



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

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ASSISTANT CITY SOLICITOR

EDWARD A. CUNNINGHAM
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BIRGE ALBRIGHT
LEGAL COUNSEL

May 21, 1984

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

Re: Cambridgeport Industrial District

Dear Mr. Healy:

On May 14, 1984, the City Council requested that I draft a general ordinance as follows:

ORDERED: That the City Solicitor be and hereby is requested to draft a general ordinance which will cause the Department of Inspectional Services to issue demolition permits and building permits in the Cambridgeport Industrial District only after the applicant:

- (1) certifies that no residential, commercial or industrial tenants have been or will be evicted from the premises to be demolished more than sixty (60) days prior to the date when physical reuse of the site for new construction begins; and
- (2) plans for reuse of the site consistent with an overall redevelopment plan for the Cambridgeport Industrial District approved by the City Council have been filed with the Com-

munity Development Department and advertised as a public notice in local newspapers at least ninety (90) days prior to the effective date of the requested demolition permit.

In my opinion, the proposed ordinance would be beyond the power of the City Council, for the following reasons:

1. Insofar as the proposed ordinance attempts to regulate eviction of nonresidential tenants, it is not within the power of the City of Cambridge under the Home Rule Amendment because it constitutes the regulation of civil relationships not incidental to the exercise of an independent municipal power. See Marshall House, Inc. v. Rent Review & Grievance Board of Brookline, 357 Mass. 709 (1970). Eviction of residential tenants is already regulated by the City's Rent Control Ordinance, authorized by Chapter 36 of the Acts of 1976. The proposed ordinance does not indicate in what way the new ordinance would vary from existing eviction regulations.

2. Even if a redevelopment plan for the Cambridgeport Industrial District were approved by the City's legislative body, an ordinance limiting the issuance of building permits and demolition permits to projects for which plans consistent with the approved city plan had been submitted would not be authorized because the procedures called for by the proposed ordinance are not consistent with those mandated by Chapter 40A, the State Zoning Act.

3. Chapter 40A, the State Zoning Act, requires a city's legislative body to delegate approval of development plans to the Planning Board or Board of Zoning Appeals. The proposed ordinance would be invalid because it contradicts this requirement.

4. The proposed ordinance cannot be designated as a "general ordinance." It must be designated as an amendment to the Zoning Ordinance because regulation of development to require consistency with an approved plan constitutes zoning.

5. The proposed ordinance must be designated as an amendment to the zoning ordinance because it is to apply to only one district of the City and special regulation of a specified district is permissible only pursuant to Chapter 40A, the State Zoning Act.

6. The proposed ordinance would prohibit redevelopment of any sites with existing buildings until a redevelopment plan for the Cambridgeport Industrial District has been approved by the City Council. In spite of the work of the Community Development Department and the availability of the January 1983 Revitalization Plan, no such plan has been approved and future adoption of any such City plan is uncertain. If adopted prior to the approval of such a plan, the proposed ordinance would prohibit all redevelopment, and therefore constitute a "taking" of private property without just compensation in violation of the Fourteenth Amendment of the United States Constitution.

7. Insofar as the proposed ordinance would apply to demolition or building permits it should apply to all districts in the City of Cambridge. The reason is that special regulation of a specified district is permissible only pursuant to Chapter 40A.

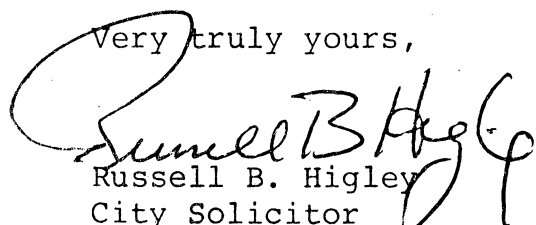
8. The proposed ordinance requires the approval by the City Council of a redevelopment plan. There is no authority for approval by a city's legislative body of redevelopment plans except in connection with urban redevelopment projects pursuant to Chapters 121A and 121B, which contemplate the taking of the land involved or the city providing financial assistance to the developer.

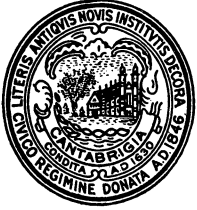
9. Insofar as the intent of the proposed ordinance is to assure that redevelopment meets the City's job opportunity and employment goals, the Cambridgeport Industrial District should be designated a "major economic revitalization area" pursuant to subsection 11.82 of the Cambridge Zoning Ordinance.

10. If the City Council believes it is appropriate to require review of development plans for the Cambridgeport Industrial District, it should designate the Cambridgeport Industrial District as an area of "special planning concern" under section 11.40 of the Cambridge Zoning Ordinance and require compliance with the development consultation procedures specified therein.

11. The proposed ordinance would conflict with G.L. c. 111, §127B and c. 143, §9, because those statutes place the demolition of buildings in Cambridge within the discretion of the Commissioner of Inspectional Services.

Very truly yours,


Russell B. Higley
City Solicitor



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LEGAL COUNSEL

May 29, 1984

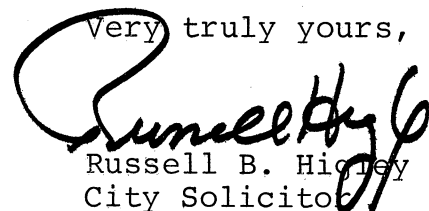
Mr. Paul E. Healy
City Clerk
City Hall
Cambridge, Mass.

Re: City Council Calendar Item No. 8 of 5/21/84

Dear Mr. Healy:

In response to your letter of May 25, I enclose a copy of my opinion to the City Manager dated May 21, concerning the issuance of demolition permits and building permits in the Cambridgeport Industrial District.

Very truly yours,


Russell B. Higley
City Solicitor

RBH/jl

Enc.

Comm. from Paul E. Healy, City Clerk, transmitting a comm. from Russell B. Higley, City Solicitor Re: an opinion regarding an order adopted by the Council concerning the issuance of demolition permits and building permits in the Cambridgeport Industrial District.

*copy sent to the City Manager
6/6/84 mb*

In City Council,

June 4, 1984

*6/4/84
Motion of C. D. Sullivan
to refer Bill to the
City Manager with
request to draft
Ordinance as requested
By Council order of
4/31/84*