# CITY OF CAMBRIDGE

## INTEROFFICE CORRESPONDENCE

**To** Robert W. Healy, City Manager **Date** Nov. 28, 1988

**From** Sally Powers, Director of Assessment **Reference**

**Subject** Harvard's "Final Clubs" and Facade Easements

Attached is a copy of Board Member Faith McDonald's and Commercial Appraiser Lillian Bryant's report tracing the history of the Final Clubs' valuations since FY84.

In direct response to questions raised in Council Order #3 10/24/88 concerning facade easements, the following information is provided. Four clubs have granted "facade preservation easements" to the Cambridge Historical Commission:

| Club | Location | Term of Easement |
|---|---|---|
| Fox Club | 46 J.F.K. St. | 1986-1989 |
| D.U. Club | 45 Dunster St. | 1986-1989 |
| Phoenix S.K.Club | 72 Mt. Auburn St. | 1987 to perpetuity |
| Spee Club | 76 Mt. Auburn St. | 1984 to perpetuity |

As a result of the granting of the easement, the Fox Club received reduced assessments as follows:

| Fiscal Year | Value No Easement | Value With Easement | Value Reduction | Tax Reduction |
|---|---|---|---|---|
| 87 | 977,200 | 825,000 | 152,200 | 2,743.02 |
| 88 | 977,200 | 825,000 | 152,200 | 2,786.78 |
| 89 | 1,123,780 | 948,750[1] | 175,030 | 3,037.21 |

Because of expiration of the easement, future values will reflect full market value of the Fox property.

The D.U. Club, which also granted a temporary easement, received value reductions as follows:

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1 An additional assessment will be issued in June, 1989. The FY89 Fall bill valued the property at $874,500, reflecting application of incorrect trending factor.

| Fiscal Year | Value No Easement | Value With Easement | Value Reduction | Tax Reduction |
|---|---|---|---|---|
| 87 | 1,171,500 | 990,000 | 181,500 | 3,767.94 |
| 88 | 1,171,500 | 990,000 | 181,500 | 3,838.73 |
| 89 | 1,347,200 | 1,158,300 | 188,900 | 3,789.34 |

As is the case with the Fox Club, no future value reductions will be appropriate.

The Phoenix Club and the Spee received their first reduced valuations because of facade easements this fiscal year, FY89, as follows:

| Club | Value No Easement | Value With Easement | Value Reduction | Tax Reduction |
|---|---|---|---|---|
| Phoenix | $ 709,600 | $ 654,000 | $55,600 | $1,115.34 |
| Spee | $1,159,300 | $1,068,600 | $90,700 | 1,495.29 |

Total cost in foregone tax dollars of the facade easement valuations:

| | |
|---|---|
| FY87 | 6,510.96 |
| FY88 | 6,625.51 |
| FY89 | 9,437.18 |
| TOTAL | $22,573.65 |

MEMORANDUM

TO: Sally Powers, Director

FROM: Faith D. McDonald, Principal Assessor
Lillian F. Bryant, Commercial Review Appraiser

DATE: November 28, 1988

RE: FACADE EASEMENTS - CLUBS

The first year of revaluation, FY84, two things happened with the "Final Clubs":

(1) They received their new revaluation;
(2) A threat of a discrimination suit arose because of their lack of female representation.
All of the clubs with the exception of one, the Spee, filed with the ATB.

The clubs' legal contention was that the commercial classification was incorrect and that the interpretation of the classification laws by the assessors was in error. (See attached letter from "Palmer & Dodge" dated March 30, 1984). After the many meetings we had, the representatives, albeit lawyers, of the clubs did not understand the revaluation process and the court mandate to value at 100%.

An example of the increase was the Phoenix Club:

| | |
|---|---|
| FY83 value | $ 39,600 |
| Taxes | 7,840 |
| FY84 value | $654,000 |
| Taxes | 21,660 |

An increase of 276%.

It was demonstrated to the representatives of the clubs that the bill would have been $15,696 with an equalized tax rate of $24/$1000 and, it wasn't the value but the rate structure. They said the $15,696 was still too high and that the values should reflect the same taxes with or without classification, i.e., with a tax rate of $33.12 the value should be $236,700 or thereabouts so that the taxes would not change or if changed, ever so slightly.

The clubs wanted to settle everything as quickly as possible so they wouldn't have to go thru all the trustee approval or to pay the tax bill as is. We made a few suggestions which they followed up on:

(1) Decide who will be representing you;
(2) The classification issue should be pursued with

legislation not overvaluation;
(3) Check with the Historical Commission regarding what has to be done to put an easement on the property(ies). This was a means to an end that Community Development had suggested to these people. What kind(s) of easement was going to be dependent upon what risks they were willing to take.

The Manager's Office, Community Development, Cambridge Historical Commission, the National Register, The Harvard Square Defense Fund, the Building Department and various other boards met with these people individually and in various size groups for over a year.

We were making headway until the discrimination suit interrupted the discussions. The clubs filed with the ATB and one case was tried and won by the City, the AD Club. Stating that the clubs were indeed commercial use unless there is a definite portion of the building that is set aside for residential use exclusively for a greater portion of the year, then the assessors could apportion the residential/commercial tax rate by whatever appraisal means was deemed appropriate. We used the square foot method or income method, both adding up to about the same dollars.

Over the past couple of years, we received four facade easements(attached). The D.U. Club and the Fox Club both have a facade easement for three years beginning 1986 and ending 1989.

The Phoenix and the Spee Club easements are idefinite or perpetual.

In 1983, an easement was signed by the Barbara Murphy Trust for the property located at 1420-1440 Massachusetts Avenue. As far as I know, this was done seperate and apart from the re-val question. (See attached).

In calculating the potential reduction in value resulting from such forces imposed by the facade preservation easement the assessors take into consideration but are not limited to:

(1) additional expenditure for permits for construction;
(2) additional costs for craftsmen who specialize in restoration techniques;
(3) potential adverse effects on the owner's ability to obtain favorable financing for rehabilitation/renovation requirements;
(4) uncertainty as to the direction of future court decisions regarding potential unreasonable requirements because of easements rights of the owner;
(5) uncertainty as to how highest and best use could be measured over a period of time; etc, etc.

In valuing the clubs with facade easements, the assessors took into consideration the above factors along with assumptions built into the highest and best use concept, i.e. possible conversion to residential units. In this consideration, the assessors did not do a fee appraisal to include researching the historic restrictions that may have been already imposed on these structures on a national or local level. If these clubs had restrictions of any kind at the onset of revaluation they would have immediately brought them to the attention of the assessors at the many meetings. Therefore, they were assessed as all properties were assessed, at 100% of market value.

It has been written and summarized in appraisal journals that a great difference exists between properties that should remain as is now and in the foreseeable future, and those that may be altered, enlarged, or demolished for a higher or better use either currently or in the foreseeable future. If the times require a change in use to bring a higher return of and on the land and it is encumbered by an easement which requires preventive measures, the future worth of the property is diminished. In the case Hillborn v Commissioner of Internal Revenue, 85 T.C.40(1985), later known as the "Derbes 10% Rule" the courts seemed to have established a 10% rule of thumb as a beginning point for land and building discounting to properties encumbered with an easement, and in this particular case, a facade preservation easement.
The D.U. and Fox Clubs have a three-year easement with an increase in value governed by the "uniform, City-wide appreciation factor intended to increase the assessed valuations of all parcels of real estate" for the taxing dates in question.
The Phoenix and Spee Clubs have perpetual easements with no language regarding increases due to factoring.

Attached is a spreadsheet showing Fiscal 1984 thru Fiscal 1989 assessments with projected increases in values thru Fiscal 2001, valued with perpetual easement and without, where applicable.

PALMER & DODGE
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
TELEPHONE (617) 227-4400
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March 30, 1984

Mr. Edward J. Collins, Jr., Deputy Commissioner
Department of Revenue
The Commonwealth of Massachusetts
Leverett Saltonstall Building
100 Cambridge Street, Room 806
Boston, MA 02204

Dear Ed:

I ask herewith for an interpretation by your office of the use classification statute (General Laws, Chapter 59, Section 2A) as it relates to nine Cambridge properties which the Cambridge assessors have classified as commercial properties. They are the properties owned by the nine undergraduate Harvard fraternities or Harvard college final clubs as they are called in Cambridge, all of which have been classified by the assessors as Class Three commercial properties owned by fraternal organizations "used or held for use for business purposes and not specifically includible in another class."

The nine Harvard college final clubs and the properties involved are as follows:

| | |
|---|---|
| A.D. Club | 1 Plympton Street (1270 Massachusetts Avenue) |
| Delphic Club | 9 Linden Street |
| D.U. Club | 45 Dunster Street |
| Fly Club | 2 Holyoke Place (64 Mt. Auburn Street) |
| Fox Club | 44 Boylston Street |
| Owl Club | 30 Holyoke Street |
| Phoenix S.K. Club | 72 Mt. Auburn Street |
| Porcellian Club | 1320 Massachusetts Avenue |
| Spee Club | 76 Mt. Auburn Street |

A "fraternity" is defined in the 1956 edition of Funk & Wagnalls New Practical Standard Dictionary as "a literary and social organization of men students of American colleges, usually having Greek letter names and secret rites, and represented by chapters in many institutions."

The American Heritage Dictionary defines "fraternity" as: "3. A chiefly social organization of male college students, usually designated by Greek letters."

The nine Harvard fraternities each have their own constitution and by-laws, but they are bound by an inter-club agreement among the nine which sets forth rules for election and which limits admission as members to

Harvard College undergraduates who have attained sophomore standing. Therefore, the clubs are necessarily restricted in their membership. For example, the Constitution of the Fly Club provides in ARTICLE V on Membership as follows:

> "1. Any person then enrolled as an undergraduate student in Harvard University, and not a member of a similar college social club, shall be eligible for active membership in the Fly Club; . . ."

Once a person has been admitted as a member to one of the fraternities (or final clubs) he remains a member for life, so that each of the clubs has graduate members, but as most individuals leave Cambridge on graduation from Harvard College the nine clubs are almost entirely undergraduate clubs as far as their activities are concerned and in connection with the use to which the properties are put.

The nine Harvard college clubs have a fairly long history, the oldest being the Porcellian Club (founded in 1791) and the newest being the Phoenix S.K. Club (founded in the early 1900s). Although each of the Harvard clubs is independent, and not a chapter of a larger national organization, at least five of the clubs started as chapters of national fraternities. The A.D. Club (originally Alpha Delta Phi), the Delphic Club (originally Delta Phi), the D.U. Club (originally Delta Upsilon), the Fly Club (originally also a part of Alpha Delta Phi) and the Spee Club (originally Zeta Psi). As indicated in Alexander W. Williams' book "A Social History of the Greater Boston Clubs" in Chapter 12, pages 87-102 at page 88, the Harvard faculty in the late 1800s was opposed to the "Greek Letter" fraternities because of the possibility of having Harvard undergraduates dominated by Harvard graduate student members of the same fraternity from other colleges, so at different times those of the Harvard college final clubs which had a national affiliation became independent of the national organization.

Even though each of the clubs is different as to architecture, space, etc., all of them have the total facilities of a residential house except for sleeping rooms for undergraduate members. Although most, if not all, have "one or more dwelling units" the Harvard faculty has refused to allow undergraduate members to live in the clubs since the nineteenth century, so that all the present buildings were built without such accommodations. The bedrooms in the present clubs are occupied either by staff or by graduate students. Each of the clubs has a dining room, living room or rooms, library, kitchen, bathrooms, card room, pool table room, guest room where non-members can be entertained and a banquet hall for large functions. The buildings were built with these specifications in mind so that they would provide all the facilities needed by undergraduate members for study, relaxation, entertainment and general daily living.

Under such circumstances, I believe that these properties fit more closely within your guidelines as residential property fraternity houses under the Non-transient Group Quarters category, rather than as commercial property fraternal organizations under a public service property category and should be so designated by your office.

It is clear that no reinterpretation of the Department's "Guidelines for Classification and Taxation of Property according to Use" will be made by the Cambridge assessors unless there is further guidance from your office.

For those clubs which have one or more bedrooms in their respective buildings, e.g., the Delphic Club with five bedrooms, there is a second argument in favor of a residential use classification. The statute in Section 2A(b) clearly states that "property used or held for human habitation containing one or more dwelling units including rooming houses with facilities designed and used for living, sleeping, cooking and eating on a non-transient basis" shall be classified as residential. All of the club buildings with one or more bedrooms literally fit within the wording of the statute.

On the other hand, the definition of commercial property not only requires that the property be "used or held for use for business purposes" - clearly not the purpose of any of the undergraduate fraternities (clubs) but also requires that the property be "not specifically includible in another class." Since each of the clubs which have one or more bedrooms is specifically includible in the residential class it is improper to designate the basic use classification of such properties as commercial.

The assessors may point out that various of the clubs have leased a portion of their premises to commercial organizations. To the extent that this is so, I certainly do not contest a proper allocation of the fair cash value of the property between the uses, as is provided for in the statute, but this in no way affects the validity of the argument that the basic use classification for such properties is residential.

The assessors might also argue that some of the clubs are located in commercial zones (although at least four are located in the C-3 residential zone), but this obviously affects only valuation and has nothing to do with use classification.

I would like to have the opportunity, together with Gilbride McManus, president of R. M. Bradley & Co., to discuss this matter with you personally. I would appreciate a meeting at your earliest convenience.

Sincerely,

Casie de Rham

CdeR:fnm

Bcc. Eric W. Wodlinger, Esq.
Mr. John S. Hamlen
Mr. Gilbride McManus
Mr. Charles Cheston
Malcolm Pittman, Esq.

Mr. Edward J. Collins, Jr., Deputy Commissioner                March 30, 1984

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Sincerely,

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Cc. Eric W. Wodlinger
John S. Hamlen
Gilbride McManus
Charles Cheston

P.S. Will see you with Gil McManus on Wednesday at 3 p.m.

| Map | Lot(s) | Property Location | Club Name | Preservation Easement | Term | Fiscal 1984 Value | Fiscal 1984 Value Adj. | Fiscal 1985 Value | Fiscal 1985 Value Adj. | Fiscal 1986 Value | Fiscal 1986 Value Adj. | Fiscal 1987-88 Value |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 133 | 49 | 43-45 Mt. Auburn St. | PI Eta Speakers | No | | 575000 | 430,000 | 438,600 | | 469,200 | | 500,000 |
| 160 | 24 | 1320 Mass. Ave. | Porcellian Club | No | | 651,000 | | 651,000 | | 716,000 | | 1,184,800 |
| 160 | 46 | 1 Plympton St. | A.D. Club | No | | 1,035,000 | | 1,035,000 | | 1,105,000 | | 1,560,000 |
| 160 | 55 | 9 Linden Street | Delphic Club | No | | 1,000,000 | | 1,020,000 | | 1,087,500 | | 1,100,000 |
| 161 | 2 | 72 Mt. Auburn St. | Phoenix S.K. Club | Yes | Perpetual | 403,300 | 348,100 (3) | 348,100 | None | 348,100 (4) | | 617,000 |
| | | | Phoenix wo P. Ease | | | 403,300 | | 411,400 | | 452,600 | | 617,000 |
| 161 | 5 | 30 Holyoke St. | Owl Club | No | | 672,900 | 542,130 (1) | 553,000 | None | 553,000 (2) | | 908,700 |
| 161 | 91 | 60 Mt. Auburn St. | Grass & Bushes Fly Club | | | | | 173,900 | | 173,900 | | 397,400 |
| 161 | 92 | 16 Holyoke Place | Parking Fly Club | | | | | | | 144,500 | | 300,700 |
| 161 | 93 | 64 Mt. Auburn Street | Fly Club | No | FY 84 161/82 | 1,057,200 | 798,000 | 814,000 | | 606,900 | 405,900 | 922,300 |
| 162 | 4 | 46 J.F.K. St. | Fox Club | Yes | 1986-1989 | 800,000 | | 800,000 | | 782,500 | | 825,000 |
| 162 | 10 | 46 Dunster St. | Signet Club | No | | 359,500 | | 366,700 | | 379,500 | | 530,000 |
| 162 | 62 | 76 Mt. Auburn Street | Spee Club | Yes | Perpetual | 631,770 | | 644,400 | | 671,100 | | 1,008,100 |
| | | | Spee Club wo P.Ease | | | 631,800 | | 644,400 | | 671,100 | | 1,008,100 |
| 162 | 67 | 45 Dunster Street | D.U. Club | Yes | 1986-1989 | 951,000 | | 951,000 | | 1,046,000 | | 990,000 |

(1) Land value adjusted to residential land value.

(2) Missed Fiscal 1986 trend.

(3) Land value adjusted to residential land value.

(4) Missed Fiscal 1986 trend. What was the trend?

Fly Club was one lot in Fiscal 1984

| Fiscal 1989 Value | Fiscal Proj. 90 Value | Fiscal Proj. 91 Value | Fiscal Proj. 92 Value | Fiscal Proj. 93 Value | Fiscal Proj. 94 Value | Fiscal Proj. 95 Value | Fiscal Proj. 96 Value | Fiscal Proj. 97 Value | Fiscal Proj. 98 Value | Fiscal Proj. 99 Value | Fiscal Proj. 2000 Value | Fiscal Proj. 2001 Value | Percent Increase Per Annum |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 585,000 | 655,200 | 733,800 | 821,900 | 920,500 | 1,031,000 | 1,154,700 | 1,293,300 | 1,448,500 | 1,622,300 | 1,817,000 | 2,035,000 | 2,279,200 | 12% |
| 1,386,200 | 1,552,500 | 1,738,800 | 1,947,500 | 2,181,200 | 2,442,900 | 2,736,000 | 3,064,300 | 3,432,000 | 3,843,800 | 4,305,100 | 4,821,700 | 5,400,300 | 12% |
| 1,825,200 | 2,044,200 | 2,289,500 | 2,564,200 | 2,871,900 | 3,216,500 | 3,602,500 | 4,034,800 | 4,519,000 | 5,061,300 | 5,668,700 | 6,348,900 | 7,110,800 | 12% |
| 1,287,000 | 1,441,400 | 1,614,400 | 1,808,100 | 2,025,100 | 2,268,100 | 2,540,300 | 2,845,100 | 3,186,500 | 3,568,900 | 3,997,200 | 4,476,900 | 5,014,100 | 12% |
| 654,000 | 673,600 | 693,800 | 714,600 | 736,000 | 758,100 | 780,800 | 804,200 | 828,300 | 853,100 | 878,700 | 905,100 | 932,300 | 3% |
| 709,600 | 794,800 | 890,200 | 997,000 | 1,116,600 | 1,250,600 | 1,400,700 | 1,568,800 | 1,757,100 | 1,968,000 | 2,204,200 | 2,468,700 | 2,764,900 | 12% |
| 1,045,000 | 1,170,400 | 1,310,800 | 1,468,100 | 1,644,300 | 1,841,600 | 2,062,600 | 2,310,100 | 2,587,300 | 2,897,800 | 3,245,500 | 3,635,000 | 4,071,200 | 12% |
| 457,000 | 511,800 | 573,200 | 642,000 | 719,000 | 805,300 | 901,900 | 1,010,100 | 1,131,300 | 1,267,100 | 1,419,200 | 1,589,500 | 1,780,200 | 12% |
| 345,800 | 387,300 | 433,800 | 485,900 | 544,200 | 609,500 | 682,600 | 764,500 | 856,200 | 958,900 | 1,074,000 | 1,202,900 | 1,347,200 | 12% |
| 1,060,600 | 1,187,900 | 1,330,400 | 1,490,000 | 1,668,800 | 1,869,100 | 2,093,400 | 2,344,600 | 2,626,000 | 2,941,100 | 3,294,000 | 3,689,300 | 4,132,000 | 12% |
| | | | | | | | | | | | | | |
| 874,500 | 979,400 | 1,096,900 | 1,228,500 | 1,375,900 | 1,541,000 | 1,725,900 | 1,933,000 | 2,165,000 | 2,424,800 | 2,715,800 | 3,041,700 | 3,406,700 | 12% |
| 620,100 | 694,500 | 777,800 | 871,100 | 975,600 | 1,092,700 | 1,223,800 | 1,370,700 | 1,535,200 | 1,719,400 | 1,925,700 | 2,156,800 | 2,415,600 | 12% |
| 1,068,600 | 1,100,700 | 1,133,700 | 1,167,700 | 1,202,700 | 1,238,800 | 1,276,000 | 1,314,300 | 1,353,700 | 1,394,300 | 1,436,100 | 1,479,200 | 1,523,600 | 3% |
| 1,159,300 | 1,298,400 | 1,454,200 | 1,628,700 | 1,824,100 | 2,043,000 | 2,288,200 | 2,562,800 | 2,870,300 | 3,214,700 | 3,600,500 | 4,032,600 | 4,516,500 | 12% |
| 1,158,300 | 1,297,300 | 1,453,000 | 1,627,400 | 1,822,700 | 2,041,400 | 2,286,400 | 2,560,800 | 2,868,100 | 3,212,300 | 3,597,800 | 4,029,500 | 4,513,000 | 12% |

11.


CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager


December 12, 1988

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 31 requesting information relative to facade preservation easements, enclosed please find copy of a report from Sally Powers, Director of Assessment.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item No. 11 5-764

Re: response to Awaiting Report Item 31 on facade preservation easements.

In City Council,

December 12, 1988

12-12-88

Placed on File.