

Receipt is hereby acknowledged this 16th day of April, 1980, of \$480,000.00 as a pro tanto amount for the damages sustained in the eminent domain taking of property located at 9-11 Rear and 21 Sacramento Street, Cambridge, Massachusetts, and more particularly described in City Council Order dated March 31, 1980, and recorded on April 4, 1980, in the Middlesex County Registry of Deeds, South.

It is further acknowledged that the award of damages in this taking are made to the President and Fellows of Harvard College, Cambridge, Massachusetts 02138 as former owner of record of the property taken.

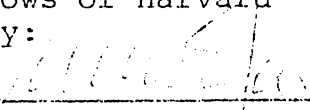
The foregoing notwithstanding, this payment made by the City of Cambridge and its receipt by Harvard University is expressly understood by all parties to be subject and without prejudice to the pending contention of Harvard University as set forth in the pending case of President and Fellows of Harvard College vs. City of Cambridge, civil action No. 80-1881 in the Middlesex Superior Court. Harvard contends that the payment is legally inadequate as a pro tanto payment under Mass. G.L. c 79.

City of Cambridge by:

David Vickery 

Assistant City Manager
for Community Development

President and Fellows of Harvard
College by:

Lewis A. Armistead 

Dated:
April 16, 1980



City of Cambridge

NON-AUTOMATED VENDOR ACCOUNT
Cambridge, Massachusetts 02139
(617) 498-9032

53-139
113

CHECK N° 009163

DATE	VOUCHER NO	WARRANT NO.	PAY TO	AMOUNT OF CHECK
4-11-1980	009163	1476	The President & Fellow of Harv. Un. Real Estate Dept. Holyoke Center/Room 451 1350 Mass. Ave. Cambridge, Ma.	\$480,000.00



Century Bank
Century Bank and Trust Company
Cambridge, Massachusetts 02140

VOID AFTER
60 DAYS

CAMBRIDGE MASS 02140



S. G. Grier
CITY TREASURER

⑈009163⑈ ⑆011301390⑆ ⑈04 13008 1⑈

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE

v.

CITY OF CAMBRIDGE

COMPLAINT

1. President and Fellows of Harvard College, commonly known as Harvard University, is a private not-for-profit corporation organized and existing under the Constitution and laws of the Commonwealth of Massachusetts and having its principal offices in Cambridge, County of Middlesex, Commonwealth of Massachusetts.

2. The City of Cambridge is a municipal corporation having its principal offices in Cambridge, County of Middlesex, Commonwealth of Massachusetts.

3. This action seeks an order against the defendant under Mass. G.L. c. 79, § 10A requiring the defendant to comply with the provisions of Mass. G.L. c. 79 in connection with a taking by it of certain land of the plaintiff by an Order of Taking dated March 31, 1980 and recorded with the Middlesex South District Registry of Deeds and in the Registered Land Section of said Registry on April 4, 1980.

4. On April 2, 1979 the defendant had adopted a prior Order of Taking on this same land in which it stated that the market value for the land had been appraised at \$480,000. A copy of this Order of Taking is attached hereto as Appendix A. The plaintiff is informed and believes that this market value figure of \$480,000 was based upon the July 17, 1978 appraisal report of the defendant's appraisers, Messrs. John D. Hewitt and Richard W. Partridge, Jr. who had appraised the land for \$480,000 as of July 7, 1978. A copy of the July 17, 1978 letter of Messrs. Hewitt and Partridge forwarding that appraisal report to the defendant is attached hereto as Appendix B.

5. The defendant did not record the aforesaid April 2, 1979 Order of Taking within the 30 day period required by Mass. G.L. c. 79, § 3, and the taking thereupon was ineffectual.

6. In June of 1979 the defendant had its said appraisers Messrs. Hewitt and Partridge update their July 17, 1978 appraisal report as to the fair market value of the land, and on June 12, 1979 Messrs. Hewitt and Partridge reported to the defendant that the updated value as of June 4, 1979 was \$750,000. A copy of the June 12, 1979 letter of Messrs. Hewitt and Partridge forwarding their supplementary appraisal report to the defendant is attached hereto as Appendix C. As noted

in the second paragraph therein, Messrs. Hewitt and Partridge stated "that the unit prices for land are accelerating at such a fast rate that this appraisal value will be effective for only 60 days."

7. On March 31, 1980 the defendant adopted this second Order of Taking of the said land in which it again awarded damages in the amount of \$480,000. A copy of this Order of Taking is attached hereto as Appendix D. This second Order of Taking was, as previously noted, recorded in the Middlesex South District Registry of Deeds and in the Registered Land Section of said Registry on April 4, 1980.

8. The defendant now purports to offer \$480,000 to the plaintiff under Mass. G.L. c. 79, § 8A either as a full payment of or a payment pro tanto against the fair market value of the land as of the date of taking.

9. The foregoing procedure by the defendant on the second Order of Taking is not in accordance with the requirements of Mass. G.L. c. 79. The damages set forth in the Order of Taking under Mass. G.L. c. 79, § 6 should be based upon at least one appraisal made for and filed with the defendant under Mass. G.L. c. 79, § 7A, and any such appraisal should be made in accordance with Mass. G.L. c. 79, § 12 which measures the damages as the value of the land as of the date of taking. In this case there is no such appraisal

which in any way purports to measure the value of the land as of the date of taking. The defendant's \$450,000 appraisal as of July 7, 1978 was increased to \$750,000 as of June 4, 1979, and by its very terms this latter appraisal was insufficient and no longer effective after August 12, 1979.

WHEREFORE the plaintiff prays under Mass. G.L. c. 79, § 10A as follows:

1. That an order of notice issue requiring the defendant to appear and show cause why the order requested under prayer 2, below, not be granted;
2. That, upon return of the order of notice under prayer 1, above, the Court Order the defendant to obtain from its appraisers and have filed with it an appraisal of value of the plaintiff's land as of the date of taking, and to amend its Order of Taking pursuant to Mass. G.L. c. 79, § 6 to set forth said value as the damages awarded by it which, pursuant to Mass. G.L. c. 79, §§ 7G and 8A, the plaintiff may accept either as full payment or as a payment pro tanto;
3. That, upon issuance of the Order under prayer 2 above, and until further order of the Court, the Court temporarily enjoin any further proceedings by the defendant on this land taking pending compliance by the defendant with said Order; and

4. For such other relief as shall seem fitting to
the Court.

By its attorneys,

George T. Finnegan
Ropes & Gray
225 Franklin Street
Boston, Massachusetts 02110
Tel. (617) 423-6100



City of Cambridge

IN CITY COUNCIL

April 2, 1979

WHEREAS:

By Section 30 of Chapter 43, Section 14 of Chapter 40 and Chapter 79 of the General Laws, all as amended, it is provided that the City Council may take in fee in the name of the City for any municipal purpose any land within the limits of the City not already appropriated for public use; and

WHEREAS:

The Community Development Department has requested and the City Manager and City Council have approved and authorized that the City should under the provisions of the aforesaid Chapters of the General Laws take and hold for recreation open space purposes the parcel of land hereinafter bounded and described; and

WHEREAS:

An appropriation sufficient to cover the estimated expense thereof has been duly made by the City Council as required by the aforesaid Sections of Chapter 40 and 43;

NOW, THEREFORE by virtue and in pursuance of the authority conferred by said Chapters of the General Laws and by every other power and authority it thereto enabling, the City of Cambridge by its City Council does hereby take the land hereinafter described for recreation open space purposes and all easements, privileges and appurtenances thereto belonging as well as all trees and all structures thereon. Intending to take and hereby taking in fee simple all the land included within such description by whomsoever the same may be owned, including the fee to the center of any and all streets, highways and public ways contiguous and adjacent to the said areas, but excluding any and all easements in Sacramento Street bounded and described, vis:

A certain developed parcel of land situated in Cambridge bounded and described as follows:

- Northerly: by land now or formerly owned by Linda M. Sawyer and by land now or formerly owned by the President and Fellows of Harvard College; 281.75'
- Westerly: by land now or formally owned by the President and Fellows of Harvard College; 54.92',
- Southerly: by land now or formerly owned by the President and Fellows of Harvard College; 169.23',
- Westerly: by land now or formerly owned by the President and Fellows of Harvard College; 105.40',

- Southerly: by Sacramento Street; 98.82',
- Easterly: by land now or formerly owned by Anthony G. Enos and Lydia V. Enos; 103.08',
- Southerly: by land now or formerly owned by Anthony G. Enos and Lydia V. Enos; 10.0',
- Easterly: by land now or formerly owned by the President and Fellows of Harvard College; 148.75'

containing 53,006 square feet more or less. The market value for the land has been appraised at \$480,000.

ORDERED:

The taking of fee simple title in land herein described is hereby authorized in accordance with General Laws, Chapter 40, Section 14 and Chapter 43, Section 30 as amended for the purpose of public recreation open space.

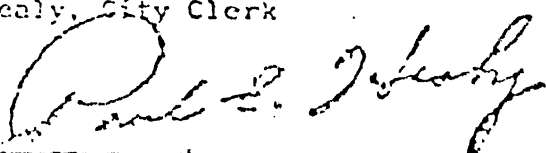
Said land is described as a certain developed parcel of land situated in Cambridge, bounded and described as follows:

- Northerly: by land now or formerly owned by Linda M. Sawyer and by land now or formerly owned by the President and Fellows of Harvard College; 281.75'
- Westerly: by land now or formerly owned by the President and Fellows of Harvard College; 54.92',
- Southerly: by land now or formerly owned by the President and Fellows of Harvard College; 169.23',
- Westerly: by land now or formerly owned by the President and Fellows of Harvard College; 105.40',
- Southerly: by Sacramento Street; 98.82',
- Easterly: by land now or formerly owned by Anthony G. Enos and Lydia V. Enos; 103.08',
- Southerly: by land now or formerly owned by Anthony G. Enos and Lydia V. Enos; 10.0',
- Easterly: by land now or formerly owned by the President and Fellows of Harvard College; 148.75'

containing 53,006 square feet more or less. The market value for the land has been appraised at \$480,000.

In City Council April 2, 1979
 Adopted by a yea and nay vote:
 Yeas 7; Nays 0; Absent 2.
 Attest: Paul E. Healy, City Clerk

A true copy,
 ATTEST:



JOHN D. HEWITT, M.A.I.

RICHARD W. PARTRIDGE, JR., R. M.

MEMBERS,

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS
SOCIETY OF REAL ESTATE APPRAISERS



July 17, 1978

CITY OF CAMBRIDGE
Community Development Department
City Hall Annex
57 Inman Street
Cambridge, Massachusetts 02139

Attention: David R. Vickery, Assistant City Manager

In Re: Land on the northerly side of Sacramento Street, being Map 155, Lot 25 containing 10,636 square feet and Lot 29 containing 42,370 square feet of land

Dear Mr. Vickery:

Pursuant to your Purchase Order No. 028767-1, and a Contract dated December 7, 1977, we have appraised the above captioned real estate for the purpose of estimating its fair market value as of July 7, 1978.

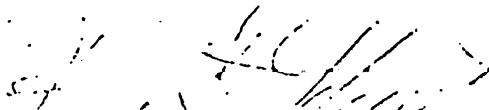
We hereby certify that we have personally inspected the land on several occasions and that we have no present or contemplated future interest in the same.

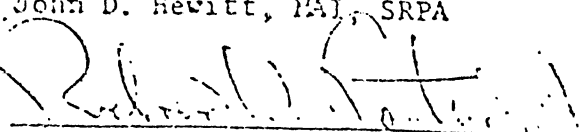
In the preparation of the attached report we have applied accepted methods and standards of real estate appraisal practice consistent with the guidelines and ethical requirements of The American Institute of Real Estate Appraisers and The Society of Real Estate Appraisers, of which we are both members.

We further certify that we have personally gathered and analysed the data herein contained, that we have not knowingly omitted or failed to consider any matter which we felt was pertinent to the value estimate, and on the basis of our inspection, investigation, study and analysis, we are of the opinion that the subject property, as of July 7, 1978, has a market value of

\$480,000.

Respectfully submitted,


John D. Hewitt, PAI, SRPA


Richard W. Partridge, Jr., RM, SRA

JDH:ark

Post Office Box 220
Accord (South Hingham)
Massachusetts 02018

Appendix B

JOHN D. HEWITT, M.A.I.

RICHARD W. PARTRIDGE, JR., R. M.

MEMBERS:
AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS
SOCIETY OF REAL ESTATE APPRAISERS

June 12, 1979

CITY OF CAMBRIDGE
Community Development Department
City Hall Annex
57 Inman Street
Cambridge, Massachusetts 02139

Attention: David R. Vickery, Assistant City Manager

In Re: Land on the northerly side of Sacramento Street being Map 155 Lot 25, containing 10,636 square feet, and Lot 29 containing 42,370 square feet of land

Dear Mr. Vickery:

In accordance with your letter of May 29, 1979, we have reappraised the above captioned real estate as of June 4, 1979 for the purpose of estimating its fair market value.

It should be noted, as stated in Highest and Best Use, that the unit prices for land are accelerating at such a fast rate that this appraisal value will be effective for only 60 days.

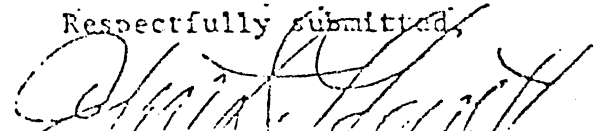
This updated appraisal report is considered a Supplementary Report to our report of July 17, 1978, and only portions of the report have been rewritten where changes were necessary.

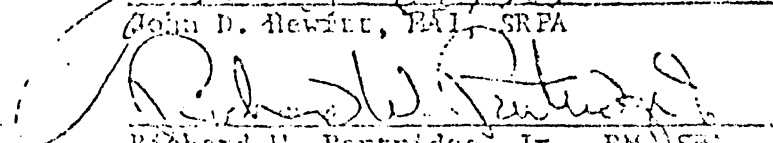
We hereby certify that we have personally reinspected the land on several occasions and rephotographed the land on June 5, 1979. We have no present or contemplated future interest in the same. In the preparation of the attached report we have applied accepted methods and standards of real estate appraisal practice consistent with the guidelines and ethical requirements of The American Institute of Real Estate Appraisers and The Society of Real Estate Appraisers, of which we are both members.

We further certify that we have personally gathered and analyzed the data herein contained, that we have not knowingly omitted or failed to consider any matter which we felt was pertinent to the value estimate, and on the basis of our inspection, investigation, study and analysis, we are of the opinion that the subject property, as of June 4, 1979, has a market value of

\$750,000.

Respectfully submitted,


John D. Hewitt, MAI, SRPA


Richard W. Partridge, Jr., RM, SRPA

JDH:ark

Post Office Box 220
Accord (South Hingham)
Massachusetts Tel: 749-0583

Appendix C



City of Cambridge

IN CITY COUNCIL

March 31, 1980

WHEREAS:

By Section 30 of Chapter 43, Section 14 of Chapter 40 and Chapter 79 of the General Laws, all as amended, it is provided that the City Council may take in fee in the name of the City for any municipal purpose any land within the limits of the City not already appropriated for public use; and

WHEREAS:

The Community Development Department has requested and the City Manager and City Council have approved and authorized that the City should under the provisions of the aforesaid Chapters of the General Laws take and hold for recreation open space purposes the parcel of land hereinafter bounded and described; and

WHEREAS:

An appropriation sufficient to cover the estimated expense thereof has been duly made by the City Council as required by the aforesaid Section of Chapter 40 and 43;

THEREFORE BE IT ORDERED:

That the taking in fee simple title of land hereinafter described is hereby authorized in accordance with General Laws, Chapter 40, Section 1 Chapter 43, Section 30 and Chapter 79 as amended, for the purpose of public recreation space, intending to take and hereby taking in fee simple all the land included within such description by whomsoever the same may be owned, and all easements, privileges and appurtenances thereto belonging as well as trees, and all structures thereon including the fee to the center of any and all streets, highways and public ways contiguous and adjacent to the said areas but excluding any and all easements on Sacramento Street bounded and described, vis:

Parcel 1 A parcel of land situated on and being numbered 9-11R Sacramento Street as shown on the City of Cambridge Assessor map, page 155, Lot No. 29 containing 42,370 square feet of land, bounded and described as follows:

Northerly: by land now or formerly owned by Linda M. Sawyer and by land now or formerly owned by the President and Fellows of Harvard College; 281.75',

Westerly: by land now or formerly owned by the President and Fellows of Harvard College; 156.94',

Southerly: by land now or formerly owned by the President and Fellows of Harvard College; 272.98',

Easterly: by land now or formerly owned by the President and Fellows of Harvard College; 148.75'.

Parcel 2 A parcel of land situated on and being numbered 21 Sacramento Street as shown on the City of Cambridge Assessors' map, page 155, Lot No. 25 containing 10,636 square feet of land bounded and described as follows;

Westerly: by land now or formerly owned by the President and Fellows of Harvard College; 105.70',

Southerly: by Sacramento Street; 98.82', .

Easterly: by land now or formerly owned by Anthony G. Enos and Lydia Enos; 103.08',

Northerly: by land now or formerly owned by the President and Fellows of Harvard College; 103.75'.

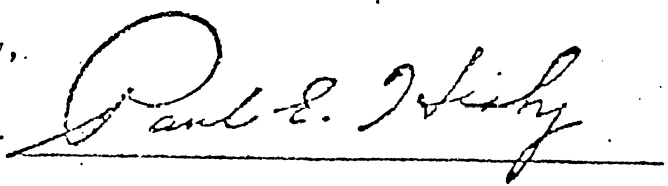
Parcels 1 and 2 contain 53,006 square feet more or less. The damages awarded with respect to said parcels are \$480,000 and the supposed owners are the President and Fellows of Harvard College.

Said parcels of land are shown as Parcel Number One and Parcel Number Two on a plan entitled "Sacramento Street Plan of Land in Cambridge" dated April 3, 1980 by James F. Rice, Surveyor, to be recorded herewith.

A copy of said plan is on file in the Office of the City Clerk, City Hall, Cambridge, Massachusetts.

In City Council March 31, 1980.
Adopted by a yeas and nays vote:
Yeas 5; Nays 3; Absent 1.
Attest:- Paul E. Healy, City Clerk.

A true copy,

ATTEST:- 

Paul E. Healy, City Clerk.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

April 11, 1980

President and Fellows of Harvard College
Harvard University Real Estate Department
Holyoke Center - Room 451
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138

Gentlemen:

Re Notice of Taking
Property Located at 9-11 Rear and 21 Sacramento Street
Cambridge, Massachusetts

In order to carry out the Cambridge Recreational Open Space Program, the City of Cambridge is obligated, among other things, to acquire, in whole or in part, real property including land, buildings, structures and other improvements, appurtenances, rights-of-way, easements, and other rights and interests, within the neighborhoods of the City.

This is to notify you that by an order of taking, dated March 31, 1980, the above-noted parcel of property was taken by the City of Cambridge for the development of Sacramento Field Park. Said order has been recorded in the Registry of Deeds, including the Land Registration Section, for Middlesex County at Cambridge, Massachusetts. Plans showing the taking are on file in said Registry of Deeds and in the office of the Law Department, City Hall, Cambridge, Massachusetts. Chapter 79, Section 14 of the General Laws provides that a person entitled to an award of his damages under said Chapter or the body politic or corporate bound to pay the same, may petition for the assessment of such damages to the Superior Court in Middlesex County. A petition for the assessment of damages under Section 14 may be filed within two years after the right to such damage has vested.

Chapter 79, Section 8A, of the General Laws provides that a person entitled to damages may request an offer either in full settlement or as a payment pro tanto from the City of Cambridge at any time after the right to damages has vested, the City of Cambridge may offer in writing to every person entitled to damages on account of such taking reasonable amount which the City of Cambridge is willing to pay either in settlement or as a payment pro tanto.

The City of Cambridge has awarded the sum of: Four Hundred Eighty Thousand Dollars (\$480,000.00) as the amount of damages sustained by the owner or owners and all other persons, including all mortgagees of record, having any and all interest in the above-noted parcel, in the taking of or injury to their property or entitled to any damages, by reason of said taking.

President and Fellows of
Harvard College

-2-

April 11, 1980

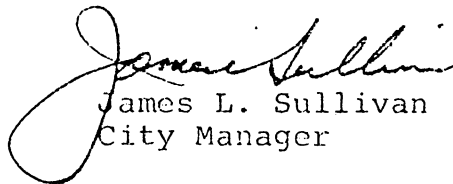
Payment of this award has been made this day by direct delivery of a check for the full amount stated above.

Such payment may be accepted in full settlement of the right of such owner or person to damages in respect to the taking of the subject property or may be accepted as payment pro tanto pursuant to Chapter 79, Section 9, without prejudice to or waiver or surrender of any right to claim a larger sum by proceeding before an appropriate tribunal, but subject to the obligation to refund to the City an amount equal to the difference between such payment and the damages subsequently assessed by such tribunal if said payment pro tanto shall be accepted and prove to be in excess of the damages subsequently assessed by such tribunal.

Mr. John R. Hixson of the Cambridge Community Development Department is available at any time to assist in matters relating to property acquisition policies and procedures.

If you have any questions or if you wish further assistance in regard to these matters, please do not hesitate to call Mr. Hixson at 498-9034.

Very truly yours,


James L. Sullivan
City Manager

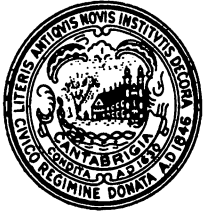
Taking recorded and rights to
damages vested on: April 4, 1980

Recorded at Registered Land Section,
Middlesex South Registry of Deeds
Certificate No. 90959

JLS:jp

cc: Lewis Armistead
Russell B. Higley, Esq.
David R. Vickery
Robert L. Whidden
Peter Helwig
John Hixson
Paul Healy

5.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTE 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

April 28, 1980

To the Honorable, the City Council:

Enclosed for your information are copies of all the documentation related to the taking of two parcels of land on Sacramento Street.

Very truly yours,

James L. Sullivan
James I. Sullivan
City Manager

JLS/mbf
Enc.

Agenda #5

F-159

Documentation related to the taking of two
parcels of land on Sacramento St.

In City Council,

April 28, 1980

4/28/1980

Placed on File