C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council 5-13, 1997

Executive Session 10:05 Dorsey v City of Cambridge

YEA	NAY	ABSENT	PRESENT	
		✓		V.M. Kathleen L. Born
✓				Ms. Henrietta Davis
✓				Mr. Francis H. Duehay
✓				Mr. Anthony Galluccio
✓				Mr. Kenneth E. Reeves
✓				Mr. Michael A. Sullivan
✓				Mr. Timothy J. Toomey, Jr.
✓				Ms Katherine Triantafillou
✓				Mayor Sheila T. Russell

8 0 1 0

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

April 30, 1997

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: ***Danehy v. City of Cambridge***

Dear Mr. Healy:

I am attaching a copy of the Findings of Fact, Rulings of Law and Order for Judgment in the case of *Danehy v. the City of Cambridge* for referral to the City Council. As you will recall, that case presented a challenge to the validity of the Herman petition which rezoned several parcels along Massachusetts Avenue near Trolley Square from Business C-1 to Business A-2 and several other parcels from Business C-1 to Residence B. The Herman petition inadvertently excluded one remaining parcel of Business C-1 located at 2467 Massachusetts Avenue ("the Marino parcel"). In a subsequent petition--the Sheketoff petition--the City Council failed to rezone the Marino parcel to Business A-2. The Court has determined that the Herman petition was a valid zoning amendment except for the omission of the Marino parcel.

The Court has remanded this matter to the City Council in order to afford an opportunity to rezone the Marino parcel to Business A-2. I recommend that appropriate steps be taken to respond to the Court's order, which could be accomplished by a new zoning amendment proposal initiated by the City Council. If the City Council would like to discuss the Court order, I recommend that the discussion occur in executive session.

Very truly yours,

Russell B. Higley

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 91-8661

JOHN L. DANEHY[1]

vs.

CITY OF CAMBRIDGE

FINDINGS OF FACT, RULINGS OF LAW AND ORDER FOR JUDGMENT

The plaintiff, John L. Danehy, brings this action for a declaratory judgment challenging the validity of an amendment to the City of Cambridge's zoning ordinance which changed the zoning designation of numerous properties in the Trolley Square area including his own. Danehy contends that the zoning amendment, known as the Herman Petition and enacted on November 4, 1991, should be declared invalid on the grounds that the amendment treats the rear portion of his property differently from other similar parcels in the district and further singles out a neighboring property, the Marino parcel, for treatment less onerous than that imposed on other indistinguishable properties in the district. Thus, Danehy contends that the Herman Petition violates the uniformity requirements of G.L. 40A, § 4 and constitutes arbitrary and unreasonable spot zoning.

[1]As Trustee of the Junction Realty Trust.

FINDINGS OF FACT

These findings are derived from the parties' statement of agreed facts, various exhibits introduced by the parties, and the testimony of several witnesses. Based on the evidence presented by the parties during the course of trial and the reasonable inferences to be drawn from such evidence, I make the following findings of fact:

Plaintiff John L. Danehy, as Trustee of the Junction Realty Trust, is the owner of property located at 2400 Massachusetts Avenue in Cambridge, Massachusetts ("the Danehy parcel"), in an area of North Cambridge known as Trolley Square. From 1943 until 1991, the property fronting along Massachusetts Avenue within Trolley Square, bounded on the west by Washburn Avenue and Edmonds Street and on the east by Shea Road and Norris Street, was at all times zoned for commercial use. From 1943 to 1986, all properties along Massachusetts Avenue were located within either the "Business B" or "Business A" zoning districts, with the exception of property located at 2467 Massachusetts Avenue. The property at 2467 was located in the "Business B" zone from 1943 to 1960, and in both the "Business A" and "Business B" zoning districts from 1960 to 1986.

During 1984 and 1985, community groups in Cambridge began to discuss the possibility of rezoning portions of Massachusetts Avenue including the Trolley Square area. Thus, in 1985, a zoning amendment known as the First Laverty Petition was submitted to the City Council, proposing that businesses in Trolley Square located in the "Business B" district be rezoned as "Business C-1". However, the City Council did not adopt this zoning amendment.

A comprehensive land use and zoning study on the area was subsequently conducted for the City, by consulting firm Wallace, Floyd. The purpose of the study was to provide information and a zoning recommendation for the area. Thereafter, in 1986, a revised zoning proposal for Trolley Square and the other areas along Massachusetts Avenue known as the Laverty Petition was filed with the City, based in large part upon the findings from the Wallace, Floyd study. The Laverty Petition proposed a uniform downzoning of all portions of Massachusetts Avenue in Trolley Square from "Business B" status to "Business C-1" status, a reduction of the commercial floor area ratio from 4.0 to 2.75, and the implementation of height limitations. After substantial discussion, negotiation and compromise between public officials, business people and residents, the Laverty Petition was adopted as an amendment to the Cambridge Zoning Ordinance in October of 1986.

Between 1986 and 1991, there was relatively little commercial development in Trolley Square other than a 23-unit condominium on Massachusetts and the reconstruction of the Green Parrot restaurant to Marino's Restaurant. However, on July 24, 1991, various community members filed another proposed zoning amendment, the Herman Petition, which sought to further downzone part of Trolley Square fronting on Massachusetts Avenue from a "Business C-1" designation to a "Business A-2" designation in order to materially decrease the permitted density of commercial development in the area. The Herman Petition also proposed to down-zone those portions of Danehy's property not bounded by Massachusetts Avenue,

which comprise approximately fifty percent of the Danehy parcel, from "Business C-1" to "Residence B" status. The petition proposed similar zoning changes from "Business C-1" to "Residence B" for eight other lots on Cameron Avenue north of Massachusetts Avenue.

The area affected by the Herman Petition did not include one commercial parcel in the formerly uniform "Business C-1" zone amended by the Laverty Petition. While all the other properties affected by the Herman Petition were downzoned from "Business C-1" to "Business A-2" status, the Marino property located at 2467 Massachusetts Avenue (the Marino parcel) remains zoned as "Business C-1". The Marino property was inadvertently excluded from the Herman Petition due to a clerical error by a staff member when transmitting the relevant requested boundary line description from the Laverty petition to the drafters of the Herman Petition. This error was not discovered until after the Herman Petition was filed with the City Clerk's Office. Thus, in order to provide for the uniform rezoning of Trolley Square, the Herman Petition needed to be amended to include the Marino parcel.

Accordingly, on October 1, 1991, a proposed amendment to the Herman Petition, known as Sheketoff Petition, was filed with the City stating that the Herman Petition had inadvertently omitted certain parts of the "Business C-1" zoning district and seeking to include the Marino parcel in the rezoning. The Herman Petition was presented to the City Council for discussion and a vote on November 4, 1991, the night before municipal elections. During the debate on the Herman Petition, the City Solicitor appeared before the

Council and raised the possibility that the amendment, if passed, might constitute spot zoning due to the omission of the Marino parcel. He thus requested that the Council delay the vote two weeks so that he could research and issue an opinion on the legal validity of the Herman Petition. However, the City Counsel denied this request and proceeded to vote on the Herman Petition, adopting it as an amendment to the Cambridge Zoning Ordinance without modification.

Meanwhile, at the time that the City Council voted on the Herman Petition, the Sheketoff Petition was being reviewed by the Council's Ordinance Committee. On December 17, 1991, the City Planning Board issued a recommendation that the Sheketoff Petition be adopted as filed, noting that:

> [The Marino parcel] was inadvertently left out of the Herman, et al Petition which was adopted by the City Council in November. That rezoning affected the majority of the Business C-1 District in Trolley Square but left this small site unaffected. There is, in fact, no reason to treat this small area any differently than the other areas rezoned to Business A2 through the adoption of the Herman Petition; indeed, the area would really be an anomalous spot of Business C-1 in a long stretch of Massachusetts Avenue from Porter Square north which is now uniformly zoned Business A2 . . . The findings otherwise made for the Herman Petition generally apply to this proposed zoning as well.

During a January 1992 vote, the City Counsel rejected the Sheketoff Petition by a vote of 6 in favor and 3 opposed.

RULINGS OF LAW

The power of a town to create zoning districts and to designate the purposes for which land is utilized rests on the

police power, which is to be asserted only if the public health, the public safety and the public welfare, as those terms are fairly broadly construed, will be thereby promoted and protected. Caires v. Building Commr. of Hingham, 323 Mass. 589, 593 (1949); Lamarre v. Commissioner of Public Works of Fall River, 324 Mass. 542, 545 (1949). Further, a zoning ordinance may be amended to accomplish any of the purposes for which the ordinance was originally adopted in accordance with the enabling act. Schertzer v. Somerville, 345 Mass. 747, 751 (1963). As a legislative decision of local government, a zoning amendment is entitled to great deference by the court, whose review is limited to determining whether the amendment bears a rational relation to the public safety, health, or morals. Shapiro v. Cambridge, 340 Mass. 652, 658 (1960); Lanner v. Board of Appeal of Tewksbury, 348 Mass. 220, 228 (1964); Crall v. Leominster, 362 Mass. 95, 101 (1964).

All rational presumptions are to be made in favor of the validity of a zoning amendment, and its enforcement will not be refused unless it shown beyond a reasonable doubt that it conflicts with constitutional requirements or with the enabling statute. Caires v. Building Commissioner of Hingham, supra at 594-595. Where the reasonableness of a zoning ordinance or amendment is debatable, the judgment of the local legislative body upon which the duty and responsibility for its enactment rests must be sustained, and a reviewing court cannot substitute its own judgment for that of local authorities. Lanner v. Board of Appeal of Tewksbury, supra at 228; Canteen Corp. v. Pittsfield, 4 Mass. App.

Ct. 289, 292 (1976); National Amusements, Inc. v. Boston, 29 Mass. App. Ct. 305, 309 (1990). Thus, a zoning amendment can be deemed invalid only where the court is convinced that it involves an arbitrary exercise of power, is unreasonable, or is substantially unrelated to the public health, safety, convenience or welfare. Caires v. Building Comm'r of Hingham, supra at 594; Lamarre v. Commissioner of Public Works of Fall River, supra at 545; Schertzer v. Somerville, supra at 751; National Amusements, Inc. v. Boston, supra at 309. The plaintiff bears the heavy burden of demonstrating that there is no reasonable connection between the challenged amendment and the purposes of the Zoning Act. Caires v. Building Comm'r of Hingham, supra at 594; Canteen Corp. v. Pittsfield, supra at 292.

Section 4 of the Zoning Act provides that "[a]ny zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind or structures or uses permitted." G.L. c. 40A, § 4 (1993). This provision prohibits "spot zoning", defined as a legislative change to existing zoning restrictions which arbitrarily and unreasonably singles out one parcel of land for treatment different from that accorded to surrounding parcels indistinguishable from it in character. Marblehead v. Rosenthal, 316 Mass. 124, 126 (1944); Lamarre v. Commissioner of Public Works of Fall River, supra at 545; Van Sant v. Building Inspector of Dennis, 352 Mass. 289, 292 (1967); National Amusements, Inc. v. Boston, supra at 309.

In determining whether a rezoned parcel has been improperly

singled out, resulting in spot zoning, the court will compare a parcel's significant features with those of the surrounding parcels to determine whether some justification exists for the disparate treatment. Barney & Carey Co. v. Milton, 324 Mass. 440, 449 (1949); Crall v. Leominster, supra at 103-104. Factors to be taken into account include the physical characteristics, size and location of the rezoned parcel as compared with surrounding land, the nature of adjoining uses, the objective of the zoning change, and the economic effect of the zoning change. Murphy v. Springfield, 25 Mass. App. Ct. 1121 (1988); National Amusements v. Boston, supra at 310. Further, in assessing whether spot zoning has occurred, it is proper for the court to consider the effect of the zoning change on the municipality as a whole, particularly where the growth of the municipality has been addressed by a plan. Shapiro v. City of Cambridge, 340 Mass. 652, 658-659 (1960); Schertzer v. Somerville, supra at 748-749.

The singling out of a similarly situated parcel for less onerous treatment than surrounding land may be upheld as a valid exercise of police power only where the zoning change is reasonably related to the promotion of the public welfare. Lamarre v. Commissioner of Public Works of Fall River, supra at 544-545; Turnpike Realty Co. v. Dedham, 362 Mass. 221, 227-228 (1972), cert. den., 409 U.S. 1108 (1973); Sullivan v. Town of Acton, 38 Mass. App. Ct. 113, 115 (1995). Accordingly, a singling out of a particular parcel for the sole purpose of conferring an economic benefit on the owner is invalid as spot zoning because it does not

serve any legitimate public purpose. Lamarre v. Commissioner of Public Works of Fall River, supra at 545; Beal v. Building Commissioner of Springfield, supra at 642-643; Board of Appeals of Hanover v. Housing Appeals Commission, 363 Mass. 339, 360-361 (1973). However, the mere fact that an amendment incidentally leads to an economic benefit for a singled-out parcel is not enough to constitute spot zoning where there are also benefits to the general public. Lanner v. Board of Appeals of Tewksbury, supra at 229; Maider v. Dover, 1 Mass. App. Ct. 683, 687 (1974). Nonetheless, even where the purpose of the singling out is not to confer an economic benefit on a particular landowner, disparate treatment is invalid where it serves no legitimate zoning purpose and is thus arbitrary and unreasonable. Beal v. Building Comm'r of Springfield, supra at 642-643; Smith v. Board of Appeals of Salem, 313 Mass. 622, 624 (1943).

Downzoning of a Portion of the Danehy Parcel

In the present case, plaintiff John Danehy contends that the Herman Petition, which amended the Cambridge Zoning Ordinance with respect to the Trolley Square area of Massachusetts Avenue, violates the uniformity requirement of G.L. c. 40A, § 4 by singling out the rear portion of his parcel, bounded by Harvey Street to the North, Alberta Terrace to the South and Cedar Avenue to the West, for downzoning from "Business C-1" to "Residence B" status. It is well established that a municipality may re-examine and move zoning boundary locations as sound zoning principles dictate. Schertzer v.

Somerville, supra at 751-752; Canteen v. Pittsfield, supra at 292. Where a locus is at a borderline between a business district and a residential district, it may be properly zoned in either district. Martin v. Rockland, 1 Mass. App. Ct. 167, 169 (1973). "It is often difficult to draw the line between neighborhoods that should be devoted to different uses, and where there is room for reasonable doubt, the judgment of the local authorities should prevail." Lanner v. Board of Appeals of Tewksbury, supra at 228; Crall v. Leominster, supra at 101-102 n.4.

In the present case, the rezoned portion of the Danehy lot abutted a much larger "Residence B" zone on Cedar Avenue, justifying the rezoning of the Danehy rear portion as a change in the zoning boundary line necessary to preserve the amenities of that residential neighborhood. Thus, the rear portion of the Danehy parcel could be treated as a borderline locus which the City Council was entitled to zone in either of the two bordering zones. Rosko v. Marlborough, 355 Mass. 51, 53-54 (1968); Martin v. Rockland, supra at 169-170. Moreover, it is clear that the City Council had a legitimate purpose for this downzoning, to create consistency with similar portions of Massachusetts Avenue adjacent in either direction, and a consistent zoning boundary through the middle of the block as opposed to down the middle of the street, in order to avoid negative consequences for the abutting residential neighborhood. This rational public welfare objective was supported by not only the Wallace, Floyd report but also a traffic study report prepared by consulting firm DJK Associates, the north

Cambridge Neighborhood Study report, and the Cambridge Planning Board report.

Finally, there is no evidence that Danehy's lot was impermissibly singled out for restrictive treatment so as to constitute spot zoning. The Herman Petition also downzoned eight parcels along the section of Cameron Avenue north of Massachusetts Avenue to the same "Residential B" status as the rear portion of Danehy's parcel. These Cameron parcels had similar characteristics to the rear portion of the Danehy lot and were similarly located on the borderline between the business district and the abutting Residence B district. Thus, this Court concludes that Danehy has failed to demonstrate that the Herman Petition as applied to the rear portion of his parcel constitutes spot zoning in violation of Chapter 40A.

Failure to Downzone the Marino Parcel

Danehy further asserts that the Herman Petition violates the uniformity requirement of G.L. c. 40A, § 4 by singling out the Marino parcel for less restrictive treatment than surrounding parcels indistinguishable in use and character, including his own parcel. The City, however, contends that Danehy lacks standing to challenge either the zoning designation of the Marino parcel, or the failure to include that parcel in the Herman Petition downzoning. Because Danehy has failed to demonstrate both an ownership interest in the Marino parcel and some pecuniary damage suffered by him as a result of the rezoning, the City concludes

that he cannot raise the issue of whether the Herman Petition runs afoul of the uniformity requirements of section 4 of the Zoning Act.

The right to challenge the validity of zoning ordinances rests on an invalid application of them, such that only a citizen holding a property right affected by the application of an ordinance has a right to challenge its validity. Circle Lounge & Grille, Inc. v. Board of Appeal of Boston, 324 Mass. 427, 430-431 (1949); Cummmings v. City Council of Gloucester, 28 Mass. App. Ct. 345, 349-350, rev. den., 407 Mass. 1102 (1990). Clearly the Herman Petition directly affected Danehy's parcel by downzoning it from Business C-1 to Business A-2. The critical issue, however, is whether Danehy has a property right in the zoning treatment of the neighboring Marino parcel relative to treatment of his own parcel. As previously discussed, the numerous cases involving spot zoning are premised on the uniformity requirement contained in G.L. c. 40A, § 4. Thus, the Zoning Act itself appears to confer upon all landowners a cognizable interest in having their property treated the same as other properties indistinguishable in character and use within a single zoning district. Compare Monks v. Zoning Board of Appeals of Plymouth, 37 Mass. App. Ct. 685, 688 (1994), rev. den., 419 Mass. 1106 (1995) (holding that where a town bylaw conditioned the grant of a special permit on a finding that a proposed structure would not in any way detract from the visual quality of the neighborhood, the town created and defined a protected interest such that a plaintiff alleging only that the proposed structure would impair

the view from his property had standing to challenge the granting of a permit).

Further, it is notable that none of the cases challenging various amendments as spot zoning address lack of standing concerns, suggesting that landowners within a district in effect have automatic standing under c. 40A, § 4 to challenge a zoning amendment on the basis that it violates the uniformity requirement by singling out a particular parcel of land for special treatment. See e.g., Muto v. Springfield, 349 Mass. 479, 480 (1965) (owners of land located near a locus brought suit challenging the downzoning of that locus from Residence A to Residence C as spot zoning); Crall v. Leominster, supra at 96 (abutters and land owners in the vicinity of a 270 acre parcel rezoned from agricultural to industrial use brought suit challenging the rezoning as spot zoning).

Finally, in the case of Van Sant v. Building Inspector of Dennis, in which the plaintiffs brought suit to enforce a zoning by-law against a parcel of land omitted from a zoning amendment, the court addressed the merits of the plaintiffs' argument that the by-law improperly selected one parcel and left it unrestricted while onerous restrictions were imposed on other similarly situated parcels without expressing any concern for a lack of standing. supra at 290. Accordingly, this Court concludes that Danehy, as a property owner in the formerly Business C-1 Zone of the Trolley District whose own land was downzoned by the zoning amendment, has standing to challenge the City's failure to include the Marino

parcel in the Herman Petition rezoning as invalid spot zoning.[2]

Foremost, this Court concludes that as a general matter, the passage of the Herman Petition was a reasonable and rational use of the City's police power, motivated by the proper zoning purpose of preserving the neighborhood by limiting future growth of commercial parcels in Trolley Square. Thus, there were legitimate and permissible reasons for the adoption of the Herman Petition by the City Council in keeping with the requirement of the Cambridge Zoning Ordinance to promote the public welfare. Further, this Court notes that contrary to Danehy's assertions, the City employed the proper procedures in passing the amendment at issue, which was enacted after a two year neighborhood study, a comprehensive plan, and a valid vote by the City Council after several hearings.

Nonetheless, the fact remains that the Herman Petition left the Marino property with the less onerous zoning classification of "Business C-1" while rezoning all similar properties fronting on Massachusetts Avenue in the Trolley District to the more restrictive "Business A" classification. Indeed, the majority of Massachusetts spot zoning cases have focused on precisely the situation where a zoning amendment singles out a parcel of land for

---

[2]In addition, this Court notes that Danehy seeks a declaratory judgment pursuant to G.L. c. 231A that the Herman Petition constitutes invalid spot zoning. It is well established that declaratory relief sought by one landowner to determine the validity of a zoning ordinance as applied to the land of another is properly brought in Superior Court under c. 231A. Noonan v. Moulton, 348 Mass. 633, 637 (1965); Bonan v. Boston, 398 Mass. 315, 320 (1986). Danehy has thus alleged a legally cognizable injury under the uniformity provision of G.L. c. 40A, § 4 that is justiciable as an actual controversy.

less restrictive treatment than similar parcels in the same zoning district. See e.g., Leahy v. Inspector of Buildings of New Bedford, 308 Mass. 128, 134 (1941); Beal v. Building Commissioner of Springfield, supra at 644. It is undisputed that the exclusion of the Marino parcel from the Herman Petition was not for the sole purpose of conferring an economic benefit on any particular owner. Sullivan v. Town of Acton, 38 Mass. App. Ct. 113, 116 (1995). The Marino parcel was not intentionally singled out for preferential treatment by the City Council; rather, due to a clerical error, the parcel was inadvertently omitted from the zoning amendment. Nonetheless, the critical question is whether any rational relationship exists between the singling out of the Marino parcel and a permissible zoning objective such as the promotion of the public welfare.

It is clear to this Court that the singling out of the Marino parcel does not comport with Cambridge's comprehensive zoning plan for the Trolley Square area. See Canteen Corp. v. Pittsfield, supra at 293; Leahy v. Inspector of Buildings of New Bedford, supra at 130. The Marino parcel was included in the 1986 Laverty Petition amendment, which uniformly rezoned the Trolley Square area from "Business B" to "Business C-1", yet was not included in the 1991 Herman Petition rezoning the same area. The City itself has conceded in the parties' agreed statement of facts that in order to provide for uniform rezoning of Trolley Square, the Marino property should have been included in the Herman Petition. Finally, the City Planning Board in recommending the adoption of the Sheketoff

Petition noted that there was no reason to treat the Marino parcel any differently than the long stretch of parcels along Massachusetts Avenue from Porter Square north which were uniformly rezoned to Business A2 through the adoption of the Herman Petition.

Hence, this Court concludes that on the record before it, no rational relationship exists between the singling out of the Marino parcel for a more favorable zoning status than that afforded surrounding parcels such as the plaintiff's and any permissible zoning objective under G.L. c. 40A. Danehy has met the heavy burden of demonstrating that the Marino parcel was arbitrarily and unreasonably singled out from other indistinguishable parcels in the district for less onerous treatment. Accordingly, on the present record, the Herman Petition amendment to the Cambridge Zoning Ordinance cannot be deemed a reasonable exercise of the legislative powers of the Cambridge City Council, and is invalid as spot zoning in violation of G.L. c. 40A, § 4.

ORDER

For the foregoing reasons, it hereby **ADJUDGED** and **DECLARED** that the November 4, 1991 Herman Petition amendment to the Zoning Ordinance of the City of Cambridge is valid and effective under the provisions of G.L. c. 40A as applied to the Danehy parcel located at 2400 Massachusetts Avenue.

It is further **ADJUDGED** and **DECLARED** that the Herman Petition violates the uniformity requirement of G.L. c. 40A, § 4 and constitutes an arbitrary and discriminatory use of the police

power, lacking a legitimate public purpose, insofar as it singles out the Marino parcel, located at 2467 Massachusetts Avenue, for less restrictive zoning treatment than that of similarly situated parcels solely on the basis that said parcel was omitted from the Herman Petition due to a clerical error.

This Court retains jurisdiction of this case and hereby **ORDERS** that the matter be **REMANDED** to the Cambridge City Council in order to afford it an opportunity to take further action in accordance with this opinion.

Wendie I. Gershengorn
Justice of the Superior Court

DATED: April 22, 1997

12,241

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX
THE SUPERIOR COURT

DOCKET# MICV91-08661C

RE: Danehy, Tr. et al v Cambridge

TO: Nancy E Glowa
Cambridge Law Department
City Hall
795 Massachusetts Avenue
West Cambridge MA 02139

NOTICE OF DOCKET ENTRY

You are hereby notified that on 04/24/97 the following entry was made on the above referenced docket:

JUDGMENT: It is Ordered and Adjudged that the November 4, 1991 Herman Petition amendment to the Zoning Ordinance of the City of Cambridge is valid and effective under the provisions of G.L.C. 40A as applied to the Danehy parcel located at 2400 Massachusetts Avenue. That the Herman petition violates the uniformity requirement of G.L. 40A sec 4 and constitutes an arbitrary an discriminatory use of the police power, lacking a legitimate public purpose insofar as it singles out the Marino parcel located at 2467 Massachusetts Avenue for less restrictive zoning treatment than that of similarly situated parcels solely on the basis that said parcel was omitted from the Herman Petition due to a clerical error. That the action be remanded to the Cambridge City Council for further action consistent with the Court's opinion. cm 4/24/97

Dated: 24th day of April, 1997

Edward J Sullivan
Clerk of the Courts

BY:
Arthur DeGuglielmo, Asst Clerk
Telephone: 617-494-4291

MIDDLESEX, ss. **Commonwealth of Massachusetts** SUPERIOR COURT

MICV91-08661

** 30

JOHN L. DANEHY

VS.

CITY OF CAMBRIDGE

JUDGMENT

This case came on for a trial before the Court, Gershengorn, J., presiding, and the issues having been duly tried and findings having been duly rendered it is Ordered and Adjudged:

That the November 4, 1991 Herman Petition amendment to the Zoning Ordinance of the City of Cambridge is valid and effective under the provisions of G.L. C. 40A as applied to the Danehy parcel located at 2400 Massachusetts Avenue.

That the Herman Petition violates the uniformity requirement of G.L. 40A §4 and, constitutes an arbitrary and discriminatory use of the police power, lacking a legitimate public purpose insofar as it singles out the Marino parcel located at 2467 Massachusetts Avenue for less restrictive zoning treatment than that of similarly situated parcels solely on the basis that said parcel was omitted from the Herman Petition due to a clerical error.

That the action be remanded to the Cambridge City Council for further action consistent with the Court's opinion.

Dated at Cambridge, Massachusetts this twenty-fourth day of April, 1997.

Mary E. Rosa

Deputy Assistant Clerk

SUP.034

24.

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139
TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

May 5, 1997

To The Honorable, The City Council:

Please find attached for your consideration a communication from City Solicitor Russell B. Higley, regarding the Findings of Fact, Rulings of Law and Order for Judgement in the case of *Danehy v. the City of Cambridge.*

It is recommended that any discussion on this matter take place in Executive Session.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachments

Consent Agenda #24

cal 1
5-2 92

Relative to a memorandum from City Solicitor russell Higley, regarding the Findings of Fact, Rulings of Law and Order ~~for~~ Judgement in the case of Danehy V. the City of Cambridge.

In City Council May 5, 1997

Charter Right
exercised by
Councillor Sullivan
5/12/97 Motion to move
to Executive Session
Carried 8-0-1
Placed on file