

United States Senate

WASHINGTON, D.C. 20510

OFFICES IN THE COMMONWEALTH:
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January 29, 1970

Honorable James L. Sullivan
City Manager, City of Cambridge
Cambridge, Massachusetts

Dear Jim:

Aware that time is of the essence for Cambridge, I have spent considerable time reviewing the documents, letters, etc. you were kind enough to send along to me after our conference in the Federal Building.

I am sending carbons of this letter to the Cambridge City Council and the Cambridge Redevelopment Authority. I have tried to organize what follows in memorandum form to highlight my conclusions.

1. Admittedly, the City of Cambridge acquired the land in question through the urban renewal process, displacing a large number of business concerns while doing so. This was done upon the expectations that NASA, as a redeveloper, would develop a large part of the area in accordance with the Cambridge Redevelopment Authority's urban renewal plan. The fact that property was taken for redevelopment makes the case against NASA more sympathetic, but no stronger from a legal viewpoint. It is doubtful that even the parties whose property was taken by eminent domain have a remedy, since presumably the City followed the appropriate provisions of G. L. c. 121 when establishing the region as a renewal area.

I am aware that the project was being financed by a grant from the Department of Housing and Urban Development, and that the grant is apparently conditioned upon use of the funds for implementation of the urban renewal plan involving NASA. Although it is possible that HUD may have some rights against the City of Cambridge, I do not see how the HUD grant can impose obligations of any kind upon NASA. It is, of course, highly regrettable from a planning viewpoint that the two federal agencies did not get together; but the fact that HUD awarded grants expecting that NASA would take certain action does not by itself,

in my opinion, impose any legal obligation upon the latter to behave as anticipated.

2. The Land Disposition Contract imposes certain obligations upon NASA as conditions to the validity of the conveyance of the parcels in question by the Cambridge Redevelopment Authority. In Article III, section 2, NASA agrees, "upon commencement of any construction, diligently (to) proceed to complete such construction as soon as possible." In the same section, NASA agrees that construction upon particular parcels shall be completed within sixty months after delivery of the deeds to such parcels. In Article IV, NASA covenants to devote the property solely to the uses specified in the City's urban renewal plan. Such covenant is to remain in effect until October 7, 1995, and both the City of Cambridge and the Cambridge Redevelopment Authority are authorized to pursue any available remedies in order to enforce it.

It should be observed that this is a land disposition contract, not a construction agreement. The promises made by NASA in the agreement are conditions to the conveyance of the land by the Cambridge Redevelopment Authority. Nevertheless, once the land has been conveyed, as most of it has been, it becomes incumbent upon NASA to keep its part of the bargain, at the risk of rendering the agreement unenforceable and enabling the Cambridge Redevelopment Authority to recover the land. My opinion, therefore, is that the Land Disposition Contract does contain a specific commitment on the part of NASA to undertake and to complete this project in accordance with the specifications of the urban renewal plan. (Enforcement by the Cambridge Redevelopment Authority would appear to be limited to compelling re-conveyance of the land; I doubt that under this contract the Authority could either compel specific performance or recover monetary damages.)

3. Despite the NASA commitment, if there is no appropriation, there is no way to compel completion of the project. Any party who contracts with a federal agency assumes a risk either that the agency is contracting without authority or that there will be no appropriation to pay for what the agency has promised to do. While I was Attorney General of the Commonwealth several cases came before me where there were similar "contractual" obligations which were breached when the Legislature declined to vote funds for the project in question.

If, then Congress refuses to appropriate funds to complete this project, I am afraid that the obligations assumed by NASA are unenforceable.

4. The obligations assumed by NASA are conditions to the valid conveyance of the property. Since NASA has apparently breached the agreement, it would appear that the land transfer arrangement can be rescinded and Cambridge can recover the real property interests which it has conveyed (subject, of course,

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to return of the purchase price and to agreement as to disposition of the buildings which have already been constructed.)

I would like to make a number of non-legal comments and suggestions in conclusion.

As my legal comments indicate, it seems to me that Cambridge does have a strong case insofar as being able to force NASA to reconvey the land. Your negotiations with NASA may prove of value. Needless to say, the City of Cambridge faces an important public policy question in deciding whether, in fact, it wishes to seek such reconveyance.

My own feelings are that the City, the State, and the Congressional Delegation should continue to use its joint influence to keep the Center intact as a research center. Negotiations are, as you know, in progress to this end and before the City makes a decision to pursue its own legal remedies, I would hope that we can continue to press for this kind of solution. Needless to say, Jim, I stand ready to confer with you and your colleagues on the contents of this letter and on any other collateral question which affect the well being of the city in this unfortunate episode.

I hope you will not hesitate to call upon me at any time if you think I can be of any assistance whatever.

Sincerely yours,



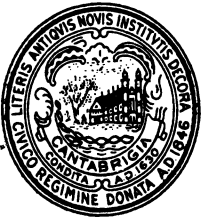
Edward W. Brooke

EWB/rws

OFFICE OF THE
CITY MANAGER

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EXECUTIVE DEPARTMENT

James L. Sullivan
City Manager

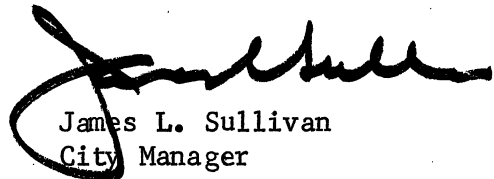
John H. Corcoran
Assistant City Manager

February 2, 1970

To the Honorable, the City Council:

I transmit herewith communication received
from Senator Edward W. Brooke, dated January 29, 1970,
which is self-explanatory and relates to the NASA
closing.

Very truly yours,



James L. Sullivan
City Manager

JLS/b

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COMMUNICATION
from the City Manager trans-
mitting one from Senator Edward W.
Brooke, dated January 29, 1970 relative
to the NASA closing.

February 9, 1970.

2/9/1970

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