



# City of Cambridge

19.  
CALENDAR ITEM # 5  
IN CITY COUNCIL

February 8, 1993  
February 22, 1993

## COUNCILLOR WALSH

- WHEREAS: The Superior Court of Middlesex County in the case of Alex Steinbergh, et al. v. Cambridge Rent Control Board was decided on January 14, 1993, a copy of which is attached with this order; and
- WHEREAS: This case seems to clearly outline standards whereby the Rent Control Board should grant removal permits to low and moderate income people so they can purchase rent control property within the city; and
- WHEREAS: Many of the rent control properties have suffered from severe deterioration during the last 22 years and need either a capital input or "sweat-equity" in order to bring them to code; and
- WHEREAS: Home ownership will allow the opportunity which is enjoyed by the majority of this Council to be shared by additional residents of Cambridge; and
- WHEREAS: Eight of the nine members of this Council enjoy the privilege of owning his or her own home, and yet only 28% of the residents of Cambridge now own their own home; and
- WHEREAS: The tax base of the city in both residential and commercial properties continues to decline; and
- WHEREAS: Interest rates for home ownership are relatively low; and
- WHEREAS: Home ownership, especially for people of low and moderate income is a policy which this City Council strongly endorses; now therefore be it

**ORDERED:** That the City Manager be and hereby is requested to consult with the Assistant City Manager for Community Development and the Executive Director of the Rent Control Board to create a program to notify tenants of low and moderate income that this opportunity is available to them and to work with banks within the City of Cambridge to coordinate a mortgage program for acquisition of these units with funds available to make necessary improvements where needed and to report back to this Council within 30 days with said plan.

In City Council February 22, 1993.

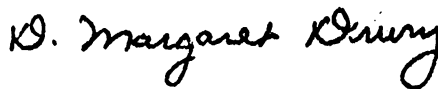
Failed of adoption by a yea and nay vote:-

Yeas 3; Nays 6; Absent 0.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-



D. Margaret Drury  
City Clerk

# City of Cambridge

MASSACHUSETTS

In City Council

2/22

1993

CR#5

YEA	NAY	ABSENT	PRESENT	
	✓			Mr. Ed Cyr
	✓			Mr. Francis H. Duehay
	✓			Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
✓				Mr. Walter J. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
✓				Mr. William H. Walsh
	✓			Ms. Alice K. Wolf
	✓			Mayor Kenneth E. Reeves
3	6	0	0	

**AMENDMENT OFFERED BY COUNCILLOR WALSH AT CITY COUNCIL  
MEETING OF FEBRUARY 22, 1993**

(amendment underlined)

ORDERED: That the City Manager be and hereby is requested to consult with the Assistant City Manager for Community Development and the Executive Director of the Rent Control Board to create a program to notify tenants of low and moderate income that this opportunity is available to them and to work with banks within the City of Cambridge to coordinate a mortgage program for acquisition of these units with funds available to make necessary improvements where needed and to report back to this Council within 30 days with said plan and be it further requested that the Assistant City Manager for Community Development and the Executive Director of the Rent Control Board attempt to develop a program with landlords that would allow for acquisition of some of these units as they become vacant for transition housing to be owned by non-profit corporations to develop housing for homeless families and that the program to be developed include incentives for landlords to agree to provide this type of housing at reasonable costs.

**AMENDMENT FAILED ON A YEA AND NAY VOTE:-  
YEAS 2; NAYS 5; ABSENT 0; PRESENT 2.**

# City of Cambridge

MASSACHUSETTS

CR # 5 2/22/93  
amend

In City Council 2/22 1993

YEA	NAY	ABSENT	PRESENT	
	✓			Mr. Ed Cyr
			✓	Mr. Francis H. Duehay
			✓	Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
✓				Mr. Walter J. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
	✓			Mr. William H. Walsh
	✓			Ms. Alice K. Wolf
	✓			Mayor Kenneth E. Reeves

2                      5                      0                      2

CCM-101



# City of Cambridge

19.

CR # 5 2/22/93  
as amended

IN CITY COUNCIL  
February 8, 1993

COUNCILLOR WALSH

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*and be it further requested that FCM for CD + ED of RCB attempt to develop a program w/ landlords that would allow for acquisition of some of these units as they become vacant for homeless housing for families*

**CHARTER RIGHT EXERCISED BY COUNCILLOR WALSH**

*to be owned by non-profits to develop housing for homeless families and that the program to be developed include opportunities for landlord to agree to provide this type of housing at reasonable costs.*

CCM:101



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*and be it further requested that ACM for CD + ED of RCB attempt to develop a program w/ landlords that would allow for acquisition of some of these units as they become vacant for renter housing to be owned by non-profits to develop housing for homeless families and that the program to be developed include incentives for landlord to agree to provide stay the type of incentives at reasonable costs.*

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**CHARTER RIGHT EXERCISED BY COUNCILLOR WALSH**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT  
CIVIL ACTION  
NO. 88-2933

13

ALEX STEINBERGH, et al.,  
Plaintiffs

v.

CAMBRIDGE RENT CONTROL BOARD,  
Defendant

JAN 14, 1993

MEMORANDUM AND ORDER  
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This case involves a person of moderate income (plaintiff Richards) who wants to buy from his landlord (plaintiff Steinbergh), and thereafter live in, the housing unit Richards now occupies at a price Richards is willing to pay and Steinbergh is willing to accept. Richards, however, is being prevented from buying defendant's enforcement of the Cambridge Rent Control ordinance, a piece of legislation ostensibly designed to help Richards and others like him by attempting to keep housing units available for persons of low and moderate income.

The case initially was here following the defendant's denial of a "removal permit." All agree that Steinbergh must secure such a permit before the sale can be consummated. In the prior proceeding, the plaintiffs' claimed that the defendant's order denying the removal permit was unsupported by substantial evidence. See G.L. c. 30A, §14(7). This court disagreed. Noting, however, the troublesome anomaly the case presented, the court (per Chernoff, J.) gave the plaintiffs an option of reapplying for a removal

*Copies to -*

permit if they did so promptly so that the Board could consider anew whether such a permit could be issued on any conditions that would both allow the sale and promote the purposes of the ordinance.

The plaintiffs did reapply and a new hearing was held. The hearing examiner, after that hearing, recommended that a removal permit issue but that the permit be conditioned as follows:

- (1) the removal permit shall be effective as long as Richards occupy[ies the unit] as his primary residence, unless he conveys any part of his legal or beneficial interest;
- (2) If Richards ceases to occupy [the unit] as his principal residence, or he conveys any part of his legal or beneficial interest to any person, or any other party, or entity, THIS CONDITIONAL REMOVAL PERMIT SHALL TERMINATE AND THE UNIT WILL BE DEEMED AN ORDINANCED CONDOMINIUM UNIT WHICH CANNOT BE OWNER-OCCUPIED BY ANY SUBSEQUENT PURCHASER.
- (3) The general counsel of the Rent Control Board shall record a notice at the Middlesex County Registry of Deeds detailing the conditions set forth in the two preceding paragraphs.

(Emphasis in original).

Following receipt of the conditional recommendation, counsel for plaintiffs wrote to the defendant agreeing with the hearing examiner's recommendation but requesting that the following language be "added" to the second condition:

This conditional removal permit shall terminate, and the unit will be deemed an ordinated condominium unit which cannot be owner-occupied by the subsequent purchaser unless such purchaser is also a low to moderate income person, and that this

condition will run with the title to the unit.<sup>1</sup>

(Emphasis in original). Plaintiffs said they sought that amendment to satisfy the Board's goal of insuring that the unit would remain available for low and moderate income while enhancing the likelihood that Richards could obtain the financing he would need in order to buy the unit from Steinbergh.

On April 3, 1991, the case was heard by the Board and remanded again to the hearing examiner for the purpose of determining Richards assets and net worth and determining how to monitor compliance with the "low to moderate income" restrictions both the plaintiffs and the Board agreed should be part of the transaction and run with the land.<sup>2</sup>

On May 8, 1991, the executive director and general counsel of the staff (the same attorney who appeared and argued at the hearing before me) issued a "report" which purported to do two things with respect to plaintiffs' unit and another unit.<sup>3</sup> First the report set out some criteria for determining who "low and moderate income" persons were. Second, the report set out criteria for determining the price at which Steinbergh could sell the unit to Richards as well as the price at which Richards thereafter could sell it to

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<sup>1</sup>Obviously, there is not a perfect fit between the language of the hearing examiners ¶2 and the language plaintiffs proposed. The thrust of what they sought, however, was clear enough that a clear redraft would have been easy.

<sup>2</sup>The fact of the remand and the purpose for the remand is not in the record but is described at ¶21 of plaintiffs' memorandum to which the defendant made no objection. I therefore accept that statement as true.

<sup>3</sup>The record is unclear as to the procedural posture in which the "report" was issued or the extent to which it followed an evidentiary hearing or a hearing of any other kind.

others. Up to that point, the sale price had not been at issue in any of the proceedings.<sup>4</sup>

The Board convened again on May 15, 1991. Plaintiffs objected to the conditions limiting the resale price and also objected to further remands and proceedings. They asked the Board for a vote on the conditional removal permit they sought, i.e., the conditional removal permit that would have allowed "removal" of the apartment from the rent-control scheme if and to the extent that the unit was owned by persons of low and moderate income. The Board voted, 3-2 to deny that permit and this petition for review followed.

## II. DISCUSSION

Review of the Board's proceedings is governed by G.L. c. 30A, §14. The Court has the power to set aside the Board's action if, *inter alia*, that action is "[i]n excess of the statutory authority or jurisdiction of the agency; or [b]ased on an error of law; or . . . [u]nsupported by substantial evidence; or . . . [a]rbitrary or capricious. *Id.* §14(7). The Court, however, has no power to substitute its judgment for the Board's as to questions of fact, e.g., *Olde Towne Liquor Store, Inc. v. Alcoholic Beverage Control Comm'n*, 372 Mass. 152, 154 (1977), or on matters of policy properly within the Board's discretion.

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<sup>4</sup>That report was attached as Exhibit A to the Memorandum filed by plaintiffs. It was not part of the record the defendants submitted to this Court. How a document lying at the heart of the present controversy between the plaintiffs and the defendants, a document that clearly is the most material document to the phase of the proceedings currently before the Court and a document that was referred to in generic terms throughout the defendants' memorandum, could have been omitted from the record defendants' executive director certified was a "true and official copy of the Record of Board Proceedings," is totally beyond me.

Plaintiffs' first argument is, in essence, an assertion that the removal permit scheme is beyond the Board's power and unconstitutional to the extent that it prohibits a sale a dwelling unit as a matter of right by an individual to a person who occupies that unit or proposes to occupy it. That argument was made and rejected by my predecessor and I decline to re-examine it. See generally *King v. Globe Newspaper Company*, 400 Mass. 705, 707-708 (1987). The earlier opinion was carefully and thoughtfully reasoned and, whether or not I would reach exactly the same conclusion were I writing on a clean slate, a healthy respect for finality and the handiwork of my able colleague on this Court strongly counsel the deference I give that earlier opinion.

Plaintiffs second argument is that the Board's decision to deny the removal permit the second time around was beyond its jurisdiction and authority, unsupported by substantial evidence and arbitrary and capricious. The difficulty with that argument is that the Board voted to deny the permit application at the instance of plaintiffs. As the record reveals, two of the Board members voted against denial and thus presumably wanted to grant the removal permit. Three others wanted to inquire further about income levels and the structure of "limited equity condominiums." It was the plaintiffs who did not want any further proceedings and, because they did not, the Board voted to deny the permit.

Unless one takes the position that the Board had no right to deny the permit under any circumstances (a position plaintiffs have taken, that the court has rejected and that the plaintiffs may

appeal), the Board surely had the right to make inquiry about how to define what both the plaintiffs and the Board agreed was an acceptable condition, i.e., that owner-occupancy of the unit under the conditional removal permit be restricted to persons of "low and moderate income." Neither term is self-defining. Moreover, a variety of different criteria might reasonably be employed by different people to reach a variety of conclusions concerning the identity of persons of "low and moderate income."

To be sure, by May 15, 1991, the process of reaching a decision had taken some time. About ten months had elapsed between the time of the first summary judgment order and the time of the Board's May 15 meeting. That period of time is not unconscionably long, however, and did not, in and of itself, operate to deprive plaintiffs of a right to which they were entitled.

The net effect of the Board's accession to plaintiffs request, then, is that the Board denied the removal permit because plaintiffs declined to participate further in the information-gathering process. As stated, unless one is prepared to conclude the Board had no right to regulate the matter at all, that surely is a permissible basis for the Board to do what it did.

Having said that, however, one aspect of the matter merits further comment because, undoubtedly, either this matter or others like it will proceed. Although the Board did not adopt the recommendation that the sale price from Steinbergh to Richards and from Richards to others in the future be limited, the staff clearly recommended that limitation to the Board and, presumably, will do


so in the future. That limitation finds scant justification in the regulatory scheme. The rent which may be permissibly charged by a unit under the control of the statute and ordinance is not in any manner dependent on the acquisition price the owner paid for the property St. 1976, c. 36, §6, 7 and the sale price of the unit is irrelevant to the Board's rate setting mechanism. See e.g., *Zussman v. Town of Brookline*, 371 Mass. 632, 638-638 (1976) ("where the actual purchase price exceeds the fair market value of the units as apartments, the Rent Control Board would be abdicating its duty if it granted an increase in rates to cover the excess cost."). Moreover, if owner-occupancy of the unit is actually limited to individuals of low and moderate income, and if the purpose of the statute and the ordinance is to preserve the stock of housing available to those persons, it is difficult to see what earthly difference the price at which those low and moderate income individuals sell their property to each other could conceivably make.<sup>5</sup>

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<sup>5</sup>In that regard, I assume that the Board's comment that the "guillotine" provision recommended by the hearing examiner, i.e., the provision of the removal permit which would have permitted Richards to own and live in the condominium but which would have automatically placed the condominium back under the rent control ordinance as soon as Richards sold it, "would have allowed [Richards] to enjoy all of the benefits of ownership except that of achieving a windfall on sale," Board's brief at 6, was an aberration borne of overadvocacy. Some, indeed most, people would call that "windfall" return on investment or capital appreciation. To the extent that the sale price restrictions are designed to prevent a return on investment or capital appreciation having no adverse impact on availability of the unit for low and moderate income housing, those restrictions are wholly beyond the pale of both the statute and the ordinance. Moreover, if truly aimed at that target, those restrictions are designed to prevent individuals of low and moderate income in the City of Cambridge from doing what persons of low and moderate income in this country have done for ages: achieving economic mobility incrementally through purchase of more expensive properties at various stages in their lives as money available to them through savings and investment increases. Surely, the rent control ordinance and the enabling statute were not designed to create economic straitjackets.

ORDER

Be all of that as it may, what the Board in fact did for the reasons it did it was neither arbitrary and capricious nor unsupported by substantial evidence. Accordingly, plaintiffs' motion for summary judgment is DENIED. Defendant's motion for summary judgment is ALLOWED. Judgment will enter dismissing the complaint.

  
James P. McHugh  
Justice, Superior Court

Dated: January 12, 1993.

*Entered Jan 15, 1993*

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT  
CIVIL ACTION  
NO. 88-2933

13

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The net effect of the Board's accession to plaintiffs request, then, is that the Board denied the removal permit because plaintiffs declined to participate further in the information-gathering process. As stated, unless one is prepared to conclude the Board had no right to regulate the matter at all, that surely is a permissible basis for the Board to do what it did:

Having said that, however, one aspect of the matter merits further comment because, undoubtedly, either this matter or others like it will proceed. Although the Board did not adopt the recommendation that the sale price from Steinbergh to Richards and from Richards to others in the future be limited, the staff clearly recommended that limitation to the Board and, presumably, will do

so in the future. That limitation finds scant justification in the regulatory scheme. The rent which may be permissibly charged by a unit under the control of the statute and ordinance is not in any manner dependent on the acquisition price the owner paid for the property St. 1976, c. 36, §6, 7 and the sale price of the unit is irrelevant to the Board's rate setting mechanism. See e.g., *Zussman v. Town of Brookline*, 371 Mass. 632, 638-638 (1976) ("where the actual purchase price exceeds the fair market value of the units as apartments, the Rent Control Board would be abdicating its duty if it granted an increase in rates to cover the excess cost."). Moreover, if owner-occupancy of the unit is actually limited to individuals of low and moderate income, and if the purpose of the statute and the ordinance is to preserve the stock of housing available to those persons, it is difficult to see what earthly difference the price at which those low and moderate income individuals sell their property to each other could conceivably make.<sup>5</sup>

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<sup>5</sup>In that regard, I assume that the Board's comment that the "guillotine" provision recommended by the hearing examiner, i.e., the provision of the removal permit which would have permitted Richards to own and live in the condominium but which would have automatically placed the condominium back under the rent control ordinance as soon as Richards sold it, "would have allowed [Richards] to enjoy all of the benefits of ownership except that of achieving a windfall on sale," Board's brief at 6, was an aberration borne of overadvocacy. Some, indeed most, people would call that "windfall" return on investment or capital appreciation. To the extent that the sale price restrictions are designed to prevent a return on investment or capital appreciation having no adverse impact on availability of the unit for low and moderate income housing, those restrictions are wholly beyond the pale of both the statute and the ordinance. Moreover, if truly aimed at that target, those restrictions are designed to prevent individuals of low and moderate income in the City of Cambridge from doing what persons of low and moderate income in this country have done for ages: achieving economic mobility incrementally through purchase of more expensive properties at various stages in their lives as money available to them through savings and investment increases. Surely, the rent control ordinance and the enabling statute were not designed to create economic straitjackets.

ORDER

Be all of that as it may, what the Board in fact did for the reasons it did it was neither arbitrary and capricious nor unsupported by substantial evidence. Accordingly, plaintiffs' motion for summary judgment is DENIED. Defendant's motion for summary judgment is ALLOWED. Judgment will enter dismissing the complaint.

  
James F. McHugh  
Justice, Superior Court

Dated: January 12, 1993.

*Entered: Jan 15, 1993*



# City of Cambridge

19  
NC

IN CITY COUNCIL

February 4, 1993

COUNCILLOR WALSH

- WHEREAS, The Superior Court of Middlesex County in the case of Alex Steinbergh, et al. v. Cambridge Rent Control Board was decided on January 14, 1993, a copy of which is attached with this Order; and
- WHEREAS, this case seems to clearly outline standards whereby the Rent Control Board should grant removal permits to low and moderate income people so they can purchase rent control property within the city; and
- WHEREAS, many of the rent control properties have suffered from severe deterioration during the last 22 years and need either a capital input or "sweat-equity" in order to bring them into code; and
- WHEREAS, home ownership will allow the opportunity which is enjoyed by the majority of this Council to be shared by additional residents of Cambridge; and
- WHEREAS, eight of the nine members of this Council enjoy the privilege of owning his or her own home, and yet only 28% of the residents of Cambridge now own their own home; and
- WHEREAS, the tax base of the City in both residential and commercial properties continues to decline; and
- WHEREAS, interest rates for home ownership are relatively low; and
- WHEREAS, home ownership, especially for people of low and moderate income is a policy which this City Council strongly endorses.

nc

RESOLVED, That the City Manager be requested to consult with the Assistant City Manager for Community Development and the Executive Director of the Rent Control Board to create a program to notify tenants of low and moderate income that this opportunity is available to them and to work with banks within the City of Cambridge to coordinate a mortgage program for acquisition of these units with funds available to make necessary improvements where needed and to report back to this Council within 30 days with said plan.



# City of Cambridge

19.

IN CITY COUNCIL

February 8, 1993

## COUNCILLOR WALSH

WHEREAS: The Superior Court of Middlesex County in the case of Alex Steinbergh, et al. v. Cambridge Rent Control Board was decided on January 14, 1993, a copy of which is attached with this order; and

WHEREAS: This case seems to clearly outline standards whereby the Rent Control Board should grant removal permits to low and moderate income people so they can purchase rent control property within the city; and

WHEREAS: Many of the rent control properties have suffered from severe deterioration during the last 22 years and need either a capital input or "sweat-equity" in order to bring them to code; and

WHEREAS: Home ownership will allow the opportunity which is enjoyed by the majority of this Council to be shared by additional residents of Cambridge; and

WHEREAS: Eight of the nine members of this Council enjoy the privilege of owning his or her own home, and yet only 28% of the residents of Cambridge now own their own home; and

WHEREAS: The tax base of the city in both residential and commercial properties continues to decline; and

WHEREAS: Interest rates for home ownership are relatively low; and

WHEREAS: Home ownership, especially for people of low and moderate income is a policy which this City Council strongly endorses; now therefore be it

ORDERED: That the City Manager be and hereby is requested to consult with the Assistant City Manager for Community Development and the Executive Director of the Rent Control Board to create a program to notify tenants of low and moderate income that this opportunity is available to them and to work with banks within the City of Cambridge to coordinate a mortgage program for acquisition of these units with funds available to make necessary improvements where needed and to report back to this Council within 30 days with said plan.

S-98

Councillor Walsh re: Home ownership program.

In City Council,

February 8, 1993

Charter Right exercised  
by Councillor Walsh

2/22/93 Amendment to  
Order failed

2-5-0-2

Order as submitted  
failed

3-6-0.

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