

Elie Yarden
143 Pleasant Street, 2A
Cambridge, MA 02139

January 6, 1998

Larry Acosta, City Arborist
Public Works Department
147 Hampshire Street
Cambridge, MA 02139

Dear Mr. Acosta,

This letter is written in accordance with the requirement in General Laws of Massachusetts: Chapter 87: Section 4, to request that you "... not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, *objection in writing is made by one or more persons* ..." [Italics mine]. This letter, to be delivered at the hearing, scheduled to be held Thursday, Jan. 7, at 5:30 p.m. in the Ackerman Room at City Hall, meets the requirement of Section 4.

Thank you for returning my call. As I explained, I had not seen any Public Notice in the *Cambridge Chronicle*, only an announcement appearing in NEIGHBORHOOD NOTES on page 7 (*Cambridge Chronicle*, December 24, 1998). Thank you for reading me the Public Notice as it appeared in the Cambridge Tab. Since it corresponds to the information provided in the "neighborhood notes," I rely on the *Chronicle* source:

Cambridgeport

Input sought on tree removal

A public hearing will be held
Thursday, Jan. 7, at 5:30 p.m. in the
Ackerman Room at City Hall regarding
the removal of a city shade tree
(Norway maple, 18 inches in diameter)
located on Putnam Avenue behind 784
Memorial Drive.

The law does not specify that some reason for objecting to the removal of a public shade tree must be given. Thus there is a presumption that it is the removal of a public benefit, a tree, that requires justification. This is in the spirit of our laws, a protection of the public interest. As a citizen, I am led to believe that I need not concern myself with protecting the public interest as if it were a private one (through force of arms, litigation, and the like). Nevertheless, my objections are specific and must be stated if we are to discover whether removing an irreplaceable good is justified by the circumstances.

Before beginning, it is especially important at a time when the City Council and other agencies of government are setting up barriers to receiving information to establish just what is under discussion; just what it is that is being decided.

What tree is under discussion? My knowledge of past events leads me to assume that 784 Memorial Drive LLC, or Spaulding & Slye acting as agent for 784 Memorial Drive LLC, is requesting the removal of a public shade tree so that a pre-existing curb cut on Putnam Avenue leading to their property could be relocated to the edge of that property on Putnam Avenue as far as possible from the intersection of Putnam Avenue and Pleasant Street. This is nowhere stated as the reason for seeking the removal. Why not?

It may be that the benefits conferred by relocating the said curb cut outweigh the injury inflicted by the removal of the tree. Were this the case, this would have been equally so on

February 5, 1998, when 784 Memorial Drive LLC (Spaulding & Slye) decided that a curb cut on Putnam Avenue was not needed for a proposed new commercial parking facility on their property. The building permit for its construction, issued on February 5, 1998, clearly states that a curb cut on Putnam Avenue would not be used. Shortly thereafter, Spaulding & Slye, acted as if it were initiating a process to relocate the existing Putnam Avenue curb cut to the location blocked by a public shade tree by initiating a mailing to abutters. This was done improperly and terminated by them. Since many meetings with traffic consultants, and others -- which continued until it was discovered that the garage building permit eliminated the Putnam Avenue curb cut from the proposal -- were based on the presumption of the desirability of access and egress at two locations, the withdrawal of the request for relocating the Putnam Avenue curb cut was a mysterious change of plans, at best.

Had proper procedure been followed in the Spring of 1998, leading to an approval by all public bodies for the relocation of the curb cut, the more than 100 year old public shade tree (Norway maple) would have been cut down first. Then, Spaulding & Slye could have come to change their plans in June or July of 1998, saying (as actually they did on February 5, 1998, with the continued support of Director Susan Klippinger, of the Traffic, Parking and Transportation Department) that the curb cut was not necessary for their project. How would we go about replacing the tree which had been cut down? I should not like to be in a position of close contact with someone who had been present as its beauty was pointlessly destroyed -- I do not wear the necessary armor in my person.

We have good reason for dotting "i"s and crossing "t"s. So let's get down to facts, even if the power is elsewhere.

Trees. There are two trees shown on photo D, the tree at center being considerably larger. Only this tree is "... located on Putnam Avenue behind 784 Memorial Drive." but, *only* if you know a complicated way of construing that statement. I.e., there is no reason for not believing that both trees are "behind 784 Memorial Drive." Another fact. Neither of the two trees -- (to locate them a little more perspicuously: (in photo A) Tree A: 12 inches in diameter*, located app. 108 feet from the fire hydrant at the corner of Putnam & Pleasant; (in photo B) Tree B: a large maple, 23 inches in diameter*, located app. 66 feet from the fire hydrant -- fit the description in the Public Notice. The only way an uninformed person can discover the tree referred to in the Public Notice is through the sign tied about Tree A. The copy of the photograph is quite sharp and the sign can be read with a magnifying glass.

NOTICE

A PUBLIC HEARING WILL BE HELD ON
January 7 5:30 p.m. City Hall
AT THE Ackerman Room BY
ORDER OF THE CITY ARBORIST FOR
THE REMOVAL(S) OF PUBLIC SHADE
TREE(S), IN ACCORDANCE WITH THE
MASSACHUSETTS GENERAL LAW
CHAPTER 87 SECTION 3.

Larry Acosta
CITY ARBORIST

It is not likely that any innocent person would mistake the tree intended for removal. I readily state that I, who am far from innocent, noticed what I believed to be an error shortly after the sign was first mentioned to me. I have deliberately waited to find out whether the 'error' would be corrected without my intervention. I care about this city and show it; frequently calling attention to dangers that can be avoided, and possibilities for achievable growth and improvement. I sometimes tire of calling people in the PWD to try to get someone to examine an extremely hazardous pedestrian crossing at the 'T'-intersection of Allston and Putnam that places a combined

curb cut and disability ramp together on the crosswalk itself after a friend narrowly escaped being struck by a car that dashed in front of her from the street to get into the parking lot. I sometimes wonder at the hostility of some City Councillors to 'public comment' on Communications designed to inform them and the public at large of matters that affect all of us in our city, at their anger when some citizen gently suggests that there may be some questions that should be asked -- and have not been. One should test the consequences of failure to exercise vigilance in safe situations only. This is certainly safe. No one destroyed the tree.

My chief objection to removing either of the trees is that there is no reason to do so. The larger one is extraordinarily beautiful in summer. But both in summer and winter, that tree has made itself part of the experience of one of the most pleasurable rooms in our dwelling. The pair of photographs (E & F) looking upon it from the windows give but a small idea of how its presence enhances life within the room itself, both day and night.

I am sure that others will have as much to say of their desire for continued presence of this tree as I have. But there is, according to Ms. Klippinger, some degree of improvement in commuter traffic management to be had as a result of its removal, even though that improvement is not required; i.e., all automobile traffic to and from the parking garage to be built on the site can be routed directly to Memorial Drive or elsewhere from a single curb cut on Pleasant Street if moved from its present location on Florence Street closer to the Drive itself.

The benefits of preserving the tree should then be compared with the benefits of destroying it. Perhaps alternative solutions should be considered that would allow for preserving the tree and improving the flow of traffic at the same time. The Traffic Department has demonstrated its ability to stretch "criteria" of what kind of added traffic congestion is permissible in response to pressure from corporate real estate interests. Perhaps it might do so out of concern for the stated wishes of our citizens. In any case the matter will have to be weighed.

The laws are there to protect the interest and well-being of our citizens. The General Law is very clear. The requirements of Chapter 87: Section 3 have *not* been met. When the requirements of Chapter 87: Section 3, have been met, we will be able to proceed. The wording of Section 4 makes clear that, in case of objection, the matter is to be decided by elected representatives of the citizenry; i.e., by those persons who have our mandate -- a political term defined in the OED. "The instruction as to policy supposed to be given by the electors to a parliament or a member of parliament."

There is good reason, today in Cambridge, to be concerned about the extent to which the City Council wishes to abdicate responsibility and avoid accountability by pretending helplessness when dealing with the blandishments and threats of commercial real estate corporations whose predatory behaviors are so destructive to the future of Cambridge.

If it can be shown to me that the City will be better off because of the removal of the tree, my regret at its loss will be easily assuaged by the public benefit. If it can be shown that the gain in efficiency for the operations of Spaulding & Slye is not sufficient to justify the loss to our citizens, the tree should be allowed to live out its natural life.

Sincerely yours,

Elie Yarden

* The diameters of the trees are from measurements taken at my chest height..

Copies: The City Council

Commissioner Ralph E. Dunphy

Susan E. Klippinger, Director of Traffic, Parking and Transportation

Appendix:

From: The General Laws of Massachusetts

Chapter 87:

Section 3. Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; provided, however, that when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein. Any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree, or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine.

Section 4. Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor.

143 Pleasant Street, 2A
Cambridge, MA 02139

January 19, 1998

Larry Acosta, City Arborist
Public Works Department
147 Hampshire Street
Cambridge, MA 02139

Dear Mr. Acosta,

On the evening of Thursday, January 7th, about nine people were waiting for your arrival on the third floor, at 57 Inman street, some of them for an hour. I am at loss to understand why you failed to appear as promised. I have received no explanation. It is now more than a week since the suddenly aborted hearing, scheduled for Thursday, January 7, 1999, 5:30 PM in the Ackerman Room at City Hall. When you called me, rather late in the day, to explain the need to move the hearing to 57 Inman Street, I indicated that this would cause some conflict because I had planned to attend at least a part of the Council Session, and had counted on the tree hearing being in the same building. I was also concerned about how people would know about the change, but you assured me that you would have someone post a notice at the Ackerman Room to redirect anyone who might not have been informed of the change, and also that it was a very short distance from 57 Inman Street.

Within a few hours you called and explained that you were going to reschedule the meeting, citing errors in advertising, that "your man" thought that perhaps he had put the sign on the wrong tree. In short, you proposed to begin all over again, advertise correctly, and undertook to contact people who might be coming on January 7. I protested saying that I was bringing my written objection to the tree removal. You assured me that this would not be necessary since there would be another hearing and thus a new deadline for written objections. When I stated that I could see nothing that would prevent getting together at the originally scheduled time, you agreed that you would be at 57 Inman Street, but requested that we begin the discussion at 6:00 PM rather than at 5:30. When I arrived, I went to the third floor where a few people were waiting. One told me of a notice on the outside door to the building to the effect that the meeting had been cancelled. A member of the tree-committee who showed up must have informed you of the gathering. We all left at about the same time, 6:30.

If you find any inaccuracies in this aide-memoire, or wish to make additions or corrections for the record, please do so and I will make every effort to incorporate them, noting those to which I take exception. Meanwhile I have a few questions to which I need answers.

1. The hearing was called because of tree-removal request made by Mr. Rob Dickey of Spaulding & Slye. When did you first receive some indication that such a request might be made?

2. What is the date of the formal request to remove the tree?

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3. When and from whom did you first discover that the Ackerman Room was no longer available for the meeting which had been scheduled and advertised for January 7?

4. Who instructed you to cancel the 6:00 o'clock meeting at 57 Inman Street to which you agreed in our last telephone conversation? What reason was given for cancellation?

5. Were you instructed to not show up in person to meet and explain matters to whoever might not have gotten the message of the cancellation? By whom?

Kindly favor me with a prompt response.

Thank you,

Elie Yarden



Ralph E. Dunphy
Commissioner

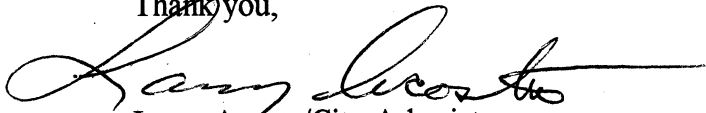
147 Hampshire Street
Cambridge, MA 02139
617-349-4800
TDD 617-349-4805

Dear Concerned Citizen;

Please accept my apology for any confusion or inconvenience caused by the improper posting for a removal hearing of the public shade tree in the sidewalk located on Putnam Avenue behind 784 Memorial Drive. If you showed up at 57 Inman St. on January 7 please forgive my absence there to discuss the hearing.

If you have not seen the posted tree or the notice in the Chronicle (1-14) the hearing is scheduled for January 28, 1999 at 5:30 pm in the Ackermann Room in City Hall.

Thank you,


Larry Acosta/City Arborist
(617) 349-6433



January 20, 1999

To: The Honorable, the City Councillors
From: Elie Yarden, co-chair Cambridgeport Neighborhood Initiative (CNI)
For: Council Meeting of January 25, 1999
Re: The Tree Hearing of January 7th, 1999 (rescheduled for January 28)

In a communication to the City Council dated January 7, 1999, I mentioned a concern ". . . about governing of the City which may require your attention . . . " and stated that I would continue in my efforts to keep you informed. I enclose copies of the following:

- my letter of January 6th to Larry Acosta, City Arborist, stating my objections to the tree removal
- an appendix, p. 4 of my January 6th letter citing Massachusetts General Law (my underlinings)
- my letter of January 19th to Larry Acosta, City Arborist, requesting information about the change of meeting place and subsequent cancellation.
- Mr. Larry Acosta's undated letter to whom it may concern which I received on January 20

In Cambridge's form of government (Plan E), both the executive power and the legislative power are delegated to a single body, the elected City Council. The General Laws of Massachusetts, Chapter 87, Sections 3 and 4 indicate, at least to me, that the legislative intent designates an elected official or body as the appropriate decision maker in matters of disputed tree-removals. While it is possible that, some time in the past, the City Council abdicated responsibility for this function to the City Manager, this is nowhere indicated. Nor is it clear that under the General Laws, such abdication is allowable. I hereby request that some member(s) of the Council arrange, by means of a Council Order, obtain information on this matter from the City's legal office, and thank you for your effort.

There are other questions in my January 20th letter to Mr. Acosta, which also reflect on matters of governance that I wish to see answered, and hope that honest and clear answers will be forthcoming.

1999 JAN 21 P 4: 24
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS



8-69/8
Consent Communication #18

A communication was received from Elie Yarden, Co-Chair, Cambridgeport Neighborhood Initiative (CNI), regarding the tree hearing of January 7, 1999 which was rescheduled to January 28, 1999.

In City Council January 25, 1999

PLACED ON FILE