. U.S.C.A.Const. Amend. 1.

John Reinstein, Mass. Civil Liberties Union Foundation, Boston, Mass., for Robert Goldstein.

Charles A. Goglia, Jr., King, Goglia, Kellogg & Gardner, Wellesley, Mass., for the Town of Nantucket.

MEMORANDUM OF DECISION

ZOBEL, District Judge.

Plaintiff is a professional musician who is known as the "Troubadour of Nantucket". He brought this action for declaratory and injunctive relief, alleging that enforcement by the Town of Nantucket of its Transient Vendor Bylaw deprives him of rights secured by the First Amendment. The bylaw, as applied to plaintiff, is constitutionally deficient.

The relevant facts are not in dispute. Plaintiff has for many years studied and performed the traditional music of Nantucket and is an acknowledged authority on the music and folklore of the island. He plays a number of instruments from the hammer dulcimer to the fife and banjo and he sings. He has performed the music of Nantucket at numerous festivals and in concert but prefers to perform in the tradition of balladeers, on the street. When he performs in Nantucket, he customarily plays the hammer dulcimer and sings, and positions his open dulcimer case so that passersby may contribute donations, and some do. On a number of occasions during the past four years plaintiff attempted to play his music in the streets of Nantucket but was prevented by town officials from doing so. In 1975, he applied to the town for permission to perform, and his petition was denied. In 1978 he again applied and was granted a "conditional permit" for a period of two weeks. The permit specified locations and times at which plaintiff could perform. At the end of the two-week period the Police Chief reported to the Board of

Selectmen that there had been "no problems". The Board then advised plaintiff that the new Transient Vendor Bylaw did apply to him and that he would have to obtain a permit before he would "be allowed to proceed further with the playing of . . . [his] . . . music." The bylaw defines "Transient Vendors" to include "any person who engages in a transient or temporary business . . . selling . . . offering for sale or accepting contributions for the offering . . . or providing . . . entertainment." It sets forth the standards for deciding whether a permit may issue. Plaintiff attacks these standards and argues that in light of the First Amendment they include impermissible criteria for regulation of free expression.

[1, 2] By its terms, the First Amendment forbids infringement of the right of free "speech." The Constitutional protection of free speech,[1] moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. *Miller v. California*, 413 U.S. 15, 22-3, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), *rehearing denied* 414 U.S. 881, 94 S.Ct. 26, 38 L.Ed.2d 128 (1973). See also, *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557-8, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (the musical "Hair"), *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503, 72 S.Ct. 777, 96 L.Ed. 1098 (1952) (the motion picture "The Miracle"). The substance and not merely a method of expression is protected by the First Amendment:

> [While] Each medium of expression, of course, must be assessed for First Amendment purposes by standards suited to it, . . . 'the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule.' *Southeastern Promotions, Ltd. v. Conrad, supra*, 420 U.S. at 557-8, 95 S.Ct. at 1246, quoting *Joseph Burstyn, Inc. v. Wilson, supra*, 343 U.S. at 503, 72 S.Ct. 777.

Accordingly, plaintiff's public performance of Nantucket's traditional folk music is clearly within the scope of protected First Amendment expression.

[3] The Constitutional guarantee, however, does not confer absolute protection from government regulation of public expression. States may impose reasonable and impartial regulations upon the time, place and manner of public expression. *Schneider v. State of New Jersey*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939). But "streets, sidewalks, parks, and other similar public places are . . . historically associated with the exercise of First Amendment rights . . ." *Amal. Food Emp. U. Loc. 590 v. Logan Val. Plaza*, 391 U.S. 308, 315, 88 S.Ct. 1601, 1607, 20 L.Ed.2d 603 (1968), and "[the Supreme Court] ha[s] consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153, 89 S.Ct. 935, 940, 22 L.Ed.2d 162 (1969) (citations omitted). In *Shuttlesworth v. City of Birmingham*, the court recalled thirty years of prior First Amendment decisions and concluded "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Id.*, 394 U.S. at 150-1, 89 S.Ct. at 938. (citations omitted)

[4] Nantucket's bylaw subjects entertainers, including plaintiff, to the same licensing requirements as apply to transient merchants and vendors. A permit may not issue without a finding by the Board of Selectmen that issuance "would be beneficial to the best interests of the Town of Nantucket and its inhabitants." In making its determination, the Board of Selectmen are, by the terms of the bylaw, required to

1. First Amendment protection applies to state action as well as Congressional action. See *Schneider v. State of New Jersey*, 308 U.S. 147, 150, 60 S.Ct. 146, 84 L.Ed. 155 (1939). See especially *id.*, at 150, n. 8, 60 S.Ct. 146.

consider the "financial responsibility" of the entertainer, the "effect of the [entertainment] on the neighborhood properties", and the interests of public order and safety. As a matter of practice, they also take into consideration the wishes of the merchants in the shopping area. Because three of the licensing criteria—financial responsibility of the applicant, effect on neighboring properties, and the opinion of town merchants—are neither narrow, objective nor definite standards, and because those criteria exceed in their scope constitutionally permissible grounds for regulating free expression, the bylaw does not pass constitutional muster. As applied to plaintiff, whose contemplated activity enjoys First Amendment protection, it is unconstitutional.

Defendant contends, however, that plaintiff's activity is commercial speech and thus does not enjoy First Amendment protection. It further argues that even if the performance is protected activity, the enforcement of the bylaw conforms with the guaranteed right of free expression and permits only impartial restriction of the time, place and manner of plaintiff's activity. Neither of these contentions is availing.

[5] The United States Supreme Court recently observed that "the notion of unprotected 'commercial speech' [has] all but passed from the scene." *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council*, 425 U.S. 748, 759, 96 S.Ct. 1817, 1824, 48 L.Ed.2d 346 (1976), citing *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975). Indeed, "[s]peech . . . is protected even though it is carried in a form that is 'sold' for profit (citations omitted), and even though it may involve a solicitation to purchase or otherwise pay or contribute money." (citations omitted) *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council, supra*, 425 U.S. at 761, 96 S.Ct. at 1825. See also *Bates v. State Bar of Arizona*, 433 U.S. 350, 363, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). The fact that plaintiff accepts contributions of passersby during his public performances, thus, does not dilute plaintiff's protection of the First Amendment. It plainly does not broaden defendant's limited mandate to exercise impartial regulations upon the use of the sidewalks for public expression.

Defendant's second argument is contradicted by the very terms of the bylaw which chart a course of Town inquiry that ranges far beyond the narrow parameters set by the First Amendment. Neither the language of the bylaw nor defendant's testimony suggests that any authoritative construction so narrows the bylaw as to comply with the command of the First Amendment. *Cf. Cox v. State of New Hampshire*, 312 U.S. 569, 576, 61 S.Ct. 762, 85 L.Ed. 1049 (1941). See also *Shuttlesworth v. City of Birmingham, supra*, 394 U.S. 147, 153, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969).

The bylaw directs the selectmen to consider, among other factors, the "financial responsibility" of the applicant and the effect of the proposed expression "on the neighborhood properties." The existence of such broad evaluative criteria in addition to specific criteria for the protection of public safety belies defendant's claim that determination of what is "beneficial to the best interests of the Town . . ." contemplates only the interest of public safety. Indeed, the Chairman of the Board of Selectmen testified that one primary consideration in weighing applications is the opinion of neighboring merchants, and on the face of plaintiff's 1978 application to the town there appears a handwritten notation that one of the selectmen is "investigating with merchants."

The requirement of merchants' approval is irreconcilable with freedom of expression. It is unqualified censorship and it is just what the First Amendment forbids. The prayers for declaratory and injunctive relief are granted. Pursuant to authority granted by 28 U.S.C. § 2201, the Court determines and declares that the Transient Vendor Bylaw (Effective August 24, 1978) of the Town of Nantucket, Massachusetts is unconstitutional as applied to plaintiff.

Plaintiff shall prepare and submit to defendant for approval as to form a judgment in accordance with this opinion.

CITY OF CAMBRIDGE

INTEROFFICE CORRESPONDENCE

To Robert W. Healy, City Manager **Date** February 1, 1985

From Joan Lastovica, City Engineer **Reference**

Subject Calculations of land for Inclusionary Zoning.

Pursuant to your request for calculations of land subject to Inclusionary Zoning and land owned by registered objectors, the following analysis and tables are presented for your consideration.

Conclusions are:

1. The land subject to Inclusionary Zoning equals 2489.61 acres.

2. Twenty percent (20%) of the land subject to Inclusionary Zoning therefore equals 497.92 acres.

3. As of 12.00 p. m. January 30, 1985, the land owned by registered objectors equals 566.22 acres.

Thus the land owned by registered objectors exceeds twenty percent (20%) of the land subject to Inclusionary Zoning.

The land area subject to Inclusionary Zoning was calculated by subtracting out water areas, zoned open space, cemeteries, public ways, MDC land area, and city parks and playgrounds. (See Table 1). These areas were excluded from the total acerage of the City as the areas are not developable at present, or without acts of the legislature. This may be a partial list of areas to be excluded from the analysis.

The land and water areas used in this analysis were determined by:

1. documents of record from the Engineering Department.

2. measured or scaled areas from plans on file, indicated by a plus/minus sign ($\pm$), and

3. historic information contained in other city records. The figures represent our best available estimates of these areas at present.

The land areas of registered objectors (see Table 2), were obtained by:

1. petitions filed by registered objectors at the City Clerk's Office.

2. matching registered objectors with block and lot numbers provided by the Assessors Office, and

3. tallying areas of land owned by registered objectors from the Assessors plats and City block/lot listings.

Due to time constraints it was necessary to first count those registered objectors with the largest land holdings in the City. Other registered objectors were counted until twelve o'clock (12) Noon Wednesday, January 30, 1985, at which time the twenty percent figure had been exceeded. Additional lists of registered objectors exist which have not yet been tallied.

Support documentation for the information provided in this report are available at your request.

TABLE ONE

CALCULATION OF LAND SUBJECT TO INCLUSIONARY ZONING (in acres)

Total area of the City		4486.40
Water Area		
Charles River	305.57	
Fresh Pond	166.47	
Lechmere Canal	2.07	
Total Water Area		474.11
Zoned Open Space		
Fresh Pond Land Area	158.32	
Alewife Reservation	50.±	
City Dump	74.81	
Russell Field	11.±	
Maple Avenue	0.13	
Total Zoned Open Space		294.26
Cemeteries		
Cambridge	64.25	
Mt. Auburn	11.65	
Total Cemeteries		75.90
Public Ways		675.40

* *

MDC Land Area	322.59
City Parks & Playgrounds	154.53
TOTAL AREA EXEMPT FROM INCLUSIONARY ZONING	1996.79
LAND AREA SUBJECT TO INCLUSIONARY ZONING	2489.61
TWENTY PERCENT (20%)	497.92

TABLE TWO

CALCULATIONS OF LAND OWNED BY REGISTERED OBJECTORS (in acres)

(PARTIAL LIST)

OBJECTOR	ACRES
Harvard University	210.02
MIT	199.14
Radcliffe	19.91
Commonwealth Gas Co.	3.75
Cambridge Electric Light Co.	33.83
Petitions dated 12/4/84 & 1/4/85	66.95
Petitions dated 12/17/84, 1/14/85 & 1/21/85 (partial list)	32.62
Total	566.22

4.

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

February 4, 1985

To the Honorable, the City Council:

Enclosed please find copy of a report from Joan Lastovica, City Engineer, with calculations of land for Inclusionary Zoning and land owned by registered objectors.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item No. 4

Re: report of Joan Lastovica, City Engineer, with calculations of land for Inclusionary Zoning.

In City Council,

February 4, 1985

2/4/1985

-Referred to the

-Petitions-

1151 Mass Ave
Cambridge 02138

February 3, 1985

RECEIVED BY
OFFICE OF CITY CLERK
FEB 4 9 09 AM '85
CAMBRIDGE, MASS.

CRCC
Cambridge Rent Control Coalition 576-1006

Cambridge City Council
City Hall
795 Massachusetts Avenue
Cambridge, Mass. 02139

To the Honorable; the City Council:

The Cambridge Rent Control Coalition has had the opportunity to review in brief the communication from the City Engineer to the City Manager and City Council regarding "calculations of land for inclusionary zoning." We would like to commend Ms. Lastovica and all the other city officials involved for their time and effort in making all the calculations required, and hope they will complete their review of all objections filed as soon as possible. We wish, however, to bring a few points to the attention of the Council.

1. Where under PUD rules water areas may be used in FAR calculations, we believe such areas should not be exempt (as in the case of the Broad Canal).

2. The standard method for defining the boundary of a zoning district is to proceed down the middle of the street. Streets falling within the district are not excluded from the district. Therefore, public ways should be included in the area subject to inclusionary zoning. We must assume, without specific indication to the contrary, that public ways do not include "unaccepted streets and ways".

Within recent years several public ways have been incorporated into development sites: parts of Kirkland Street, Cambridge Street, and Oxford Street were closed to make way for the expansion of Harvard University; part of Mellen Street was discontinued to allow for the expansion of Lesley College. Nutting Road has disappeared altogether: Harvard's projects at University Place and University Green have completely absorbed the former public way. In Cambridgeport, plans put forward by the Massachusetts Institute of Technology include the closing of Pilgrim Street and parts of Blanche Street and Auburn Street.

3. Unless the MDC land area is exempt by statute, we believe it should be exempt only where it is zoned as open space.

#3)

Cambridge Rent Control Coalition
February 3, 1985

4. Where cemeteries are not zoned as open space, they should be included in the area subject to inclusionary zoning. Cambridge Cemetery, for example, is zoned as "Residence A-2" and should not be exempted.

5. Parks and playgrounds should be exempted only if they are zoned as open space rather than for residential or institutional use. It should be noted that Cambridge Common is zoned as "Residence A-2" and ought to be included in the area subject to inclusionary zoning.

6. On the basis of a cursory examination, we believe it is possible that a number of sites excluded from the calculation of land subject to inclusionary zoning may have been double-counted. Alewife Reservation, which is exempted as open space, is land owned by the MDC. Moreover, unless the figure for the total area of city parks and playgrounds includes at least some of the sites listed as open spaces, the size of that figure (roughly 154 acres) seems to us to be too large. We note that the report by the City Engineer indicates that back-up materials are available. We request that these materials be brought forward in order to determine if any double-counting may have inadvertently occurred.

Because of the significance of the calculation of twenty percent of the affected area, we hope that the Council will require responses to the points we have raised at the earliest possible date.

Respectfully submitted,

William S. Noble
Michael H. Turk

(for) CAMBRIDGE RENT CONTROL COALITION
(William S. Noble)
(Michael H. Turk)

Comm. from William S. Noble & Michael H. Turk for the Cambridge Rent Control Coalition Re: comm. from the City Engineer on the calculations of land for Inclusionary Zoning & raising a few points in connection with this matter.

In City Council,

February 4, 1985 2/4/85

Referred to the Petitions

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

MICHAEL C. COSTELLO
ASSISTANT CITY SOLICITOR

SEVERLIN B. SINGLETON, III
BIRGE ALBRIGHT
SUSAN HICKS SPURLOCK
LEGAL COUNSEL

January 31, 1985

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, Mass.

Re: Petitions to create new § 11.90 of Cambridge Zoning Ordinance

Dear Mr. Healy:

By Order of December 3, 1984, the City Council has requested my opinion as to the validity of two petitions to create a new § 11.90 of the Cambridge Zoning Ordinance, one submitted by the City Council and the other by William S. Noble on behalf of the Cambridge Rent Control Coalition.

CONCLUSION

In my opinion, these two Petitions are not authorized by the Zoning Act, G.L.c.40A.

THE PETITIONS

The Petitions are essentially the same, with a few minor differences. I will summarize the Council Petition, and then note some of the differences between it and the Noble Petition.

The Council Petition is entitled: "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development." § 11.90. Section 11.93 provides that at least 25% of the total residential units (excluding the first seven units) of new construction (including substantial rehabilitation and conversion from non-residential to residential use) must be donated to the City or otherwise made available for low and

moderate income housing. Section 11.94 provides that one unit of low or moderate income housing must be donated or made available for every 10,000 square feet of office, institutional or retail development (excluding the first 10,000 square feet).

The Cambridge Housing Development Trust Fund Board is established as an agency of the City to administer low and moderate income housing. § 11.91. Instead of constructing new units, the developer may elect to make a cash payment or convey vacant land to the City. § 11.951. The amount of the payment or value of the land would be determined by the Board. § 11.96.

The Noble Petition differs from the Council Petition in the following respects, among others:

1. The threshold for residential developments is four units, rather than seven. § 11.932.

2. There is no provision for making a cash payment to the City in lieu of constructing the units. § 11.951.

3. The developer can deed housing units to the City, or retain ownership of the units and rent them under regulations promulgated by the Cambridge Housing Development Trust. § 11.953.

Both petitions were passed to a second reading by the City Council on January 21, 1985.

QUESTION

These Petitions present the following legal question:

1. Are the Petitions within the power granted by the Home Rule Amendment to the Massachusetts Constitution (Article 89, Amend., Art. II)?

2. Are the Petitions within the zoning power granted by G.L.c.40A?

3. Do the Petitions withstand due process analysis?

4. Would the Petitions result in a "taking" of private property requiring the City to pay just compensation?

DISCUSSION

1. Home Rule Amendment

The Home Rule Amendment to the Massachusetts Constitution (Article 89, Amend., Art. II) provides in § 6:

> Any city...may, by the adoption, amendment or repeal of local ordinances..., exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the Constitution or laws enacted by the general court....

This means that the City of Cambridge can amend its zoning ordinance, as long as the amendment is consistent with the Constitution, the general laws and special laws applicable to Cambridge.

The law pertaining to zoning in the Commonwealth is set forth in the Zoning Act (G.L.c.40A, St. 1975, c. 808), formerly known as the Zoning Enabling Act. In a case decided under the Zoning Enabling Act, Middlesex + Boston Street Railway Co. v. Bd. of Aldermen of Newton, 371 Mass. 849, 359 NE 2d 1279 (1977), the Court stated that the General Court "occupied the field of zoning by its enactment of the Zoning Enabling Act, G.L.c.40A...." 371 Mass. at 856.

> ...From the wide scope of the purposes of The Zoning Act, it is apparent that the Legislature intended to permit cities and towns to adopt any and all zoning provisions which are constitutionally permissible, subject, however, to limitations expressly stated in that act (see, e.g., G.L.c.40A § 3) or in other controling legislation.

See also SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 106 (1984), where the Court, without mentioning the Home Rule Amendment, states: "The Zoning Act, G.L.c.40A, has, with precision, set out limits on the exercise of zoning power by the municipality."

In short, I conclude that, with regard to zoning ordinances, the Home Rule Amendment does not confer any additional power on the City over and above its traditional zoning power as limited by the Zoning Act. Now, therefore, we must turn our attention to that Act and to the Cambridge Zoning Ordinance.

2. The Cambridge Zoning Ordinace

The Cambridge Zoning Ordinance is, in general, based on a traditional Euclidean classification scheme. Section 3.11 of the Ordinance divides the City into 27 use districts ranging in restrictiveness from Open Space to Heavy Industry. Section 4.30 (Table of Use Regulations) spells out the uses permitted as of right in each district, and provides, in some districts, for conditionally permitted uses. Such uses are allowed only if a special permit is issued by the Board of Zoning Appeal or the Planning Board. "Special permits shall be issued in accordance with the provisions of Section 10.40 and may be subject to such restrictions as the special permit granting authority (BZA or Planning Board) may establish." Sec. 4.12.

3. The Zoning Act

In discussing the Zoning Act, I recognize that St. 1975, c. 808, which inserted the present Zoning Act, suggested, in § 2A, "objectives for which zoning might be established....", one of which is "to encourage housing for persons of all income levels." This purpose is stated in the Zoning Ordinance, § 1.30.

(a) Use of Land

A "fundamental principle of zoning (is that) it deals basically with the use, without regard to the owernship, of the property involved or who may be the operator of the use." 1 Rathkopf. The Law of Zoning and Planning, § 1.04, p. 1-21 (4th ed., 1984).

The principle was applied recently in CHR General, Ins. v. City of Newton, 387 Mass. 351, 439 NE 2d 788 (1982), which held that a Newton ordinance regulating the conversion of rental units to condominiums could not be upheld as a zoning ordinance because it regulated the ownership, rather than the use, of the units.

The Court stated:

> ...The City concedes, as it must, that "a building composed of condominium units does not 'use' the land it sits upon any differently than an identical building containing rental units."

439 NE 2d at 791.

However, in Cameron v. Zoning Agent of Bellingham, 357 Mass. 757 (1979), the zoning ordinance exempted "public housing" from applicable site development restrictions and allowed it as a permitted use in any zoning district other than industrial. "Public housing" was defined as "housing operated by a public body created pursuant to...(G.L.c.121 § 26K)..." Id. at 758. The Court upheld the ordinance, noting that this housing was publicly owned and regulated. I note that the Petitions here contain no definition of low and moderate income housing.

It can be argued that a building composed of low and moderate income units does not use the land it sits on any differently than a building containing high income units. For this reason, I think a court would look askance at the use of the Zoning Ordinance to mandate low and moderate income housing, unless this is done in accordance with G.L.c.40A, § 9 (see below).

(b) Uniformity

General Laws, c. 40A, § 4 provides that "(a)ny zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures or uses permitted." This section was recently construed in SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101 (1984), which held that a provision in the Braintree zoning by-law conditioning all uses in a business district on the grant of a special permit by the Planning Board was invalid as conflicting with the uniformity requirement of § 4.

In so holding, the Court stated:

> ...The uniformity requirement is based upon prinicples of equal treatment: all land in similar circumstances should be treated alike, so that "if anyone can go ahead with a certain

> development (in a district), then so can everybody else." 1 Williams, American Land Planning Law § 16.06 (1974).

Id. at 107.

Here again, I feel that a court might hold that the proposed sections 11.90 violate the principle of uniformity.

(c) Special Permits

The Zoning Act, G.L., c. 40A, § 9 states: "Zoning ordinances...shall provide for specific types of uses which shall only be permitted in specified districts upon the issuances of a special permit." Special permits "have long been used to bring flexibility to the fairly rigid use classifications of Euclidean zoning schemes...by providing for specific uses which are deemed necessary or desirable but which are not allowed as of right because of their potential for incompatibility with the characteristics of the district." SCIT, Inc. v. Planning Board of Braintree, 19 Mass. App. Ct. 101, 109 (1984).

Uses not commonly subjected to special permit requirements are those regarded as troublesome, but often needed somewhere in the city, e.g. automobile service stations, garages and parking lots (see Cambridge Zoning Ordinance, §§ 4.32b, 4.36g, 4.37h); "and uses often considered desirable but which would be incompatible in a particular district unless conditioned in a manner which makes them suitable to a given location (for example, an apartment house in a single family residential district)" SCIT, Inc. at 109.

Section 9 of Chapter 40A preserves the traditional outlines of the special permit power and also provides for the use of special permits in certain new ways. Thus, paragraph 2 of § 9 states:

> Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income,

> traffic or pedestrian improvements, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Neither the Cambridge Zoning Ordinance as presently written nor the proposed sections 11.90 provide for these "density bonuses".

The recognition of "density bonuses" is a new concept which was added to the Zoning Act when it was rewritten in 1975. See Bok and White, The New Zoning Act, 20 Boston Bar J., no. 2, 11, 15 (Feb., 1976). The density bonus is intended to avoid the taking problem which would arise if a city required developers to provide low and moderate income housing or other public amenities without a compensating density increase. See Mandelker, Land and Use Law, §§ 5.46, 7.22 (1982). The use of density bonuses has been approved by a number of authorities, including the New Jersey Supreme Court. See Oakwood at Madison, Inc. v. Township of Madison, 72 N.J. 481, 371 A 2d 1192 (1977).

As noted above, these Petitions do not provide for density bonuses as authorized by § 9 of the Zoning Act. Instead, for developments over a minimum size, the Petitions simply require the developer to provide a specified amount of low and moderate income housing or make an in lieu cash payment to the city. Ordinances of this type are known as "mandatory inclusionary ordinances", and they present "a number of legal problems." Mandelker, § 7.23.

As Professor Mandelker states:

> Developers subject to these ordinances may make a taking objection if they suffer a loss in the sale or rental of the lower-income dwellings. They may also claim that the mandatory ordinance denies them equal protection, violates substantive due process, and is not within the authority conferred by the state zoning legislation.

Id., § 7.23, p. 216.

The first inclusionary ordinance to be subjected to litigation was invalidated by the Virginia Supreme Court in Board of Supervisors v. DeGroff Enterprises, 214 V c.235, 198 SE 2d 600 (1973). The Court found that the intention of the state's zoning enabling act "was to permit localities to enact only traditional zoning ordinances directed to physical characteristics and having the purpose neither to include nor exclude any particular socio-economic group." 214 V.c. at 238. It concluded that the ordinance exceeded the bounds of the enabling legislation by seeking to "control the compensation for the use of land" and also that it amounted to a taking without compensation.

Id.

In Oakwood at Madison, Inc. v. Township of Madison, 72 N. J. 481, 371 A 2d 1192 (1977), the New Jersey Supreme Court reserved decision on the constitutionality of mandatory inclusionary ordinances, but indicated some doubts about their legality. The Court stated: ..."We discern serious problems with the exercise of local zoning power in such a manner without express legislative authorization." 371 A 2d at 1210.

In Middlesex + Boston St. Railway Co. v. Bd. of Aldermen Newton, 371 Mass. 849, 359 NE 2d 1279(1977), the Board of Aldermen of Newton, acting in its capacity as the special permit authority under the Newton zoning ordinance, granted a special permit to the plaintiff to erect 54 dwelling units in a garden apartment development. The Board attached a condition to the permit requiring the plaintiff to lease 5 of the units to the Newton Housing Authority at lower-than-market rentals. The plaintiff appealed to the Superior Court under G.L. c. 40A. § 21 (the old Zoning Enabling Act). The Superior Court dismissed the appeal.

The Supreme Judicial Court reversed, holding that the Board lacked the power to impose the condition. The Court stated:

> Our conclusion that the board had no power to impose (the) condition is based on our reading and application of the zoning enabling statute, G.L. c. 40A, and the Newton zoning ordinance.

359 NE 2d at 1284.

The Court did not reach the question whether the condition "would be constitutionally permissible if it were...authorized by the General Court as part of the Zoning Enabling Act..." Here we are faced with the question of whether these Petitions are authorized by The Zoning Act.

Are these Petitions authorized by The Zoning Act? The Act does not specifically authorize mandatory inclusionary ordinances, nor does it forbid them. What was the intention of the Legislature when it enacted the Act in 1975? In ascertaining the legislative intent in enacting a statute, we must consider "all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished...." Commonwealth v. Galvin, 388 Mass. 326, 446 NE 2d 391, 393 (1983).

In my opinion, it is appropriate here to follow the maximum that "a statutory expression of one thing is an implied exclusion of other things omitted from the statute" - "Expressio unius est exclusio alterius." See County of Middlesex v. City of Newton, 13 Mass. App. Ct. 538, 542 (1982); 2A Sands, Sutherland Statutory Construction, §§ 47.23 - 47.25 (4th ed., 1984. Rev.). Where "a form of conduct, the manner of its performance and operation and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions", 2A Sands, supra, § 47.23.

"When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted." Id. I believe that this maxim applies to these Petitions, and indicates that they are not authorized by The Zoning Act, G.L.c.40A. My reasons are as follows:

The concept of providing for low and moderate income housing through a zoning ordinance is "creative", innovative and of recent origin. As noted above, the idea of giving density bonuses in return for the construction of such housing was introduced for the first time in Massachusetts when The Zoning Act was adopted in 1975. G.L.c.40A, § 9. Mandatory inclusionary ordinances, of which these Petitions are an example, are subject to serious constitutional objections. See Mandelker, Land Use Law, § 7.23.

Considering this background, it is my opinion that the Legislature intended that, if a city wanted to "encourage housing for persons of all income levels" (St. 1975, c. 808, § 2A) it must do so through the use of density bonuses as authorized in G.L. c.40A, § 9.

Since it is my opinion that these Petitions are not authorized by The Zoning Act, I do not reach the due process and taking questions.

Very truly yours,

Russell B. Higley

Russell B. Higley
City Solicitor

RBH:mm

6.

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

February 4, 1985

To the Honorable, the City Council:

Enclosed please find copy of the opinion of the City Solicitor relative to the two petitions before the City Council on Inclusionary Zoning.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item No. 6

Re: enclosing copy of the opinion of the City Solicitor relative to the two petitions on Inclusionary Zoning.

In City Council,

February 4, 1985

2/4/1985

- Referred to the Petitions -

City of Cambridge
Department of Human Service Programs
51 Inman Street, Cambridge, Massachusetts 02139, 498-9076

RECEIVED BY
OFFICE OF CITY CLERK
JAN 28 2 25 PM '85
CAMBRIDGE, MASS.

January 28, 1985

Paul Healy
City Clerk
City Hall
795 Mass. Avenue
Cambridge, MA 02139

Dear Mr. Healy:

The Cambridge Council on Aging wishes to go on record in support of inclusionary zoning and linkage.

As the report of the Working Group under Councillor Sullivan's chairmanship indicates so clearly, linkage represents a significant potential source of new housing. In a city where scarcity of affordable housing has forced many residents--both elderly persons and families--to relocate, such potential should not be neglected. A proposal which harnesses the strength of Cambridge's development boom for the benefit of all citizens seems to us a particularly appropriate strategy.

The Council on Aging consequently urges adoption of an inclusionary zoning and linkage ordinance by the City Council.

Yours sincerely,

Oliver Cox

Oliver Cox, Chairman CS
Cambridge Council on Aging

OC/fc

Community and Youth Services
498-9037/9072
Council on Aging/Elderly Services
498-9039
Recreation
498-9028
Community Learning Center
547-1589

Comm. from Oliver Cox, Chairman, Council on Aging, recording the Council on Aging in support of Inclusionary Zoning & Linkage.

In City Council,

January 28, 1985

1/28/85
Referred to
the Petitions

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

January 23, 1985

Russell B. Higley, Esquire
City Solicitor
City Hall
Cambridge, MA 02139

Dear Sir:

Enclosed you will find two zoning amendments to the Zoning Ordinances of the City of Cambridge which were passed to a second reading at the City Council meeting held on January 21, 1985 as follows:

1. Petition of the City Council to create a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development".

2. Petition of William Noble on behalf of the Rent Control Coalition by adding a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development".

Would you kindly review these amendments and indicate your approval or disapproval on the bottom and return to this office.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Enc. First publication no. 2266
First publication no. 2267

c. c. Councillor David Sullivan, Chairman, Committee on Ordinances
Mr. Cellucci, Inspectional Services.

FIRST PUBLICATION NO. 2267.

City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Five

AN ORDINANCE

In amendment to an ordinance entitled "The Zoning Ordinances of the City of Cambridge".

Be it ordained by the City Council of the City of Cambridge as follows:

The Zone Map accompanying ordinance passed to be ordained September 26, 1979 entitled "The Zoning Ordinances of the City of Cambridge is hereby amended by adding the following new Section 11.90 to Article 11.000, Special Regulations. Said new section to be entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

The purpose of this section is intended to require the provision of housing for low and moderate income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

ATTEST:- Paul E. Healy, City Clerk.

NOTE: Pursuant to the provisions of General Laws, Chapter 43, Section 23, Tercentenary Edition, being a part of the City Charter, the ordinance as aforesaid, which exceeds in length eight octavo pages of ordinary book print may be examined at the office of the City Clerk in the form of a printed pamphlet during office hours on or after January 22, 1985.

Attest:- Paul E. Healy, City Clerk.

Passed to a second reading at the City Council meeting held on January 21, 1985 and on or after February 4, 1985 the question comes on passing to be ordained.

FIRST PUBLICATION NO. 2266.

City of Cambridge

In the Year One Thousand, Nine Hundred Eighty-Five

AN ORDINANCE

In amendment to an ordinance entitled "The Zoning Ordinances of the City of Cambridge".

Be it ordained by the City Council of the City of Cambridge as follows:

The Zone Map accompanying ordinance passed to be ordained September 26, 1979 entitled "The Zoning Ordinances of the City of Cambridge" is hereby amended by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

The purpose of this section 11.90 is intended to require the provisions of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

ATTEST:- Paul E. Healy, City Clerk.

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C. C. 108

AMENDED NOTICE
PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 5:30 p. m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by William S. Noble in behalf of the Cambridge Rent Control Coalition, et al to amend the Zoning Ordinances of the City of Cambridge by adding the following new Section 11.90 to Article 11.000, Special Regulations. Said new section to be entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

The purpose of this section is intended to require the provision of housing for low and moderate income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the City Council will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

RECEIVED BY
OFFICE OF CITY CLERK
Nov 16 10 03 AH '84
CAMBRIDGE, MASS.

5.25 Floor Area Ratio

1/17

a. The maximum ratio of floor area to lot area indicated in Section 5.30 - District Dimensional Regulations shall be permitted only upon compliance with the provisions of Sections 11.100, 1.200, 11.300 of this Ordinance. Maximum Floor Area Ratios permitted without reference to the provisions of Sections 11.100 - 11.200 shall be 80% of those indicated in Section 5.30. for lots of five (5) acres or less, and 50% for lots greater than five (5) acres, as illustrated by the following schedule.

Maximum FAR in Table 5.30	80% of FAR in Table 5.30	50% of FAR in Table 5.30
.5	.4	.25
.75	.6	.375
1.00	.8	.50
1.25	1.00	.625
1.50	1.20	.75
1.75	1.40	.875
2.00	1.60	1.00
2.50	2.00	1.25
3.0	2.40	1.50
4.0	3.20	2.0

b. FAR Exceptions. A parking garage, or that portion of a structure devoted to parking automobiles, shall be exempt from the requirements as to floor area ratio but shall conform to all other dimensional requirements of the district in which it is located.

Create a new Section 11.100

11.100 Low and Moderate Income Household Inclusionary Housing Requirements for Residential Development.

11. Purpose

This Section 11. is intended to require the provision of low and/or moderate income family housing as a component of many new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11. Applicability

11. The provision of this Section 11.100 shall apply to any residential development containing any one or combination of the following uses:

(a) Detached dwelling for one family (4.31 a)
(b) Two family dwelling (4.31 b)
(c) Townhouse development (4.31 d)
(d) Multifamily dwellings (4.31 g)
(e) Existing dwelling converted for more than two families (4.31 h)
(f) Elderly oriented congregate housing (4.31e)
(g) Existing dwelling converted for elderly oriented congregate housing (4.31f)

11. The uses listed in the above Section 11. shall comply with the provisions of this Section 11. when they are created by (a) new construction or (b) conversion of a non-residential structure to residential use. For the purpose of this Subsection 11 new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provision of this Section 11. regarding substantial rehabilitation shall modify any requirements for a removal permit for housing units subject to rent control. However, substantial rehabilitation of dwellings subject to Cambridge's rent control ordinance and approved by the Cambridge Rent Control Board shall not be subject to the provisions of this Section 11.100

11. Quantity Requirements

11. Purpose

These requirements are intended to ensure that most new residential development in the City contain units available to low and moderate income families who are not served by new market rate housing construction.

11. Any residential development containing uses subject to this Section 11. as determined by Section 11. above shall make provision for units suitable for, affordable by and available to low and moderate income households (herein after known as required units) in an amount equal to at least 10% percent of the total number of residential units authorized, The requirements of this Section 11. shall apply to the total development authorized on the subject lot (as defined in Section 11.) only after application of both of the following threshold and exemption provisions:

Threshold

(a) Total gross floor area of all development on the lot (residential and other uses) is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, or 50% for lots greater than five (5) acres. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district which are permitted or required as-of-right, as detailed in Section 5.30.

Exemption

(b) More than nine (9) dwelling units have been constructed after the effective date of this Section 11.100. The ten (10%) percent requirements of this Section 11. shall however be applied only to dwelling units constructed in excess of the nine units described in this paragraph (b).

Where the application of the 10% requirement results in a fractional number one additional inclusionary unit shall be provided.

11. All requirements of Section 11.300 shall be met.

11.200 Low and Moderate Income Linkage Housing Requirements for Office, Institutional and Retail Development.

11. Purpose

This Section 11.200 is intended to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11. Applicability

11. The provision of this Section 11. shall apply to any office, institutional and retail development containing any one or combination of the following uses:

(h) Hotel or Motel (4.31 i(2))
(i) Radio and television studio (4.32f)
(j) Office and laboratory use (4.34)
(k) Retail business and consumer service establishments (4.35)
(l) Institutional Uses (4.33 as detailed in 4.56c 5, 6,8; d 1,2; e 1-7)

11. (a) The uses listed in the above Section 11. shall comply with the provisions of this Section 11.200 when they are created by (a) new construction or (b) conversion from any use not listed in 11. above. For the purpose of this Subsection 11. new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure.

(b) Except for non-residential structures converted to residential use which shall be suject to Section 11.100 no structure once subject to the provisions of this Section 11.200 shall be additionally subject to this Section if converted to another use listed in Subsection 11.

11. Quantity Requirements

11. Purpose

These requirements are intended to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial and other non-residential development does not further disadvantage low and moderate income families already unable to secure adequate affordable housing.

11. Any office, institutional or retail development subject to this Section 11. as determined by Section 11. above shall make provision for residential dwelling units suitable for, affordable by and available to low and moderate income households (required units) in an amount equal to one required unit for each 12,000 square feet of gross floor area authorized on the subject lot as defined in Section 11. after application of both of the following threshold and exemption provisions.

a. Exemption

The first 30,000 square feet of gross floor area constructed after the effective date of this Section 11. shall be exempt from requirements of this Section 11. Where the gross floor area constructed is as a result of substantial rehabilitation of an already existing structure, 50,000 square feet shall be exempt.

b. Threshold

The total gross floor area of all development on the subject lot, as defined by Section 11. , is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, and 50% for lots greater than five (5) acres. Nevertheless, with the exception of the gross floor area identified in paragraph (a) above all gross floor area constructed after the effective date of this Section 11. shall be subject to the linkage requirements of this Section 11. once the 80% or 50% thresholds have been exceeded. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district that are permitted/required as-of-right, as detailed in Section 5.30.

11. All requirements of Section 11.300 shall be met.

11.300 STANDARDS, CRITERIA, PROCEDURES, AND ADMINISTRATION FOR INCLUSIONARY AND LINKAGE HOUSING REQUIREMENTS.

11. Special Permit

All residential, office, retail and institutional development subject to Sections 11.100 and 11.200 shall be permitted only after issuance of a special permit from the Planning Board of the City of Cambridge. In issuing a special permit the Board shall find that the provisions of Section 10.40 have been met as well as the purposes, standards and criteria established in these Sections 11.100, 11.200 and 11.300.

11. All deeds, agreements, site plans, and other documents necessary to demonstrate compliance with the provisions of Sections 11.100 - 11.300 shall be submitted to the Planning Board as part of the special permit application.

Should a special permit be issued all agreements necessary to ensure the construction of units or equivalent payment to the City shall be executed before the issuance of a building permit. No certificate of occupancy for any building in an authorized development shall be issued until the units required have been constructed, the payment required has been made to the City, or an arrangement has been made for compliance over an agreed upon length of time, not to exceed ten (10) years.

Any required payments or deferred compliance obligations shall constitute a lien on the property. The Planning Board shall require the execution of such surety as may be necessary to ensure compliance should it be made after the issuance of a certificate of occupancy.

11. Options for provision of required units

11. The low and moderate income units required in Sections 11. and 11. may be provided in any one or combination of the following ways:

(a) Construction of new units on the permit site or on another site or sites elsewhere in Cambridge provided the provisions of this Section 11. are met.

(b) Cash payment to the City of Cambridge to be administered in accordance with policies and standards developed by the Cambridge Inclusionary Housing and Linkage Advisory Committee herein established to be used to make available housing units for low and moderate income households in a manner and at locations in conformance with of this Section 11. Such cash payment may be made over ten years provided any deferred payments are made in constant dollars as determined by the Consumer Price Index.

(c) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and has a current appraised fair market value at least equal to (b) above.

11. Determination of cash equivalency

The cash equivalent of the required units, as authorized in 11. (b) above, shall be $50,000 per required unit, adjusted annually by the Community Development Department using the consumer price index for the Boston Metropolitan Area as published by the United States Department of Labor or any successor agency.

11. Characteristics of Required Units

The following standards shall be applied to all required units built or financed in whole or in part through the provisions of Sections 11.100-11.200. The Advisory Committee may, as part of its responsibilities, develop such policies and standards as may be appropriate to advance the intent of the following regulations.

11. The required units shall be intended and designed for families and shall contain a minimum of two bedrooms. For the purpose of this Section 11. a family shall be three or more persons related by blood, marriage or operation of law, or as defined by any public subsidy program employed.

Where housing is to be devoted exclusively to elderly, handicapped, and other special needs households these restrictions as to unit and family size shall not apply.

11. For the purpose of these Sections 11. a low/moderate income household shall be one having an eligible income not exceeding 80% of the median family income for the Boston Metropolitan Area; the median family income shall be as determined by the federal Department of Housing and Urban Development or any successor agency, and shall be adjusted for family size.

Units shall be offered so that eligible households shall pay no more than thirty (30) percent of their eligible maximum household income for the units provided (monthly rent or mortgage and taxes for purchased units).

11. The required units shall, to a reasonable extent, serve a diversity of incomes and family sizes and shall to the extent possible preferentially serve Cambridge residents. It is the intent of these Sections 11.100 - 11.300 that very low income as well as moderate income households be served.

The Advisory Committee shall establish standards for the size of required units which shall be consistent with the size of similar units in public, assisted, and market rate housing.

11. The required units shall be dispersed throughout the housing development and not concentrated in any one location.

11. The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the units required for low and moderate income households will be available for a minimum of twenty years for those low and moderate income households.

11. Where the housing is to be constructed in stages the required low and moderate income units shall be provided in each stage in the same proportion as required for the total development unless otherwise permitted by the Planning Board.

11. The provisions of this Section 11.300 shall not apply to housing constructed by a public agency or non-profit corporation using a federal, state or local housing assistance program.

11. The City of Cambridge encourages developers to exceed the inclusionary housing requirements of Section 11.100. It is the untention of these Sections 11.100-11.300 that such developments should receive priority access to available housing subsidies.

11. Property Subject to this Section

The provisions of the Section II shall apply to all new, substantially rehabilitated, or converted buildings constructed on a lot after November 5, 1984. For the purpose of this Section 11. a lot shall be defined as:

(a) a lot or adjacent lots in the same ownership in existence on November 15, 1984 regardless of any subsequent change in ownership or control or subdivision thereof; or

(b) a group of such Lots in different or the same ownership on November 15, 1984 which has been assembled in whole or in part for development purposes or which constitutes a development parcel.

The provisions of Sections 11.00 and 11.200 shall be applied to the cumulative number of units and/or gross floor area constructed on a lot after November 15, 1984 as determined by this Section 11.

11. Cambridge Inclusinary Housing and Linkage Advisory Committee

There shall be established a Cambridge Inclusionary Hosuing and Linkage Advisory Committee which shall be governed by a seven member board whose members shall be residents of Cambridge and appointed by the City Manager, as follows:

(a) a representative from the Cambridge Housing Authority

(b) a representative of a Cambridge based non-profit housing corporation, on a rotating basis.

(c) a Cambridge tenant

(d) a Cambridge homeowner

(e) a Cambridge based business person or real estate developer

(f) a Cambridge lender

(g) Cambridge City Manager or his designee

11. Powers, Duties and Responsibilities of the Advisory Committee

The Advisory Committee shall:

(a) Review the dispersal of all funds and land conveyed to the City of Cambridge under the provisions of this Section 11.

(b) Develop such policies production and standards as may be appropriate for the of housing required and/or financed under the provisions of this Section 11.

(c) Provide assistance to the Planning Board a in the administration of, this Section 11.

The Advisory Committee shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11. and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department.

11. All deeds, agreements, site plans, and other documents submitted to the Planning Board in application for a special permit under Sections 11.100, 11.200 and 11.300 shall be submitted to the Advisory Committee for review prior to the issuance of a special permit. Within sixty-five (65) days of such submittal to the Advisory Committee it shall make a report to the Planning Board as to whether all requirements of this Section 11. have been met. No special permit may

be granted until the Board has received such written report from the Advisory Committee, or 65 days have elapsed.

CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT
City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

498-9034

To: The Planning Board January 7, 1985

From: Kathy A. Spiegelman
Assistant City Manager for Community Development

The Planning Board and Community Development Department have been discussing inclusionary zoning and linkage over a period of years. It is now important to respond to the City Council's petition. At the Council hearing on the two inclusionary zoning/linkage petitions now filed, members of the Council expressed an interest in hearing suggestions for modifying the current proposals.We have recommendations from our previous proposals as well as some additional suggestions based on what we have learned since then.

While the current petitions have some of the elements necessary for successful inclusionary and linkage programs, they do not have many others. The Community Development Department maintains that neither petition in its current form will create a successful program for either inclusionary zoning or linkage. At the hearings we outlined eight points for making such programs successful. The elements we outlined are based on an analysis of our own work and research about other programs. They are based on the assumption that to be successful, an inclusionary zoning program must pool all potential resources to maximize housing opportunities for those who cannot otherwise afford them and that a successful linkage program must embody the basic concept of promoting the economic feasibility of private development.This requires flexibility, cooperation and timeliness on the part of the public sector.

Following is a re-listing of the eight elements for a successful inclusionary zoning and linkage program with proposed changes to the filed petitions. The requirement for the inclusion of low and moderate income units in housing developments and that for linking commercial developments to contributions for low and moderate income housing are two related but distinct programs. It is recommended that the ordinance separate the requirements for each within the zoning code.

1. The private real estate development community joins the public sector in the provision of expanded opportunities for decent, affordable housing.

   . Most of the changes recommended in this memo are intended to make the inclusionary and linkage programs recognize a balance between what the City wants and what developers can provide, this being the only way to see housing actually produced with new private sector participation.

2. Developer contributions are combined with other housing programs to achieve optimal results through leveraging.

   . Cash equivalency is set at level of $40,000 (1/2 the cost of a unit) which implies that the private developer is being asked to share the cost of creating inclusionary units. Requiring the private developer to pay 100% of the cost is a burden which would make many projects infeasible.

   . Require units to be kept available to targeted population for 20 years. As currently phrased, the "permanent" requirement will make it difficult to combine linkage payments with public subsidy programs and still meet this requirement.

3. City makes an affirmative municipal contribution rather than attempting to "regulate new housing into existence.

   A) Offer a quid pro quo through zoning bonuses, expedited processing or other incentive for stepped up developer contributions.

      . Allow up to 80% of permitted FAR before housing requirement is triggered. (See #8) This provides legal strength to the ordinance's provisions. The trade-off for the City is either less intensive development or housing assistance.

      . Add a provision that sites of five acres or more trigger the linkage requirement at 50% of allowable FAR rather than at 80%. This means City does not lose the opportunity to create linkage in large scale projects where such linkage is feasible but the size of land area controlled might provide a loophole.

- Require that any project which requests relief from dimensional regulations automatically triggers the linkage requirements regardless of %-age of allowable FAR used.

- Ordinance should state the City's support for private housing developers to exceed the minimum inclusionary requirements by offering priority access to subsidies to those projects which will provide more than the minimum requirement.This should not, however, become a way to encourage actual zoning violations in inclusionary projects.

B) Assist the private developer to produce the housing. Cannot expect a developer to bear the total burden with no positive City action.

- By requiring a cash equivalency of $40,000 per unit, the City is agreeing to share with the developer the cost and responsibility for producing low cost housing.

4. Flexibility is allowed to negotiate site specific components - e.g. unit sizes, locations, low vs. moderate income mix. These components should not be reduced to a "cookbook" of detailed regulations that may be inappropriate or impossible to achieve.

- Remove from the ordinance the specificity of unit sizes and number of bedrooms. Allow the Advisory Committee to establish standards and for the City to be flexible in negotiating the best combination of details for a project. This would greatly enhance the likelihood of producing housing through this program. It also prevents the creation of detail requirements which prevent the combined use of subsidy programs which have their own specific requirements.

5. Developer contributions are set at reasonable levels.

A) Mandatory contributions should not result in economic infeasibility of development.

- Exempt substantial rehabilitation of buildings which are already regulated by Rent Control and which will continue to be so regulated

when completed. City should not multiply regulatory requirements for particular projects to the extent that such projects become totally infeasible, especially when such over-regulation would serve to discourage preservation of older housing in need of reinvestment, thereby aggravating the shortage of affordable housing.

- Change housing exemption from 7 to 9 units in order to enhance feasibility of small scale or infill housing developments.

- Change commercial development exemption to 30,000 square feet. This lessens possibility that this requirement will prevent a project from going forward. (Incentive for rehab by increasing exemption to 50,000 square feet, see 5D).(In theory it should be possible to pro-rate contributions for all projects rather than provide for exemptions. However, it must be recognized that the Statutory and administrative responsibilities for such a comprehensive program would be much more extensive and might have strong negative impacts on the operation of the program.)

- Allowing payments over time. This dramatically reduces the impact of such a requirement on the feasibility of a development.

- Reduce financial impact by setting cash equivalent at $40,000 per required unit.

B) Contributions should be viewed as part of overall package contributed by developer, including jobs, open space amenities, etc.

- By setting the housing requirements at a feasible level and by using the special permit process, the City will be able to broadly evaluate development impacts and put the housing piece in consideration with other sought-after amenities.

C) Contributions should be flexible - units, dollars or sites.

- The program will work well if the objective of providing expanded housing opportunities is achieved through cooperation and flexibility so that contributors are encouraged to propose mutually beneficial solutions.

D) Contributions should be related to impact of a development project.

- Allow a commercial exemption of 30,000 square feet to tie requirement to projected impacts of developments and reduce impact on local small business expansion.

- Provide for linkage in large scale projects and in projects requesting relief from other aspects of the zoning ordinance (see 3A).

- To encourage rehabilitation of existing buildings, set the exemption for new construction at 30,000 square feet and for rehabilitation at 50,000 square feet.

E) Contributions should be allowed over time.

- Allow linkage payments to be made up front or over ten years: $40,000/unit up front or $40,000/unit indexed to inflation over ten years.

6. Administration of program is manageable - timely processing of applications, clear responsibilities and requirements, representative compositions on Board, adequate staff support and budget.

- An Advisory Committee for Linkage and Inclusionary Housing should be established, to shape policy in the use of funds and implementation of projects generated by the requirements of the ordinance. Rather than a Trust with responsibility to hold funds and administer operations of a program, this group would use the City's current means of administering housing programs which is handled by the Housing Division of the Community Development Department, in conjunction with the Housing Authority, the non-profit housing rehabilitation agencies and the housing subcommittee of the City Council.

- Composition of the Advisory Committee should be representative of the groups who make housing programs work: City officials, residents (both tenant and homeowner), local business interests and local lenders.

7. Targeted population is given access to units over an extended period of time through resale agreements or rent regulatory provisions.

   - Ideal notion of putting a permanent requirement into the ordinance is at variance with most public subsidy programs with which this program should be combined. Standard requirement is 20 years, This is linked to money borrowed for such purposes.

8. Public purpose under zoning is clearly stated making the requirement legally defensible. must not be a "tax." Must not be a "taking."

   - Allow development as-of-right up to 80% of permitted FAR's; more than 80% requires compliance with inclusionary/linkage provisions of the ordinance. This addresses the legal issue of using incentives to encourage housing contributions without denying development rights currently existing nor creating height, bulk, and density limits beyond already ample provisions.

   - To meet the legal requirements of Chapter 40A, it is recommended that the special permit process be used in conjunction with the housing requirements.

cc: Robert W. Healy, City Manager
City Council

5.25 Floor Area Ratio

a. The maximum ratio of floor area to lot area indicated in Section 5.30 - District Dimensional Regulations shall be permitted only upon compliance with the provisions of Sections 11.100, 1.200, 11.300 of this Ordinance. Maximum Floor Area Ratios permitted without reference to the provisions of Sections 11.100 - 11.200 shall be 80% of those indicated in Section 5.30. for lots of five (5) acres or less, and 50% for lots greater than five (5) acres, as illustrated by the following schedule.

Maximum FAR in Table 5.30	80% of FAR in Table 5.30	50% of FAR in Table 5.30
.5	.4	.25
.75	.6	.375
1.00	.8	.50
1.25	1.00	.625
1.50	1.20	.75
1.75	1.40	.875
2.00	1.60	1.00
2.50	2.00	1.25
3.0	2.40	1.50
4.0	3.20	2.0

b. FAR Exceptions. A parking garage, or that portion of a structure devoted to parking automobiles, shall be exempt from the requirements as to floor area ratio but shall conform to all other dimensional requirements of the district in which it is located.

Create a new Section 11.100

11.100 Low and Moderate Income Household Inclusionary Housing Requirements for Residential Development.

11. Purpose

This Section 11. is intended to require the provision of low and/or moderate income family housing as a component of many new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11. Applicability

11. The provision of this Section 11.100 shall apply to any residential development containing any one or combination of the following uses:

(a) Detached dwelling for one family (4.31 a)
(b) Two family dwelling (4.31 b)
(c) Townhouse development (4.31 d)
(d) Multifamily dwellings (4.31 g)
(e) Existing dwelling converted for more than two families (4.31 h)
(f) Elderly oriented congregate housing (4.31e)
(g) Existing dwelling converted for elderly oriented congregate housing (4.31f)

11. The uses listed in the above Section 11. shall comply with the provisions of this Section 11. when they are created by (a) new construction or (b) conversion of a non-residential structure to residential use. For the purpose of this Subsection 11 new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provision of this Section 11. regarding substantial rehabilitation shall modify any requirements for a removal permit for housing units subject to rent control. However, substantial rehabilitation of dwellings subject to Cambridge's rent control ordinance and approved by the Cambridge Rent Control Board shall not be subject to the provisions of this Section 11.100

11. Quantity Requirements

11. Purpose

These requirements are intended to ensure that most new residential development in the City contain units available to low and moderate income families who are not served by new market rate housing construction.

11. Any residential development containing uses subject to this Section 11. as determined by Section 11. above shall make provision for units suitable for, affordable by and available to low and moderate income households (herein after known as required units) in an amount equal to at least 10% percent of the total number of residential units authorized, The requirements of this Section 11. shall apply to the total development authorized on the subject lot (as defined in Section 11.) only after application of both of the following threshold and exemption provisions:

Threshold

(a) Total gross floor area of all development on the lot (residential and other uses) is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, or 50% for lots greater than five (5) acres. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district which are permitted or required as-of-right, as detailed in Section 5.30.

Exemption

(b) More than nine (9) dwelling units have been constructed after the effective date of this Section 11.100. The ten (10%) percent requirements of this Section 11. shall however be applied only to dwelling units constructed in excess of the nine units described in this paragraph (b).

Where the application of the 10% requirement results in a fractional number one additional inclusionary unit shall be provided.

11. All requirements of Section 11.300 shall be met.

11.200 Low and Moderate Income Linkage Housing Requirements for Office, Institutional and Retail Development.

11. Purpose

This Section 11.200 is intended to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

11. Applicability

11. The provision of this Section 11. shall apply to any office, institutional and retail development containing any one or combination of the following uses:

(h) Hotel or Motel (4.31 i(2))
(i) Radio and television studio (4.32f)
(j) Office and laboratory use (4.34)
(k) Retail business and consumer service establishments (4.35)
(l) Institutional Uses (4.33 as detailed in 4.56c 5, 6,8; d 1,2; e 1-7)

11. (a) The uses listed in the above Section 11. shall comply with the provisions of this Section 11.200 when they are created by (a) new construction or (b) conversion from any use not listed in 11. above. For the purpose of this Subsection 11. new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure.

(b) Except for non-residential structures converted to residential use which shall be suject to Section 11.100 no structure once subject to the provisions of this Section 11.200 shall be additionally subject to this Section if converted to another use listed in Subsection 11.

11. Quantity Requirements

11. Purpose

These requirements are intended to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial and other non-residential development does not further disadvantage low and moderate income families already unable to secure adequate affordable housing.

11. Any office, institutional or retail development subject to this Section 11. as determined by Section 11. above shall make provision for residential dwelling units suitable for, affordable by and available to low and moderate income households (required units) in an amount equal to one required unit for each 12,000 square feet of gross floor area authorized on the subject lot as defined in Section 11. after application of both of the following threshold and exemption provisions.

a. Exemption

The first 30,000 square feet of gross floor area constructed after the effective date of this Section 11. shall be exempt from requirements of this Section 11. Where the gross floor area constructed is as a result of substantial rehabilitation of an already existing structure, 50,000 square feet shall be exempt.

b. Threshold

The total gross floor area of all development on the subject lot, as defined by Section 11. , is greater than 80% of that permitted by the applicable base zoning designation for lots of five (5) acres or less, and 50% for lots greater than five (5) acres. Nevertheless, with the exception of the gross floor area identified in paragraph (a) above all gross floor area constructed after the effective date of this Section 11. shall be subject to the linkage requirements of this Section 11. once the 80% or 50% thresholds have been exceeded. This threshold provision shall not be applicable, however, to any development that does not conform to the dimensional requirements of the applicable base zoning district that are permitted/required as-of-right, as detailed in Section 5.30.

11. All requirements of Section 11.300 shall be met.

11.300 STANDARDS, CRITERIA, PROCEDURES,AND ADMINISTRATION FOR INCLUSIONARY AND LINKAGE HOUSING REQUIREMENTS.

11. Special Permit

All residential, office, retail and institutional development subject to Sections 11.100 and 11.200 shall be permitted only after issuance of a special permit from the Planning Board of the City of Cambridge. In issuing a special permit the Board shall find that the provisions of Section 10.40 have been met as well as the purposes, standards and criteria established in these Sections 11.100, 11.200 and 11.300.

11. All deeds, agreements, site plans, and other documents necessary to demonstrate compliance with the provisions of Sections 11.100 - 11.300 shall be submitted to the Planning Board as part of the special permit application.

Should a special permit be issued all agreements necessary to ensure the construction of units or equivalent payment to the City shall be executed before the issuance of a building permit. No certificate of occupancy for any building in an authorized development shall be issued until the units required have been constructed, the payment required has been made to the City, or an arrangement has been made for compliance over an agreed upon length of time, not to exceed ten (10) years.

Any required payments or deferred compliance obligations shall constitute a lien on the property. The Planning Board shall require the execution of such surety as may be necessary to ensure compliance should it be made after the issuance of a certificate of occupancy.

11. Options for provision of required units

11. The low and moderate income units required in Sections 11. and 11. may be provided in any one or combination of the following ways:

(a) Construction of new units on the permit site or on another site or sites elsewhere in Cambridge provided the provisions of this Section 11. are met.

(b) Cash payment to the City of Cambridge to be administered in accordance with policies and standards developed by the Cambridge Inclusionary Housing and Linkage Advisory Committee herein established to be used to make available housing units for low and moderate income households in a manner and at locations in conformance with of this Section 11. Such cash payment may be made over ten years provided any deferred payments are made in constant dollars as determined by the Consumer Price Index.

(c) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and has a current appraised fair market value at least equal to (b) above.

11. Determination of cash equivalency

The cash equivalent of the required units, as authorized in 11. (b) above, shall be $50,000 per required unit, adjusted annually by the Community Development Department using the consumer price index for the Boston Metropolitan Area as published by the United States Department of Labor or any successor agency.

11. Characteristics of Required Units

The following standards shall be applied to all required units built or financed in whole or in part through the provisions of Sections 11.100-11.200. The Advisory Committee may, as part of its responsibilities, develop such policies and standards as may be appropriate to advance the intent of the following regulations.

11. The required units shall be intended and designed for families and shall contain a minimum of two bedrooms. For the purpose of this Section 11. a family shall be three or more persons related by blood, marriage or operation of law, or as defined by any public subsidy program employed.

Where housing is to be devoted exclusively to elderly, handicapped, and other special needs households these restrictions as to unit and family size shall not apply.

11. For the purpose of these Sections 11. a low/moderate income household shall be one having an eligible income not exceeding 80% of the median family income for the Boston Metropolitan Area; the median family income shall be as determined by the federal Department of Housing and Urban Development or any successor agency, and shall be adjusted for family size.

Units shall be offered so that eligible households shall pay no more than thirty (30) percent of their eligible maximum household income for the units provided (monthly rent or mortgage and taxes for purchased units).

11. The required units shall, to a reasonable extent, serve a diversity of incomes and family sizes and shall to the extent possible preferentially serve Cambridge residents. It is the intent of these Sections 11.100 - 11.300 that very low income as well as moderate income households be served.

The Advisory Committee shall establish standards for the size of required units which shall be consistent with the size of similar units in public, assisted, and market rate housing.

11. The required units shall be dispersed throughout the housing development and not concentrated in any one location.

11. The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the units required for low and moderate income households will be available for a minimum of twenty years for those low and moderate income households.

11. Where the housing is to be constructed in stages the required low and moderate income units shall be provided in each stage in the same proportion as required for the total development unless otherwise permitted by the Planning Board.

11. The provisions of this Section 11.300 shall not apply to housing constructed by a public agency or non-profit corporation using a federal, state or local housing assistance program.

11. The City of Cambridge encourages developers to exceed the inclusionary housing requirements of Section 11.100. It is the untention of these Sections 11.100-11.300 that such developments should receive priority access to available housing subsidies.

11. Property Subject to this Section

The provisions of the Section II shall apply to all new, substantially rehabilitated, or converted buildings constructed on a lot after November 5, 1984. For the purpose of this Section 11. a lot shall be defined as:

(a) a lot or adjacent lots in the same ownership in existence on November 15, 1984 regardless of any subsequent change in ownership or control or subdivision thereof; or

(b) a group of such Lots in different or the same ownership on November 15, 1984 which has been assembled in whole or in part for development purposes or which constitutes a development parcel.

The provisions of Sections 11.00 and 11.200 shall be applied to the cumulative number of units and/or gross floor area constructed on a lot after November 15, 1984 as determined by this Section 11.

11. Cambridge Inclusinary Housing and Linkage Advisory Committee

There shall be established a Cambridge Inclusionary Hosuing and Linkage Advisory Committee which shall be governed by a seven member board whose members shall be residents of Cambridge and appointed by the City Manager, as follows:

(a) a representative from the Cambridge Housing Authority

(b) a representative of a Cambridge based non-profit housing corporation, on a rotating basis.

(c) a Cambridge tenant

(d) a Cambridge homeowner

(e) a Cambridge based business person or real estate developer

(f) a Cambridge lender

(g) Cambridge City Manager or his designee

11. Powers, Duties and Responsibilities of the Advisory Committee

The Advisory Committee shall:

(a) Review the dispersal of all funds and land conveyed to the City of Cambridge under the provisions of this Section 11.

(b) Develop such policies production and standards as may be appropriate for the of housing required and/or financed under the provisions of this Section 11.

(c) Provide assistance to the Planning Board a in the administration of, this Section 11.

The Advisory Committee shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11. and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department.

11. All deeds, agreements, site plans, and other documents submitted to the Planning Board in application for a special permit under Sections 11.100, 11.200 and 11.300 shall be submitted to the Advisory Committee for review prior to the issuance of a special permit. Within sixty-five (65) days of such submittal to the Advisory Committee it shall make a report to the Planning Board as to whether all requirements of this Section 11. have been met. No special permit may

be granted until the Board has received such written report from the Advisory Committee, or 65 days have elapsed.

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

498-9034

To: Councillor Alice K. Wolf January 11, 1985

From: Kathy A. Spiegelman
Assistant City Manager for Community Development

Inclusionary Zoning and Linkage

The following comments are offered in response to the concerns raised in your memo of December 18, 1984.

1. How can we avoid the negative impact inclusionary zoning and linkage might have on elderly housing and/or moderate priced housing - both of which serve important needs for the Cambridge population?

   It is currently difficult for any housing proposal to compete for investors' dollars with commercial projects. In the case of housing for elderly or moderate income, there is very little that does not involve some type of public subsidy or non-profit participation. We have recommended exemption from the provision of this ordinance for projects receiving such public assistance or non-profit agency participation. Such projects could be certified as including at least the minimum quantity required by inclusionary zoning - which at 10% would be consistent with the standards of almost any public program.

   By setting the minimum required units at 10% of an entire project and by setting the threshold at 10 units, it is more likely that both market-rate elderly and lower-cost market housing could be feasible. Review of moderate income development proposals shows that anything over 10% will be impossible to provide.

   Trying to offer incentives to lower cost private market housing might encourage developers in home ownership projects to set below -market sale prices, sell quickly, and allow first owners to capture windfalls from the full market potential at early resale. The addition of limited equity requirements to prevent this could not be implemented without the assistance of the above-mentioned subsidy programs and housing agencies.

2. How can we guarantee that students are not the beneficiaries of inclusionary units?

There are means test for income eligibility in subsidized housing programs. Although student status itself does not make someone ineligible, sources of outside support might do so. Additionally, the Advisory Committee can consider a residency preference for residents of 5 or more years.

3. How do we prepare for court challenges?

Other than adopting an ordinance which addresses the legal requirements of Chapter 40A, the Zoning Enabling Statute, I do not know of any language provisions which protect against future court actions. Perhaps severability is what you had in mind.

4. How could we expedite the review process?

The special permit requirement may contribute to review time but it makes the ordinance less vulnerable to legal challenge. It should be noted that many larger developments already go through the special permit or variance process. This special permit process should be no longer than other special requests, in other words the Advisory Committee should advise the Board within the existing Statatory time limits.

5. How do you differentiate the requirements for industrial development from office development?

Industrial development has been exempted in both of the proposals. However there is another problem of monitoring compliance over a period of time. Much of R & D development has space which is sometimes office and sometimes manufacturing. Business growth frequently depends upon this type of flexibility. It is likely that an interpretation of "industrial" would have to be pretty strict to prevent evasion of the ordinance requirements.

6. What incentives can we provide for developers to provide public amenities in addition to housing assistance?

It has been extremely difficult to identify development bonuses or process shortcuts which could be exchanged for housing assistance from developers. On the other hand, we can remove disincentives for developers to address multiple public needs. This means setting up a linkage program in which the requirements are not so burdensome as to eliminate provisions for other infrastructure and open space contributions or eliminate a project's feasibility completely.

Also, the special permit process enables us to place the housing requirement in the context of a broader evaluation of the impacts of a development project.

7. How do we avoid the possibility of housing developers building luxury housing on one site and low and moderate income housing somewhere else?

I believe that the special permit process can review a project's proposed low and moderate income housing with respect to location as well as other characteristics. An inequitable proposal would not be approved.

8. How do we designate a city agency responsible for overseeing the housing development?

The issue of how the City will administer the proposed inclusionary and linkage programs is a critical concern which has been raised by the public in hearings and by the Planning Board in their discussions on this topic. The creation of a new agency seems inefficient and unlikely to make the best use of combined resources. The proposed Housing Trust, if established as a"trust", presumably would receive, hold and distribute money and conduct the administration of projects and programs related to that money. I believe it is preferable to create a Linkage and Inclusionary Housing Advisory Committee which would provide policy advice and project approval for linkage-supported or inclusionary housing projects. Management of funds and administration of these projects would be handled in the same manner as other housing programs in the City. The Advisory Committee would make official recommendations to the Planning Board in the special permit process and guide the use of linkage/inclusionary funds in projects managed by the City.

cc: Robert W. Healy, City Manager
City Council

4

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

January 21, 1985

To the Honorable, the City Council:

Enclosed for your information are copies of two memorandums from Kathy A. Spiegelman, Assistant City Manager for Community Development, to the Planning Board and Councillor Alice Wolf, relative to inclusionary zoning and linkage.

Very truly yours,

Robert W. Healy

Robert W. Healy
City Manager

RWH/mbf
Encs. 2

Agenda Item No. 4

Re: copies of two memorandums from Kathy Spiegelman, Asst. City Manager for Community Development Re: inclusionary zoning & linkage.

In City Council,

January 21, 1985

Referred to Petitions

Cambridge Redevelopment Authority

336 Main Street
Cambridge, Massachusetts 02142
617 492 6800

RECEIVED BY
OFFICE OF CITY CLERK
DEC 18 11 40 AM '84
CAMBRIDGE, MASS.

December 18, 1984

Charles C. Nowiszewski
Chairman

Thomas J. Murphy
Vice Chairman

Frank S. Maragioglio
Treasurer

Gustave M. Solomons
Assistant Treasurer

Jacqueline S. Sullivan
Member

Joseph F. Tulimieri
Executive Director
and Secretary

Mr. Arthur C. Parris
Chairman
Cambridge Planning Board
57 Inman Street
Cambridge, Massachusetts 02139

Re: Proposed Low-and Moderate-Income Inclusionary Housing Requirements Zoning Ordinance

Kendall Square Urban Renewal Area/Cambridge Center
Wellington-Harrington Urban Renewal Area

Dear Mr. Parris:

The Authority has received a copy of the final report, dated October 29, 1984, to the Cambridge City Council from Councillor David E. Sullivan for the Working Group on Inclusionary Zoning, and a linkage ordinance attached to the report.

Without commenting upon the Working Group's conclusions as to the City's housing needs or as to the specifics or validity of the proposed recommendation or the merits of the proposed ordinance, the Authority respectfully urges that you exempt from the requirements of any such ordinance any development which may take place within an urban renewal area subject to an urban renewal plan that is or may be approved under Massachusetts law.

As you know, Massachusetts law encourages the redevelopment of substandard and blighted areas when such areas are determined by appropriate public agencies to qualify as such and when specific urban renewal plans setting forth particular land use controls and requirements are publicly reviewed, approved and put into effect for the respective areas. The public agencies which participate in this process include the Redevelopment Authority, the Planning Board, the City Council and the Massachusetts Department of Community Affairs. The federal Department of Housing and Urban Development may also participate to the extent that federal financial assistance is furnished to aid the development. Public participation is also involved in the entire planning and approval process.

The urban renewal plan, which is the end-product of that process, is a clear statement to prospective redevelopers and to the public agencies which have financially assisted in making the areas available for redevelopment, on what the new development should be. These detailed expressions of public policy establish a balance of controls and incentives for development aimed at achieving public objectives tempered by market-sensitive flexibility and feasibility.

In Cambridge, urban renewal plans have to date been established -- among others -- for the Kendall Square and Wellington-Harrington areas. These plans now state the land use and other development requirements which the City, acting by and through its lawful processes, impose upon redevelopers in order to achieve the desired development of the respective areas in the public interest.

The imposition of a significant new burden on redevelopers within an approved urban renewal area by the adoption of the proposed new ordinance would be inconsistent with the programs contemplated by the comprehensive urban renewal planning process.

Moreover, making the requirements proposed by the draft ordinance applicable to the existing approved urban renewal areas would, to say the least, be unfair to the redevelopers who have already undertaken or agreed to undertake the planning and development of such areas. It would also be contrary to the municipality's interest in completing the existing projects as planned. In the Kendall Square Urban Renewal area, a redeveloper has entered into two development agreements with this Authority calling for the construction of approximately 2,500,000 square feet of gross floor area, including a mix of commercial, hotel, institutional, parking and residential uses.

In those agreements, the developer is obligated to construct buildings at a certain density and in accordance with a minimum timetable, and under specified, and costly, design and other environmental controls. If new restrictions -- such as those contained in the proposed ordinance -- are imposed, the developer would be within his contractual rights to demand renegotiation of these agreements. Such an occurrence could bring interminable delays in the development process, and the loss of the momentum achieved would be most unfortunate. More than 750,000 square feet have already been constructed, and plans for other buildings are now in various stages of completion. If the draft ordinance were to be made applicable to the Kendall Square area, and the redeveloper renegotiated its construction commitments to the Authority, this would impose a change in the remaining development which would clearly not be in the public interest, economic or otherwise. Not only

has substantial progress been made by the redeveloper in carrying out the approved project but major public improvements have been installed in reliance upon the continued effectiveness of the contemplated development, the existing urban renewal plan and the MXD zoning district which were publicly approved after thorough planning and review.

Similarly, in the Wellington-Harrington area, the Authority has made public disclosure of its intent to dispose of a 25,000 square foot parcel, consistent with the objectives of the present approved urban renewal plan for that area. This is a joint venture owner-occupied development. It is intended that a four-story, 28,000 square foot office/retail building be constructed on Cambridge Street. This development is an additional attempt to renew Cambridge Street in accordance with the approved urban renewal for that area. The Authority is presently negotiating a land disposition agreement which will contain many conditions. To superimpose the additional restrictions of the proposed ordinance would make this development economically infeasible. Accordingly, development of this site (the former Langley building) would not proceed and the continued up-grading of this portion of Cambridge Street postponed indefinitely.

Parenthetically, it should be noted that over the past decade the Authority was responsible for providing more than 1100 new and rehabilitated housing units in the Wellington-Harrington neighborhood. Fully 85 percent of these units are presently occupied by modest income Cambridge families.

We respectfully request your positive consideration that urban renewal areas be excluded from the operation of the proposed inclusionary zoning and linkage ordinance.

Sincerely yours,

Joseph F. Tulimieri
Executive Director

JFT:aah

cc: Mr. Robert W. Healy
Ms. Kathy Spiegelman
Mr. Russell B. Higley
Mr. Joseph Cellucci
City Council Committee on Ordinances

Comm. from Joseph Tulimieri, Exec. Dir., Cambridge Redevelopment Authority Re: proposed Low-and Moderate-Income Inclusionary Housing Requirements Zoning Ordinance & the Kendall Square Urban Renewal Area/Cambridge Center Wellington-Harrington Urban Renewal Area.

In City Council,

January 7, 1985

1/7/1985

Referred to the Petitioner.

City of Cambridge

In City Council December 10, 1984

The Ordinance *Committee*

comprised of the entire membership of the City Council

to which was referred a petition submitted by the City Council to create a new section 11.90 entitled LOW AND MODERATE INCOME HOUSEHOLD INCLUSIONARY HOUSING REQUIREMENTS FOR RESIDENTIAL, OFFICE, INSTITUTIONAL AND RETAIL DEVELOPMENT and a petition submitted by William S. Noble on behalf of the Rent Control Coalition to add a new section 11.90 entitled LOW AND MODERATE INCOME HOUSEHOLD INCLUSIONARY HOUSING REQUIREMENTS FOR RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENT met on Tuesday, December 4, 1984 in the City Council Chamber at five o'clock and forty-five minutes p. m.

Councillor David Sullivan, Chairman, presided.

The Chair called for the proponents to appear and be heard at this time.

Councillor David Sullivan stated that he would relinquish the chair for the purpose of discussing the petitions which were before the Committee for their consideration and in his absence from the chair, Councillor Walter Sullivan presided.

Councillor David Sullivan stated that the Committee was hearing both petitions at the same time since they deal with the same subject matter. He outlined the income restrictions for eligibility in federal housing and further stated that the first ten thousand square feet of building space would be exempted and that one unit for each ten thousand square feet of gross floor would be provided under the proposals. He also stated that the opposition to the proposed zoning amendments would argue that we are killing the goose that lays the golden egg. In response to this comment, Councillor David Sullivan stated that many developers had been the recepient of tax breaks and subsidies from both federal and state governments and have not provided any housing in the process, that President Reagan has indicated that there would be more cuts in the funds available through HUD and for the development of housing in the upcoming budget. He further stated that while construction does provide jobs it does not met the needs of Cambridge citizens; that tax benefits allowed by the federal government for development does not reach the citizens of Cambridge and that we should first try linkage proposal and see if it works, that maximization of proceeds for developers should not have priority over the rights of workers and the needs of citizens for affordable housing. He further requested that anyone with a better approach to the problem would be welcomed by him.

Councillor Wolf stated that she hoped that the opposition to the housing proposals would not just say no, that the City Council would like them to share their concerns with the City Council and make recommendations for changes. She also stated that many communities, it must be remembered, that industry brings housing needs for those employed that there is a demonstrated connection between the industrial development and housing needs and that she hoped that out of this process a consensus could be formed and recommendations made and carried out.

Councillor Vellucci stated that he did not understand the requirements of the federal government regarding income levels to qualify for low and moderate income housing and outlined the need for housing for Cambridge citizens and stressed the necessity of adopting positive attitudes for the development of inovative approach to provide housing for the citizens of Cambridge.

The Committee heard from William Noble from the Rent Control Coalition who recorded his support for the petitions and submitted an outline of the differences between the two petitions which is appended to this report and referred to as Appendix A. He also stated that there was a need for afforable housing in the City of Cambridge.

The Committee heard from Daniel J. Wuenschel, Executive Director of the Cambridge Housing Authority who read a prepared statement which is appended to this report and referred to as Appendix B. In his statement Mr. Wuenschel stated that the Housing Authority supported the concept of the inclusionary zoning and the draft prepared by the Working Group on Inclusionary Zoning. He further stated that Cambridge has a critical and increasing need for low and moderate housing and that the Housing Authority has a low turnover rate and few vacancies and that they had to close their regular family waiting list in 1980 due to the extraordinary number of applicants and the waiting time for vacancies. He also stated that the leased housing program had thus far certified 303 applicants for placement but that only 89 applicants have been placed due to the difficulties in locating units and attracting landlords to take part in the program. Mr. Wuenschel stated that the need for family housing and shelter for those with special needs remained largely untouched. He outlined the role that the Housing Authority could play under Inclusionary Zoning and further stated that the amount of housing likely to be generated under this ordinance is substantial and advocated a public planning process with the public and the non-profit housing development entities taking part so that the issue could be addressed citywide.

In answer to questions by Councillor Duehay, Mr. Wuenschel stated that applications have been filed under all programs, that the agency is restricted by cost limits regarding the purchase of property and public development and the amount of money allocated to the programs. Mr. Wuenschel further stated that there was a need for new developments and finance in order to move forward with more housing units.

The Committe heard from Assistant City Manager for Community Development, Kathy Spiegelman, who outlined elements for a successful Inclusionary Zoning and Linkage Program as follows:

1. private real estate development joining the public sector to expand the opportunities for decent, affordable housing.

2. developer contributions to be combined with other housing programs to achieve optimal results through leveraging.

3. city to make an affirmative contibution rather than attempting to regulate new housing into existence.

4. flexibility allowed to negotiate site specific components.

5. developer contributions being set at reasonable levels.

6. administration of program being manageable.

7. targeted population being given access to units over an extended period of time through resale agreements or rent regulatory provisions.

8. public purpose under the zoning is clearly stated to make the requirements legally defensible.

At the conclusion, Ms. Spiegelman stated that the Community Development Department recommends that the above elements be included in any inclusionary zoning and linkage program in the City of Cambridge.

At this time Councillor David Sullivan stated that he would welcome specific language to carry out the recommendations submitted by the Assistant City Manager for Community Development.

The Committee heard from Denise Simmons, 176 Brookline Street, Ward Five Democratic Committee, who recorded her support for the petitions and stated that the Housing Authority units are the only affordable units in the City and further urged passage of a strong version of the zoning amendments.

The Committee heard from Michael Turk, 24 Prescott Street, from the Rent Control Coalition, who recorded his support and stated that there is an office space boom in the city with a thirty-two percent increase this year alone. He stated that there was 1½ million square feet of office space in Harvard Square and that a balance must be maintained. He further stated that properties are demolished to make way for commercial enterprises, that there is a need for housing and jobs for Cambridge residents. His statement is appended and referred to as Appendix C.

The Committee heard from Robert LaTremouille, 348 Franklin Street who recorded his support and stated that under Chapter 40A, Section 9 allow the city to develop linkage.

The Committee heard from Pablo Calderon, Executive Director of the RCCA, Corporation, 217 Western Avenue, recorded his support and stated that he agreed with the twenty-five percent of the units for the poor. He also stated that the developers have used government subsidies and that he was in favor of the developers providing housing.

The Committee heard from Bill Cavellini, 274 Brookline Street, who recorded himself in favor of the zoning amendments. He further stated that we need to help the newcomers coming to the Cambridgeport area and that it was imperative for the private sector to make contributions to housing and that all other sources have reached their limit and are exhausted.

The Committee heard from Charles Ash, Secretary of the Cambridge Committee of Elders, resident of 48 Eustic Street, who recorded that organization in favor of the principle of Inclusionary Zoning. He also stated that the Committee on Elders felt that Cambridge is at a critical point and that Inclusionary Zoning is a necessary form to control the exclusion of ordinary people, young and old, from any housing with the city. Mr. Ash's statements is appended to this report and referred to as Appendix D.

Steve Gary, CEOC, 11 Inman Street, recorded himself in support of the proposed zoning amendments.

Vincent Dixon, 287 Harvard Street, recorded himself in support of the proposed zoning amendments.

The Committee heard from Victoria Kent, 88 Hammon Street, who read a prepared statement which is appended to this report and referred to as Appendix E. In her statement Ms. Kent stated that she was in favor of the Inclusionary Zoning petitions.

The Committee heard from Frederick Levy, President of the Cambridge Civic Association, who read a prepared statement which is appended to this report and referred to as Appendix F. In his statement Mr. Levy stated that the CCA supports the Inclusionary Zoning Petition and further that they support an expanded housing stock by requiring low and moderate income housing in conjunction with large scale real estate developments so long as new housing does not result in high density development encroaching on less dense residential area. He also stated that he believed that this proposal is feasible, that it will not choke off development and that it will result in real additions to the housing stock in the city.

At eight o'clock and fifty-nine minutes p. m. the chair closed the hearing for the proponents and requested the opposition to appear.

Douglas Thayer, 1810 Massachusetts Avenue, owner of the Gilbert Companies, recorded himself in opposition to the zoning amendments.

David Clem, represent The Athenaeum Group, 25 Arlington Street, recorded his opposition to the zoning amendments.

Harold L. Goyette, 540 Franklin Street, recorded himself in opposition.

The Committee heard from Alex Steinbergh, 3 Clinton Street, who stated that he believed that low cost housing should be built, that owners should be given bonus incentives to provide housing and where six units are contemplated for building now becomes eight and that twenty-five percent of the units should be low and moderate housing and the feasibility regarding parking requirements for these developments should be considered.

The Committee heard from Joseph W. Haley, from Goodwin, Procter and Hoar, representing the Congress Group, Hines Industrial, Forest City Enterprises and Boston Properties, recorded their opposition to the zoning proposals. Attorney Haley question the problem of getting needed housing, whether it is legal to proceed this way. He also question whether Chapter 40 Section 9 was a proper legal basis for proceeding in this matter. He further stated that he liked the suggestions offered by Kathy Spiegelman and that the proposals offered by her are good for the city Council to consider; that the proposals as they stand now would be found to be illegal if tested in court without working with some compensation plan.

The Committee heard from David Hughes, representing the Chamber of Commerce, recording their opposition. He stated that the proposals would have a devastating effect on the economic vitality of the City and that the proposals, if enacted, would send the message to the developers that Cambridge is against development and that small businesses wanting to expand would be hurt. He further stated that it has never been proven that there is a link between the need for housing and increased development and that the proposal amounted to a special tax on the developers and would greatly increase the already lengthy period required to get a development off the ground.

Councillor David Sullivan stated that he had invited Mr. Hughes to work with the Group and that he had agreed to attend but not participate in the deliberations and that he had offered no alternative proposed for alleviating the housing crises.

Councillor Wolf stated that it is the right to housing to people as well as a right to property that it is a moral requirement that housing be provided for all persons. She further stated that we should consider alternative proposals and not adopt a negative attitude toward the housing needs.

Mr. Hughes responded by stating that the proposals would be a disincentive to development.

Councillor Duehay stated that the Chamber did not lead in 1960 and inquired as to where the leadership of the Chamber was now. He also stated that we need positive thoughts to solve the problem.

Councillor Vellucci stated to Mr. Hughes that you were invited and you did not respond.

Councillor Duehay requested the City Clerk to request, in writing, from the people who were not heard for their views on the Inclusionary proposals.

Councillor David Sullivan stated that the issue is whether this proposal would create more low cost housing and Attorney Haley stated that it is illegal and a simplistic approach to the problem.

The Committee heard from Thomas J. Costagliola, 610 Green Street, owner of Infinity Construction, who recorded his opposition to the zoning proposals. He also questioned whether a special permit would be advisable with units of 5, 6 or more and that the new proposed ordinance would encourage vested interest. He further stated that parking spaces now cost $15,000 in the City of Cambridge and questioned whether low and moderate income persons could afford one. He stated that the return on the construction of a townhouse was about five to ten percent.

Communications received by the City Clerk in opposition, pursuant to Chapter 40A, Section 5 of the Massachusetts General Laws to the Inclusionary Zoning petitions as submitted by the City Council and the Rent Control Coalition are appended to this report and referred to as Appendix G.

Councillor Wolf moved that the two proposals be referred to the City Council, without recommendation.

On a voice vote the motion -

Carried.

For the Committee,

Councillor David Sullivan,
Chairman.

NOTE: Appendix H is a list of the main recommendations in the Working Group proposal submitted by the City Council and the alternative proposal submitted by the Rent Control Coalition.

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OFFICE OF CITY CLERK
DEC 6 10 37 AM '84
CAMBRIDGE, MASS.

348 Franklin Street
Cambridge, MA. 02139-3731

December 6, 1984

TO THE HONORABLE, THE CAMBRIDGE CITY COUNCIL:

During the December 4, 1984, Ordinance Committee hearing the chair encouraged written summaries of presentations made to the Committee. I am pleased to provide this summary of my comments during that hearing.

I was coauthor of the first two meaningful Inclusionary Zoning proposals submitted to the Cambridge City Council. It is thus a pleasure to see two new and very good expansions of the concept under consideration: the working group proposal and the CRCC improvement of the working group document. I am coauthor of the latter.

Cambridge has been extremely generous to developers in our zoning policies. During the past three years, this has resulted in a 32% increase[1] in the amount of office space in our city. It is time for the developers to provide something in exchange.

Massachusetts General Laws, chapter 40A, section 9, allows Cambridge to require a developer to provide low and moderate income housing in exchange for zoning generosity. The city should exercise its rights.

Councillor David Sullivan, in particular, is to be commended for improvements he has made to the working group draft. He has added Special Permit provisions paralleling chapter 40A, section 9. This section was the basis of our previous proposals. Compliance with it is essential to create a legal proposal. The CRCC has included Councillor Sullivan's language in our document.

While the working group is to be commended, the CRCC submittal is better. The CRCC submittal has added provisions to the draft which are necessary to accomplish our common goal. These include technical changes which are legally more restrictive than the working group draft. These more restrictive provisions, under Zoning Change law, can only be included in a surviving document if the CRCC draft is the basis of that document.

CRCC section 11.98 is crucial. A major percentage of development efforts are accomplished by accumulating parcels in separate ownership, placing them under one owner, and building. The working group proposal is made applicable only to "lots " as defined therein. The working group definition of "lot" excludes parcels which have been accumulated from separate ownerships. The CRCC language includes such accumulations in its definition of "lot".

1. Banker and Tradesman, November 28, 1984

Section 11.993 concerns review by the trust of special permit applications. The CRCC language places time schedules for trust review designed to allow planning board processing within special permit requirements.

Section 11.994 adds standards of review for the planning board. None are provided in the working group draft. Standards of review are essential to ensure that the intent of the legislation is fulfilled.

Section 11.995 spells out the responsibilities of the trust. This level of detail is essential to create the trust and to guide its duties as an independent city body. The CRCC language ensures that final decisions on zoning matters rest with the planning board.

Section 11.996 requires that a certificate of occupancy be granted for the required units before any such certificate may be granted other portions of the project. This ensures compliance. It is recommended as a result of snags in the 1000 Massachusetts Avenue project. 1000 Massachusetts Avenue is in a zoning district which requires yard space or housing on its Green Street lot line. There is, however, no requirement that the latter be provided and completed prior to the balance of the project. The developer was aware of the distinction. It displayed less enthusiastic cooperation than might have been wished, pointing out the zoning provision in justification.

I think that Councillor Wolf's question about mixed use developments combining uses which are required to provide low and moderate income housing with uses which are not required to do so is well taken. A mixed use development results in pro rata zoning requirements. We should review mixed use projects and clarify our language to conform to the intent of the legislation.

Councillor Vellucci's concern that "low and moderate income" beneficiaries be limited to the truly poor is well taken. It is the intent of these proposals that such be the case. If these proposals do not accomplish this goal, I believe that they should be modified.

In contrast, the Development Department, in the working group sessions, attempted to expand the beneficiaries. In the last meeting the working group deleted language inserted by the staff which would have expanded beneficiaries to include persons earning 120% of the average income in our area. The staff language would have included apartments renting for as much as $700 per month.

I disagree with comments made by Ms. Spiegelman in opposition to the proposals. Her comments were internally contradictory. On one hand she expressed concern that the proposals would create too large a bureaucracy. On the other hand, she wanted the proposals amended to call for even more city involvement.

I believe that the CRCC proposal, by not including buy-out provisions, minimizes the size of the bureaucracy. It constitutes a regulation of the private sector in the direction the state has allowed us to go. It provides detailed Guidance for developers and tells them to do their thing within that guidance.

The CRCC proposal requires low and moderate income housing to be dispersed among market-rate housing in the same project. Housing required incidental to commercial and institutional development must be in the same neighborhood as the development, if such is reasonably possible.[2] Since each developer is providing a relatively small number of required units, the units could be constructed with minimal impact on the neighborhoods and without variances.

Ms. Spiegelman commented that the target population should be given permanent access to the required housing. CRCC has attempted to do so. Nevertheless, the comment raised in my mind a logical improvement to our proposals. The state permits us to require low and moderate income housing as a condition for our great zoning generosity. I consider it reasonable, and within the state language, to require a permanent subsidy for these units as an easement on the balance of the project, in that amount as is necessary to make these units meaningfully low and moderate income. There is an alternative that the units be transferred to the city. In such a case I would consider transfer appropriate without such an easement.

Councillor Duehay's comment that the trust should be deleted in order to simplify and economize the proposal is another thoughtful suggestion. I think that it should be carefully considered.

Sincerely,

Robert J. La Trémouille

2. Councillor Wolf complimented the CRCC on this latter aspect of our proposal. It is unique to our proposal. I gratefully accept her compliment and regret that I understood it to be directed to the portion concerning housing incidental to housing. That language is taken from the working group proposal.

Comm. from Robert J. LaTremouille, transmitting a summary of his comments during the December 4, 1984 meeting of the Committee on Ordinances Re: inclusionary zoning.

In City Council,

December 10, 1984

12/10/84

Referred to the

PETITION —

CCM-101

City of Cambridge

3.

IN CITY COUNCIL

November 5, 1984

COUNCILLOR CLINTON

ORDERED: That the City Manager be and hereby is requested to instruct the City Solicitor and the Assistant City Manager for Community Development to prepare a legal opinion and an area wide map indicating exactly what properties in this City could be affected if this City Council adopts a proposal for inclusionary zoning; said opinion and map should be submitted to this Council prior to any hearing being scheduled by either the Planning Board or the Committee on Ordinances, in order that proper notification may be made to all concerned; and be it further

ORDERED: That the Assistant City Manager for Community Development pay particular attention to such issues as: are the abutters within 300 feet of said inclusionary zoning able to oppose said proposal; and do existing companies, institutions or residential properties who wish to expand their facilities come under the restrictions of said proposal.

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex Inman & Broadway

To Robert W. Healy
City Manager

From Kathy A. Spiegelman, Assistant City Manager for Community Development **Date** November 15, 1984

Subject Response to Council Order #3 Dated November 5, 1984

This memo is in response to the City Council request concerning notification of hearings for the inclusionary zoning proposals now before the council. The proposed zoning amendments would potentially affect all properties in all zoning districts in the City with the possible exception of the Open Space District. Statutory requirements for notification of zoning amendments of this kind are publication in a general circulation newspaper, mailed notification to abutting town planning and zoning commissions, notification to the Executive Office of Communities and Development and to the Metropolitan Area Planning Council. In addition, it is customary for the Planning Board to send notice to groups, organizations and individuals who may have expressed interest in the subject of the petitions or who might be expected to have an interest. Notification to individual property owners for City Wide petitions, as these are, is not practicable. All building construction containing those uses regulated by these petitions (residential, office, retail and certain institutional uses) would be subject to the provisions of the two petitions. As all property owners are potentially affected by the provisions of the proposed amendments those property owners may formally protest the adoption of the amendments as provided for in Chapter 40A of the General Laws.

KAS/LB/tm

CITY OF CAMBRIDGE

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall Annex Inman & Broadway

To Robert W. Healy
City Manager

From Kathy A. Spiegelman, Assistant City Manager for Community Development **Date** November 15, 1984

Subject Response to Council Order #3 Dated November 5, 1984

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KAS/LB/tm

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

December 3, 1984

To the Honorable, the City Council:

With respect to City Council Order No. 3 of November 5, 1984 relative to inclusionary zoning proposals, enclosed please find copy of a communication from Kathy A. Spiegelman, Assistant City Manager for Community Development.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item No. 14

Re: enclosed comm. from Community Development regarding inclusionary zoning proposals.

In City Council,

December 3, 1984

12/3/84

- Placed on File -

C. C. 106

PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 6:00 p. m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by William S. Noble in behalf of the Cambridge Rent Control Coalition, et al to amend the Zoning Ordinances of the City of Cambridge by adding the following new Section 11.90 to Article 11.000, Special Regulations. Said new section to be entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

The purpose of this section is intended to require the provision of housing for low and moderate income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor David Sullivan,
Chairman.

see amended notice
posted on bulletin board 11/16/84 dd

RECEIVED BY
OFFICE OF CITY CLERK
NOV 8 8 53 AM '84
CAMBRIDGE, MASS.

C. C. 106

Amended Notice

PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

See amended notice

Office of the City Clerk.

5:30

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Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the City Council will be heard at the same time and place and considered with the same subject matter.

For the Committee,
Councillor David Sullivan,
Chairman.

C. C. 106

PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

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For the Committee,

Councillor David Sullivan,
Chairman.

C. C. 106

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For the Committee,

Councillor David Sullivan,
Chairman.

C. C. 106

PUBLIC NOTICE
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City of Cambridge

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Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

For the Committee,

Councillor David Sullivan,
Chairman.

C. C. 106

PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 5:30 p. m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by the City Council to amend the Zoning Ordinances of the City of Cambridge by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

The purpose of this section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the Rent Control Coalition will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

C. C. 106

AMENDED NOTICE
PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

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All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the Rent Control Coalition will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

November 16, 1984

To Whom It May Concern:

Enclosed you will find two AMENDED copies of hearings scheduled before the Committee on Ordinances for Tuesday, December 4, 1984 in the City Council Chamber, City Hall, Cambridge, as follows:

5:30 p. m. Petition of the City Council to create a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development".

5:30 p. m. Petition of William S. Noble in behalf of the Cambridge Rent Control Coalition, et al to add a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development".

Please note, that the time of these hearings have been changed so that both petitions will be heard together as they are concerned with the same subject matter.

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Encs. (2)

C. C. 106

AMENDED NOTICE
PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

Notice is hereby given that in accordance with the provisions of Chapter 40A, Section 5 of the General Laws, Tercentenary Edition and amendments thereto, that the Committee on Ordinances, comprised of the entire membership of the City Council will hold a public hearing on Tuesday, December 4, 1984 at 5:30 p. m. in the City Council Chamber, City Hall, Cambridge, Massachusetts on a petition by the City Council to amend the Zoning Ordinances of the City of Cambridge by creating a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development.

The purpose of this section 11.90 is intended to require the provision of low and/or moderate income family housing as a component of most new housing developments in the City of Cambridge; to assist in the provision of adequate housing for all citizens of Cambridge; to encourage a reasonable mix of housing opportunities in all city neighborhoods and in commercial development and to mitigate the escalation of the cost of housing in Cambridge as a result of new large scale non-residential development.

Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the Rent Control Coalition will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

C. C. 108

AMENDED NOTICE
PUBLIC NOTICE
RELATIVE TO ZONING.

City of Cambridge

MASSACHUSETTS

Office of the City Clerk.

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Copies of this petition are on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

All persons interested in this matter may appear at this time and be heard.

This petition and the petition of the City Council will be heard at the same time since they are concerned with the same subject matter.

For the Committee,

Councillor David Sullivan
Chairman.

CITY OF CAMBRIDGE
CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

November 8, 1984

To Whom It May Concern:

Enclosed you will find two copies of hearings scheduled before the Committee on Ordinances for Tuesday, December 4, 1984 in the City Council Chamber, City Hall, Cambridge, as follows:

5:30 p. m. Petition of Councillor David Sullivan to create a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Office, Institutional and Retail Development".

6:00 p. m. Petition of William S. Noble in behalf of the Cambridge Rent Control Coalition, et al to add a new section 11.90 entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development".

Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Encs. (2)

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9017

OFFICE OF
THE CITY CLERK

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Your kind attention in this matter will be greatly appreciated.

Very truly yours,

Paul E. Healy

Paul E. Healy, City Clerk.

PEH/dl

Encs. (2)

November 5, 1984

RECEIVED BY
OFFICE OF CITY CLERK
NOV 5 10 52 AM '84
CAMBRIDGE, MASS.

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

To the Honorable; the City Council:

The Cambridge Rent Control Coalition (CRCC) is pleased to submit the attached petition for inclusionary zoning and "linkage" in the City of Cambridge for consideration by the Council and Planning Board.

Members of CRCC attended regularly meetings of the Working Group on Inclusionary Zoning established by order of the Council. We have learned a great deal from work done by the Working Group and have incorporated much from the Working Group in our petition. Because CRCC's petition follows closely the format and approach of the Working Group's petition, we believe the Council can more easily perceive where we differ from the Working Group on substantive issues.

In the near future, the Coalition will submit to the Council additional materials to compare the effective rates of the two petitions and to explain special features of our petition.

We thank the Council for its consideration.

Respectfully submitted,

William S. Noble

(for) CAMBRIDGE RENT CONTROL COALITION

(William S. Noble)

enc: as

Cambridge, November 5, 1984

To the Honorable, the City Council of the
City of Cambridge:

The undersigned respectfully pray

that the Zoning Ordinance of the City of Cambridge be amended by adding the following new Section 11.90 to Article 11.000, Special Regulations:

"11.90 Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

11.91 Purpose

This Section 11.90 is intended to require the provision of housing for low- and moderate-income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

11.92 Applicability

11.921 The provisions of this Section 11.90 shall apply to any residential, commercial, or institutional development containing any one or combination of the following uses:

Housing Uses

(a) Detached dwelling for one family (4.31a)
(b) Two-family dwelling (4.31b)
(c) Existing one-family detached dwelling converted for two families (4.31c)
(d) Townhouse development (4.31d)
(e) Elderly oriented congregate housing (4.31e)
(f) Existing dwelling converted for elderly oriented congregate housing (4.31f)
(g) Multi-family housing (4.31g)
(h) Existing dwelling converted for more than two families (4.31h)

Commercial and Institutional Uses

(i) Hotel or motel (4.31 i(2))
(j) Radio and television studio (4.32f)
(k) Office and Laboratory Use (4.34)
(l) Retail Business And Consumer Service Establishments (4.35)
(m) Institutional Uses (4.33, as detailed in 4.56 c 5, 6, & 8, d 1 & 2, e 1-7, i 4)

11.922 The uses listed in Subsection 11.921 shall comply with the provisions of this Section 11.90 when they are created by (a) new construction, (b) conversion of a non-residential structure to residential use, (c) conversion from a residential use to a non-residential use, and (d) conversion from any use not listed in 11.921. For the purpose of this Subsection 11.922, new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provisions of this Section 11.90, including those regarding substantial rehabilitation, shall modify any requirement for a removal permit for housing units subject to rent control.

11.923 Except for residential structures converted to non-residential uses listed in Subsection 11.921, no structure once subject to the provisions of this Section 11.90 shall be additionally subject to this Section if converted to another use listed in Subsection 11.921. This Subsection 11.923 shall not apply to any new additions to or expansions of a structure which have not themselves been subject to Section 11.90.

11.93 Quantity Requirements for Residential Uses

11.931 Purpose

These requirements are intended to ensure that most new residential developments in the City of Cambridge contain units affordable by, available to, and occupied by low- and moderate-income households who are not served by new, market-rate, housing construction.

11.932 Any residential development subject to this Section 11.90, as determined by Section 11.92, (hereinafter development) and which contains four (4) or more units as defined in paragraph (a) below, must obtain a Special Permit from the Planning Board under this Section 11.90.

The Planning Board shall issue such a Special Permit only if it determines that the development will contain the percentage of units affordable by, available to and occupied by low- and moderate-income households (the required units) set forth in the following schedule:

(a) a development containing three (3) or fewer units constructed after November 5, 1984 on a lot as defined in Section 11.98 shall be exempt from the requirements of this Section 11.90.

(b) a development containing from four (4) to ten (10) units shall provide required units in an amount at least equal to twenty (20) percent of the total units constructed.

(c) a development containing more than ten (10) units shall provide required units in an amount at least equal to thirty (30) percent of the total units constructed.

(d) Where application of these requirements results in a fraction of a unit, the fraction shall be rounded to the nearest whole number and that number of units shall be required.

11.94 Quantity Requirements for Commercial and Institutional Uses

11.941 Purpose

These requirements are intended to increase the supply of new affordable housing in the City of Cambridge and to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial and institutional development does not further disadvantage low- and moderate-income households who are already unable to secure affordable housing in the City.

11.942 Any commercial or institutional development subject to this Section 11.90, as determined by Section 11.92, (hereinafter development) and which exceeds 10,000 square feet of gross floor area as defined in paragraph (a) below, must obtain a Special Permit under this Section 11.90. The Planning Board shall issue such a Special Permit only if it determines that the development will make provision for residential dwelling units affordable by, available to, and occupied by low-and moderate-income

households (the required units) in an amount at least equal to the number of units required under the following schedule:

(a) a development constructed after November 5, 1984 and containing 10,000 square feet of gross floor area or less shall be exempt from the requirements of this Section 11.90.

(b) a development containing more than 10,000 square feet of gross floor area shall provide one (1) required unit for each 10,000 square feet of gross floor area authorized. Where application of this requirement results in a fraction of a unit, the fraction shall be rounded to the nearest whole number and that number of units shall be required.

11.95 Options for provision of the Required Units

11.951 The low- and moderate-income units required under Sections 11.93 and 11.94 may be provided in any one or a combination of the following ways:

(a) Construction of required units complying with all provisions of this Section 11.90 on the permit site, in the case of a housing use, or on another site or sites elsewhere in Cambridge as provided in Section 11.952.

(b) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and which has a current appraised fair market value at least equal to the fair market value of the required unit(s).

11.952 Units required under Section 11.94 shall be constructed in the neighborhood(s) most directly impacted by commercial or institutional development subject to this Section 11.90. If, after reviewing written evidence that no sites are available in the directly impacted neighborhood(s), the Planning Board determines that fulfilling this requirement will result in substantial hardship to the Special Permit applicant, the Planning Board may permit the required units to be constructed at another Cambridge location which has been positively recommended by the Cambridge Housing Development Trust herein established (hereinafter the Trust).

11.953 In the application for a Special Permit under this Section 11.90, an applicant who intends to construct the required units must select one of the following options:

(a) transferring the required units in fee simple to the City of Cambridge. Such units shall be rented or sold to occupants or owners certified as eligible by the Trust under terms established by the Trust to ensure compliance with the provisions of this Section 11.90. Rental units owned by the City of Cambridge shall be managed by a non-profit housing community development corporation designated by the Trust. Rental income not required for management services, expenses, and timely maintenance as well as all sales proceeds shall be used by the Trust to construct additional units complying with the provisions of this Section 11.90.

(b) ownership and management, directly or by an agent, of the required units under operating regulations to be promulgated from time to time by the Trust. A Special Permit issued under Section 11.90 shall require that an applicant who intends to own and manage required units shall comply with all operating regulations issued by the Trust. Compliance with this Subsection 11.953(b) shall be made part of any and all transfers of property subject to this Subsection 11.953(b).

11.954 Units required under Section 11.93 shall not be used to satisfy the requirements of Section 11.94. Units required under Section 11.94 shall not be used to satisfy the requirements of Section 11.93.

11.96 Required Units shall meet the requirements of this Section 11.96. The Planning Board shall ensure that the requirements of this Section 11.96 are fulfilled as provided in Sections 11.98 and 11.99, before granting any special permit under this Section 11.90.

11.961 Required units shall be provided in the following rotating sequence:

(a) (1) One low-income unit
(2) One low-income unit
(3) One moderate-income unit

(b) (1) One three-bedroom unit
(2) One two-bedroom unit

To illustrate, the first six required units shall have the following characteristics:

First unit: low-income, three-bedroom unit
Second unit: low-income, two-bedroom unit
Third unit: moderate-income, three-bedroom unit
Fourth unit: low-income, three-bedroom unit
Fifth unit: low-income, two-bedroom unit
Sixth unit: moderate-income, two-bedroom unit

11.962 The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the required units will be permanently available to low- and moderate-income households. All households occupying the low- and moderate-income units provided under this Section 11.90 shall be certified as eligible by the Trust.

11.963 The required units shall be dispersed throughout the housing development and not concentrated in any one structure or location. In phased construction, each completed phase shall provide, to the nearest single unit, the same proportion of required units as required for the total development.

11.964 In no case shall the average size of required units be less than the average size of all other equivalent units authorized. Where no equivalent market-rate units are authorized, the Trust shall establish standards for the size of required units which shall be consistent with the size of similar units in public, assisted, and market-rate housing.

11.965 Required units shall be comparable in layout and finish to similar market-rate units in the same development.

11.966 Not more than 20% of the required units shall be units intended for the elderly. Units intended for the elderly shall be exempt from the requirements of Section 11.961. Where more than 20 units are required, at least 5% of the required units shall be suitable for handicapped persons.

11.967 The site plan shall provide for safe, convenient and harmonious grouping of structures, uses and facilities, for a well-designed relationship between inside and outside spaces, and for preservation of desirable natural or historic features. Where possible, structures shall be oriented and constructed to conserve energy and to take full advantage of a site's solar heating and cooling potential.

11.968 For the purposes of this Section 11.90, a low-income household shall be one having an eligible income not exceeding 50% of the median family income for the Boston Metropolitan Area; a moderate-income household shall be one having an eligible income greater than 50% and not exceeding 80% of the median. The median family income shall be as determined by the federal Department of Housing and Urban Development, or any successor agency, and shall be adjusted for family size.

11.969 For the purpose of this Section 11.90, units restricted to occupancy by persons required to have an affiliation with a non-profit charitable or educational institution shall not be used to satisfy any requirements for units for low- and moderate-income households under this Section 11.90.

11.97 Special Requirements for Conversion of Non-residential Structures

11.971 No structure in non-residential use shall be converted under this Section 11.90 unless the Trust shall recommend such conversion positively to the Planning Board and the Planning Board shall be satisfied that (a) no jobs will be lost due to the conversion or (b) where jobs will be lost, jobs equivalent or better in number, type, quality and pay shall be made available in Cambridge on a first-priority basis to all employees displaced in the conversion by the entity or entities owning or controlling the structure to be converted. No building permit shall be issued until the jobs required under (b) above have been made available.

11.972 Non-residential structures vacant on November 5, 1984 shall be exempt from the requirements of Subsection 11.971. Non-residential structures made or becoming vacant after November 5, 1984 with loss of jobs shall be subject to the provisions of Subsection 11.971 for a period of five (5) years calculated from the date the structure becomes vacant.

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11.974 A non-residential structure complying with the requirements of this Subsection 11.97 shall be entitled to the FAR, maximum height, and setbacks possessed by the

structure on November 5, 1984. The minimum lot area per dwelling unit shall be determined from Table 5.31 by taking the minimum lot area per dwelling unit required by the Residence C district with the FAR closest to that of the non-residential structure to be converted.

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(a) a lot in existence on November 5, 1984 regardless of any subsequent change in ownership or control or subdivision thereof or

(b) a group of such lots in different or the same ownership on November 5, 1984 which has been assembled in whole or in part for development purposes or which constitutes a development parcel.

The provisions of Section 11.90 shall be applied to the cumulative number of units and/or gross floor area constructed after November 5, 1984 as determined by this Section 11.98, and, where construction on a lot occurs in phases, each stage of construction shall provide the additional number of units required for that stage under Sections 11.93 and 11.94.

11.99 Compliance

11.991 Cambridge Housing Development Trust Board

There shall be established a Cambridge Housing Development Trust Board which shall be an agency of the City of Cambridge and shall be governed by a five member board of trustees who shall be residents of Cambridge and appointed by the City Manager, as follows:

(a) a representative from the Cambridge Housing Authority
(b) a representative of a Cambridge-based, non-profit, housing corporation
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The Trust shall:

(a) Manage and dispense all land, improvements, and funds conveyed to the City of Cambridge under the provisions of this Section 11.90 for the support of low- and moderate-income housing meeting the requirements of this Section 11.90.

(b) Develop such regulations as may be appropriate for the design and location of all housing required and for any documents, procedures and agreements necessary to carry out the provisions of this Section 11.90.

(c) Provide assistance to the Planning Board and to the Superintendent of Buildings in the enforcement of, and in determining compliance with, this Section 11.90.

The Trust shall have all powers necessary to carry out its responsibilities under the provisions of this Section 11.90 and shall receive staff, technical and administrative assistance from the Cambridge Community Development Department.

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All deeds, agreements, site plans, and other documents necessary to comply with the provisions of this Section 11.90 shall be submitted with the application for a Special Permit hereunder. Within five (5) days of receipt, the application and all papers submitted therewith shall be transmitted to the Trust for review. Within forty-five (45) days of submittal, the Trust shall make a report to the Planning Board as to whether all requirements of this Section 11.90 have been met. No Special Permit may be issued until the Planning Board has received such written report from the Trust, or until forty-five (45) days have elapsed from the date of submittal, whichever shall occur first.

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The Planning Board shall review the report of the Trust submitted under this Section 11.90 and shall determine whether the proposed development furthers the purposes of this Section 11.90. If the Planning Board so determines, it shall incorporate requirements set forth in the Trust

report as conditions of any Special Permit granted under this Section 11.90. No Special Permit shall be granted by the Planning Board unless it finds that the proposed development furthers the purposes and complies with the requirements of this Section 11.90.

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Specific duties to be performed by the Trust in carrying out its responsibilities under this Section 11.90 shall include, but not be limited to, the following:

(a) Where non-performance by an applicant under agreements required by this Section 11.90 would derogate from the purposes of this Section 11.90, the Trust shall include contractually enforceable penalty clauses for non-performance in such agreements. These agreements shall become conditions of the Special Permit as provided in Section 11.994.

(b) The Trust shall establish a selection process for low- and moderate-income residents of required units provided under this Section 11.90 and to the extent possible, shall give preference to prior Cambridge residents displaced from the City and to other Cambridge residents. At its discretion the Trust may delegate tenant or owner-occupant selection.

(c) The Trust shall establish comprehensive management regulations for required units provided under this Section 11.90 which are to be rented. As a minimum requirement, these regulations shall ensure continuing competent and responsive management of the required units.

(d) At its discretion the Trust may employ techniques designed to reduce the cost of required units intended for sale to eligible homeowners. Such techniques include, but are not limited to, reduced sales price, longer-term mortgages, and limited equity agreements. The Trust may use special selection methods such as lotteries to determine who will purchase a unit when there are more eligible buyers than units. In all sales of required units, The Trust shall ensure continuing compliance with this Section 11.90 and such requirements shall become conditions of the Special Permit as provided in Section 11.994.

(e) Annually, the Trust shall review the operation of all required units provided under this Section 11.90 to determine that the required units continue to be occupied by low- and moderate-income households.

(f) From time to time the Trust shall establish percentages of required units to be made available for rental to eligible tenants and for sale to eligible owner-occupants, taking into consideration current needs for each type of housing in the City of Cambridge.

11.996 All agreements necessary to ensure the construction of units or conveyance of land shall be executed prior to issuance of a Special Permit hereunder. Certificates of Occupancy for all required units under a Special Permit granted pursuant to this Section 11.90 must be issued prior to issuance of other Certificates of Occupancy under the same Special Permit.

11.997 The provisions of this Section 11.90 are severable, and if a court holds invalid any such provision, or its application to any person, property, or circumstance, such invalidity shall not impair the validity of any other provision or application which can be given effect in the absence of the invalid provision or application."

Respectfully submitted,

William S. Noble	reg at 247 Mt Auburn St. 38 Green St. Cambridge ✓
William Cavellini (Cavellini)	274 Brookline St. Cambridge. ✓
Elizabeth Oglesby (reg. at 274 Brookline Oglesby)	20 Whitney Ave., Cambridge ✓
Neil Rohr (Neil Rohr)	reg at 22 Whitney Ave. 279 Pearl St., Cambridge, 02139 ✓
Robert J. Dumouchelle	348 Franklin St., Cambridge 02139-3731 ✓
H. Hatch O. Sterrett (Sterrett)	333A Harvard St. Cambridge 02139 ✓

✓ = registered Voters

JEFFREY A. STERN	288 HARVARD St. CAMB. 02139 ✓
(Michael H. Turk) Michael H. Turk	24 Prescott St. #22 Cambridge 02138 ✓
(MALCOLM KAUFMAN)	as of Jan 1st: 14 Dudley MA 02140 ✓
Mark C Kaufman	18 Dudley St (#3) Cambridge ✓
Nancy L Brody	180 Chestnut St. Camb. ✓
Nancy Shea	27 Acorn St Camb. ✓
Gary C. Quinton	5 Newton St. Camb. 02139 ✓
Peter Zak Valentine	55 Blanche (Blanche) St Camb. 02139 ✓
HOWARD P. RANSEUR	335A HARVARD St. #15, Camb. 02139 ←
Victoria Kent	88 Hammond St, Camb. MA 02138
Rochelle Turman	27 Forest St., Camb, MA 02140
Margaret P. Smith	9 Crescent St. Camb. 02138
Janet M Hawley	80 Chestnut St Cambridge MA 02139

November 5, 1984

RECEIVED BY
OFFICE OF CITY CLERK
NOV 5 10 52 AM '84
CAMBRIDGE, MASS.

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

To the Honorable; the City Council:

The Cambridge Rent Control Coalition (CRCC) is pleased to submit the attached petition for inclusionary zoning and "linkage" in the City of Cambridge for consideration by the Council and Planning Board.

Members of CRCC attended regularly meetings of the Working Group on Inclusionary Zoning established by order of the Council. We have learned a great deal from work done by the Working Group and have incorporated much from the Working Group in our petition. Because CRCC's petition follows closely the format and approach of the Working Group's petition, we believe the Council can more easily perceive where we differ from the Working Group on substantive issues.

In the near future, the Coalition will submit to the Council additional materials to compare the effective rates of the two petitions and to explain special features of our petition.

We thank the Council for its consideration.

Respectfully submitted,

William S. Noble

(for) CAMBRIDGE RENT CONTROL COALITION

(William S. Noble)

enc: as

Cambridge, November 5, 1984

To the Honorable, the City Council of the
City of Cambridge:

The undersigned respectfully pray

that the Zoning Ordinance of the City of Cambridge be amended by adding the following new Section 11.90 to Article 11.000, Special Regulations:

"11.90 Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development.

11.91 Purpose

This Section 11.90 is intended to require the provision of housing for low- and moderate-income households in most new housing developments in the City of Cambridge, to assist in the provision of adequate housing for all citizens of Cambridge, to encourage a reasonable mix of housing opportunities in all city neighborhoods, and to mitigate escalation in the cost of Cambridge housing caused by new, large-scale, non-residential development.

11.92 Applicability

11.921 The provisions of this Section 11.90 shall apply to any residential, commercial, or institutional development containing any one or combination of the following uses:

Housing Uses

(a) Detached dwelling for one family (4.31a)
(b) Two-family dwelling (4.31b)
(c) Existing one-family detached dwelling converted for two families (4.31c)
(d) Townhouse development (4.31d)
(e) Elderly oriented congregate housing (4.31e)
(f) Existing dwelling converted for elderly oriented congregate housing (4.31f)
(g) Multi-family housing (4.31g)
(h) Existing dwelling converted for more than two families (4.31h)

Commercial and Institutional Uses

(i) Hotel or motel (4.31 i(2))
(j) Radio and television studio (4.32f)
(k) Office and Laboratory Use (4.34)
(l) Retail Business And Consumer Service Establishments (4.35)
(m) Institutional Uses (4.33, as detailed in 4.56 c 5, 6, & 8, d 1 & 2, e 1-7, i 4)

11.922 The uses listed in Subsection 11.921 shall comply with the provisions of this Section 11.90 when they are created by (a) new construction, (b) conversion of a non-residential structure to residential use, (c) conversion from a residential use to a non-residential use, and (d) conversion from any use not listed in 11.921. For the purpose of this Subsection 11.922, new construction shall include substantial rehabilitation costing more than 50% of the replacement value of the structure. No provisions of this Section 11.90, including those regarding substantial rehabilitation, shall modify any requirement for a removal permit for housing units subject to rent control.

11.923 Except for residential structures converted to non-residential uses listed in Subsection 11.921, no structure once subject to the provisions of this Section 11.90 shall be additionally subject to this Section if converted to another use listed in Subsection 11.921. This Subsection 11.923 shall not apply to any new additions to or expansions of a structure which have not themselves been subject to Section 11.90.

11.93 Quantity Requirements for Residential Uses

11.931 Purpose

These requirements are intended to ensure that most new residential developments in the City of Cambridge contain units affordable by, available to, and occupied by low- and moderate-income households who are not served by new, market-rate, housing construction.

11.932 Any residential development subject to this Section 11.90, as determined by Section 11.92, (hereinafter development) and which contains four (4) or more units as defined in paragraph (a) below, must obtain a Special Permit from the Planning Board under this Section 11.90.

The Planning Board shall issue such a Special Permit only if it determines that the development will contain the percentage of units affordable by, available to and occupied by low- and moderate-income households (the required units) set forth in the following schedule:

(a) a development containing three (3) or fewer units constructed after November 5, 1984 on a lot as defined in Section 11.98 shall be exempt from the requirements of this Section 11.90.

(b) a development containing from four (4) to ten (10) units shall provide required units in an amount at least equal to twenty (20) percent of the total units constructed.

(c) a development containing more than ten (10) units shall provide required units in an amount at least equal to thirty (30) percent of the total units constructed.

(d) Where application of these requirements results in a fraction of a unit, the fraction shall be rounded to the nearest whole number and that number of units shall be required.

11.94 Quantity Requirements for Commercial and Institutional Uses

11.941 Purpose

These requirements are intended to increase the supply of new affordable housing in the City of Cambridge and to ensure that the increased demand for housing generated by new employees brought to Cambridge by commercial and institutional development does not further disadvantage low- and moderate-income households who are already unable to secure affordable housing in the City.

11.942 Any commercial or institutional development subject to this Section 11.90, as determined by Section 11.92, (hereinafter development) and which exceeds 10,000 square feet of gross floor area as defined in paragraph (a) below, must obtain a Special Permit under this Section 11.90. The Planning Board shall issue such a Special Permit only if it determines that the development will make provision for residential dwelling units affordable by, available to, and occupied by low-and moderate-income

households (the required units) in an amount at least equal to the number of units required under the following schedule:

(a) a development constructed after November 5, 1984 and containing 10,000 square feet of gross floor area or less shall be exempt from the requirements of this Section 11.90.

(b) a development containing more than 10,000 square feet of gross floor area shall provide one (1) required unit for each 10,000 square feet of gross floor area authorized. Where application of this requirement results in a fraction of a unit, the fraction shall be rounded to the nearest whole number and that number of units shall be required.

11.95 Options for provision of the Required Units

11.951 The low- and moderate-income units required under Sections 11.93 and 11.94 may be provided in any one or a combination of the following ways:

(a) Construction of required units complying with all provisions of this Section 11.90 on the permit site, in the case of a housing use, or on another site or sites elsewhere in Cambridge as provided in Section 11.952.

(b) Conveyance of vacant land to the City of Cambridge which in all aspects of location, zoning, access, shape, etc. is suitable for the construction of housing and which has a current appraised fair market value at least equal to the fair market value of the required unit(s).

11.952 Units required under Section 11.94 shall be constructed in the neighborhood(s) most directly impacted by commercial or institutional development subject to this Section 11.90. If, after reviewing written evidence that no sites are available in the directly impacted neighborhood(s), the Planning Board determines that fulfilling this requirement will result in substantial hardship to the Special Permit applicant, the Planning Board may permit the required units to be constructed at another Cambridge location which has been positively recommended by the Cambridge Housing Development Trust herein established (hereinafter the Trust).

11.953 In the application for a Special Permit under this Section 11.90, an applicant who intends to construct the required units must select one of the following options:

(a) transferring the required units in fee simple to the City of Cambridge. Such units shall be rented or sold to occupants or owners certified as eligible by the Trust under terms established by the Trust to ensure compliance with the provisions of this Section 11.90. Rental units owned by the City of Cambridge shall be managed by a non-profit housing community development corporation designated by the Trust. Rental income not required for management services, expenses, and timely maintenance as well as all sales proceeds shall be used by the Trust to construct additional units complying with the provisions of this Section 11.90.

(b) ownership and management, directly or by an agent, of the required units under operating regulations to be promulgated from time to time by the Trust. A Special Permit issued under Section 11.90 shall require that an applicant who intends to own and manage required units shall comply with all operating regulations issued by the Trust. Compliance with this Subsection 11.953(b) shall be made part of any and all transfers of property subject to this Subsection 11.953(b).

11.954 Units required under Section 11.93 shall not be used to satisfy the requirements of Section 11.94. Units required under Section 11.94 shall not be used to satisfy the requirements of Section 11.93.

11.96 Required Units shall meet the requirements of this Section 11.96. The Planning Board shall ensure that the requirements of this Section 11.96 are fulfilled as provided in Sections 11.98 and 11.99, before granting any special permit under this Section 11.90.

11.961 Required units shall be provided in the following rotating sequence:

(a) (1) One low-income unit
(2) One low-income unit
(3) One moderate-income unit

(b) (1) One three-bedroom unit
(2) One two-bedroom unit

To illustrate, the first six required units shall have the following characteristics:

First unit: low-income, three-bedroom unit
Second unit: low-income, two-bedroom unit
Third unit: moderate-income, three-bedroom unit
Fourth unit: low-income, three-bedroom unit
Fifth unit: low-income, two-bedroom unit
Sixth unit: moderate-income, two-bedroom unit

11.962 The applicant shall establish such restrictions, conditions, and/or limitations as are necessary to ensure that the required units will be permanently available to low- and moderate-income households. All households occupying the low- and moderate-income units provided under this Section 11.90 shall be certified as eligible by the Trust.

11.963 The required units shall be dispersed throughout the housing development and not concentrated in any one structure or location. In phased construction, each completed phase shall provide, to the nearest single unit, the same proportion of required units as required for the total development.

11.964 In no case shall the average size of required units be less than the average size of all other equivalent units authorized. Where no equivalent market-rate units are authorized, the Trust shall establish standards for the size of required units which shall be consistent with the size of similar units in public, assisted, and market-rate housing.

11.965 Required units shall be comparable in layout and finish to similar market-rate units in the same development.

11.966 Not more than 20% of the required units shall be units intended for the elderly. Units intended for the elderly shall be exempt from the requirements of Section 11.961. Where more than 20 units are required, at least 5% of the required units shall be suitable for handicapped persons.

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Respectfully submitted,

William S. Noble	reg. at 247 Mt. Auburn St.
William Cavellini (CAVELLINI)	38 Green St. Cambridge ✓
Elizabeth Oglesby (reg. at 274 Brookline)	274 Brookline St. Cambridge. ✓
Neil Rogin (ROGIN)	20 Whitney Ave., Cambridge ✓
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	333A Harvard (HARVARD) St. Cambridge 02139 ✓

✓ = registered Voters.

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[signature]	24 Prescott St. #22 Cambridge 02138 ✓
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9. O-13

Petition of William S. Noble, et al, to amend the Zoning Ordinances by adding a new Section 11.90 to Article 11.000, Special Regulations, entitled "Low and Moderate Income Household Inclusionary Housing Requirements for Residential, Commercial and Institutional Development".

Copy sent to Planning Board 11/7/84 (mk)
Copy sent to Ordinance Comm 11/16/84 (mk)

3/4/85 Placed on file due to expiration of time limit
No action taken on original Noble Petition - See Planning Board Recommendation - Substituted for original Noble 3/4/85

In City Council,

November 5, 1984

11/5/84
Referred to the
Planning Board
and
Ordinance Committee
for
Hearing and Report