Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Nancy E. Glowa
First Assistant
City Solicitor

Arthur J. Goldberg
Supervising Legal Counsel

Legal Counsel
Birge Albright
Gail S. Gabriel
Vali Buland
Cheryl Anne Watson
Nancy B. Schlacter

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

May 19, 2000

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

Re: Calendar Item #1 (4-24-00)-
Issues related to Port Financial Corp.

Dear Mr. Healy:

I write in response to the above Council Order (copy attached) which deals with the conversion of the Cambridgeport Bank to the Port Financial Group. Orders 3 and 4 request legal opinions as follows:

ORDERED: That the City Manager be and hereby is requested to seek legal opinions and report back to the City Council on the jurisdiction of Cambridge regarding further action which may be taken to address concerns about notice, affordable housing impact, community lending and charitable giving as it relates to Port Financial; and be it further

ORDERED: That the City Manager be and hereby is requested to seek legal opinions and report back to the City Council as to whether the city can require a community impact statement relating to protection of jobs and lending commitment to Cambridge from any Cambridge bank wishing to convert to stock or merge with another bank; and be it further

From this Order, it is clear that the Council is concerned about the following subjects as they relate to Port Financial and other Cambridge banks: affordable housing, community lending, charitable giving, protection of jobs and lending

Telephone (617) 349-4121 *Facsimile (617) 349-4134* *TTY/TTD (617) 349-4242*

commitment.

I will address the following question:

Under present law, does the City have any jurisdiction to regulate in these areas?

DISCUSSION

I believe that the answer to the question is "No". The principal law pertaining to regulation of banks in Massachusetts is G.L. c. 167 (Supervision of banks). This chapter contains approximately 50 sections, and I have not been able to find in any of them any grant of jurisdiction to municipalities in the regulation of banks.

In particular, two sections of c. 167 deal with subjects which interest the City Council:

Sec. 14 Credit needs of local communities

Sec. 14A Mortgage review banks

Neither of these sections, however, assign any formal role to cities and towns.

CONCLUSION

Since G.L. c. 167 does not give municipalities power over any of the subjects in which the City Council is interested, I conclude that they do not have such power. Nor do I believe that a municipality could give itself such power through an ordinance or by-law, because I believe that, in the area of banking regulation, the Legislature has occupied the field. See G.L. c. 167 through 172 A.

I believe that my conclusion is supported by the enclosed opinion from Joseph A. Leonard, Jr., Deputy Commissioner of Banks and General Counsel.

I am also enclosing the Commissioner's February 22nd Decision Relative to the Petition of Cambridgeport Mutual Holding Company to Convert to a Stock Holding Company.

Very truly yours,

Russell B. Higley

Russell B. Higley

cambridge

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager *Richard C. Rossi, Deputy City Manager*

April 26, 2000

TO: James P. Maloney, Asst. City Manager/Finance
Donald Drisdell, Deputy City Solicitor

FROM: Robert W. Healy, City Manager

SUBJECT: Calendar Item #1, dated 4/24/00 RE: issues related to the Port Financial Corp.

Please review the attached Council Order and respond to this office with your findings.

PRIORITY RESPONSE
PLEASE RESPOND BY:
MAY 23, 2000

2000 Things 2 Do in 2000

CCM-101

City of Cambridge

Maloney
Dresdale

~~O-4.~~
Calendar Item #1

IN CITY COUNCIL

~~April 10, 2000~~
April 24, 2000

COUNCILLOR BRAUDE
COUNCILLOR DECKER
COUNCILLOR DAVIS
COUNCILLOR REEVES

WHEREAS: The Cambridgeport Bank is converting from a depositor owned, locally headquartered bank to the Port Financial Group owned by stockholders and based in Boston; and

WHEREAS: The initial offering period of stock to depositors has closed and according to the state Division of Banks, Port Financial will formally go public this week; and

WHEREAS: The Cambridge City Council voiced concerns in its order of March 6, 2000 and its public hearing of March 21, 2000 that the bank hold community hearings to answer depositor and stakeholder questions, make a specific commitment to return affordable housing lending levels to their high in the mid-1990's, set up a community foundation to guarantee continued commitment to Cambridge regardless of the future ownership of the bank and extend the initial offering period during which depositors may purchase stock; and

WHEREAS: The bank declined to appear at the public hearing and has failed to respond to any of the city's demands; and

WHEREAS: There are currently two remaining mutual savings banks in Cambridge, Cambridge Savings and East Cambridge Savings Bank; and

WHEREAS: There is no requirement that either of such banks hold public hearings or provide public notice prior to the vote of corporators, should either decide to go public; now therefore be it

ORDERED: That the City Council reaffirm its prior requests relating to public meetings, lending commitments and a community foundation by what is now called Port Financial Corp; and be it further

ORDERED: That the City Manager be and hereby is requested to seek from Port Financial and its officers information regarding the percent of depositors that participated in the subscription offering, the average level of participation by such depositors, the percent of stock purchased by depositors in Cambridge and a demographic breakdown of stockholders by city, state and number of shares purchased; and be it further

ORDERED: That the City Manager be and hereby is requested to seek legal opinions and report back to the City Council on the jurisdiction of Cambridge regarding further action which may be taken to address concerns about notice, affordable housing impact, community lending and charitable giving as it relates to Port Financial; and be it further

ORDERED: That the City Manager be and hereby is requested to seek legal opinions and report back to the City Council as to whether the city can require a community impact statement relating to protection of jobs and lending commitment to Cambridge from any Cambridge bank wishing to convert to stock or merge with another bank; and be it further

ORDERED: That the Neighborhood and Long Term Planning Committee and the Housing Committee hold a **"roundtable"** meeting of the leaders of the Cambridge banks and the non-profit housing agencies to discuss the banks' commitment to affordable housing, with personal invitations to the presidents of all Cambridge banks to attend.

In City Council April 24, 2000.
Adopted as amended by the affirmative vote of nine members.
Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:- D Margaret Drury

D. Margaret Drury
City Clerk

The Commonwealth of Massachusetts
Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

ARGEO PAUL CELLUCCI
GOVERNOR
JANE SWIFT
LIEUTENANT GOVERNOR
THOMAS J. CURRY
COMMISSIONER

May 18, 2000

By Facsimile and Regular Mail
Birge Albright, Legal Counsel
City of Cambridge
Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Dear Mr. Albright:

Commissioner of Banks Thomas J. Curry has referred your May 10, 2000 request for a legal opinion to me for response.

Your request relates to an April 24, 2000, Order of the Cambridge City Council relating to Cambridgeport Bank, a state-chartered stock form savings bank, and Port Financial Corp. ("Port Financial"), its bank holding company parent. As you know, Port Financial recently converted from a mutual holding company into a stock form bank holding company. A copy of the Division of Bank's ("Division") February 22, 2000 approval, which contains a detailed discussion of the law governing this transaction, is enclosed for your review.[1]

You have asked the following two questions:

1. *Can the City of Cambridge require Port Financial to give it information regarding Port's policies concerning affordable housing, community lending and charitable giving?*

2. *Can the City require a community impact statement relating to protection of jobs and lending commitments from any Cambridge bank wishing to convert to stock or merge with another bank?*

[1] The Division's approval also summarizes the applicable public notice, posting and public hearing requirements followed in this particular transaction. *See Decision Relative to the Petition of Cambridgeport Mutual Holding Company to Convert to a Stock Holding Company* (February 22, 2000) at 1-2, 14-15.

Your questions have been reviewed under the Commonwealth's banking laws and regulations. The Division's response, however, is necessarily general in nature in order to meet your department's May 23, 2000 deadline to reply to the Cambridge City Manager.

Both questions raise the threshold jurisdictional issue of whether a city or town may regulate the activities of state-chartered banking institutions having main or branch offices in their communities. As your letter acknowledges, state-chartered banking institutions are subject to a comprehensive regulatory system. At the state level, the Division is granted extensive examination and supervisory responsibilities over state-chartered institutions. Federal law also subjects these instructions to additional regulation and supervision by applicable federal bank regulatory agencies, such as the Federal Deposit Insurance Corporation and the Federal Reserve System. The Division is unaware of any state or federal law that confers jurisdiction upon municipalities to further regulate the corporate, community reinvestment or merger related activities of state-chartered banking institutions. Consequently, in the absence of express statutory authority, a municipality generally may not independently "require" or unilaterally compel a state-chartered banking institution to provide information or impose terms or conditions in connection with a transaction that is governed by a comprehensive state law.

Municipalities and local officials, however, clearly have a strong and legitimate interest in the availability of credit and banking services within their communities. As a result, all state-chartered banking institutions must meet their affirmative and ongoing obligations under the Commonwealth's Community Reinvestment Act ("CRA"), G. L. c.167, §14, and 209 CMR 46.00 *et seq.*, its implementing regulations. The CRA examination process itself strongly encourages community comment and input in evaluating an institution's record of performance in meeting community credit needs, including those of low- to moderate-income geographies. Moreover, much of the information sought in Question 1, is publicly available in the periodic CRA Performance Evaluations prepared by the Division and federal bank regulatory agencies. Additional information on lending is also available under the federal Home Mortgage Disclosure Act ("HMDA").[2]

The local and statewide competitive, economic and public convenience impacts of bank expansion, merger and certain other activities also are addressed by the Commonwealth's banking laws. In response to Question 2, the employment and lending impacts of a merger or acquisition are required assessments under the "net new benefits" component of the formal review standard found in the Commonwealth's bank merger and bank holding company statutes.[3] "Net new benefits" is defined by the banking statutes to mean " ... initial capital investments, job creation plans, consumer and business services,

[2] A wide range of HMDA, CRA and financial data on FDIC insured banks is readily available through the Federal Financial Institutions Examination Council's ("FFIEC") Website, www.ffiec.gov.
[3] *See e.g.* G. L. c.167A §2 and 4; G. L. c. 168, §34.

commitments to maintain and open branch offices within a bank's delineated local community ... and such other matters the [bank commissioner or board of bank incorporation, as the case may be] may determine."[4] The burden to show that "net new benefits" will reasonably accrue from a proposed transaction is squarely placed upon the applicant. Public and community comment on whether this review component has been met is also considered. A banking institution's past CRA record of performance is an additional major factor in the Division's banking industry merger and acquisition application review process.

Please contact me at (617) 596-1520 if you have any other questions regarding the Commonwealth's banking laws.

Very truly yours,

Joseph A. Leonard, Jr.

Joseph A. Leonard, Jr.
Deputy Commissioner of Banks
and General Counsel

Enclosure
Opinion No. O00071

[4] *Id.*

The Commonwealth of Massachusetts

Office of the Commissioner of Banks
One South Station
Boston, Massachusetts 02110

ARGEO PAUL CELLUCCI
GOVERNOR

JANE SWIFT
LIEUTENANT GOVERNOR

THOMAS J. CURRY
COMMISSIONER

DECISION

RELATIVE TO THE PETITION OF

CAMBRIDGEPORT MUTUAL HOLDING COMPANY

TO CONVERT

TO A STOCK HOLDING COMPANY

Cambridgeport Mutual Holding Company (the "Petitioner" or "Cambridgeport"), Cambridge, Massachusetts, has petitioned the Division of Banks (the "Division") for permission to convert from a mutual holding company to a stock holding company. The Petitioner is the holding company for Cambridgeport Bank (the "Bank"), a state-chartered savings bank in stock form which also has its main office in Cambridge, Massachusetts. Following the conversion, if approved, the Petitioner would be known as Port Financial Corp. The transaction is governed by the provisions of chapter 167H of the General Laws and the Division's mutual to stock conversion regulations.

The application was submitted on October 25, 1999, in accordance with the filing procedures of the Division. Notice of the application was posted and published pursuant to the Division's standard procedures and applicable regulations. Notice of the

TEL (617) 956-1500 • FAX (617) 956-1599 • TDD (617) 956-1577 • http://www.state.ma.us/dob/

1999, Cambridgeport had consolidated assets of approximately $721.8 million. Its main function is to serve as the holding company for and hold the stock of the Bank.[3] Cambridgeport's application to convert from a mutual to a stock holding company is the second such transaction. The first mutual holding company conversion was approved in 1998.

The Bank, as a result of the reorganization into a mutual holding company in 1994, is a savings bank in stock form. The Petitioner owns all of its stock. The Bank operates ten banking offices, including three supermarket branch offices. It has one branch office in addition to its main office in Cambridge and one branch office in each of the following eight municipalities: Lexington, Natick, Needham, Newton, Quincy, Wellesley, Westwood, and Winchester. At September 30, 1999, the Bank had assets of approximately $693.7 million. It is in compliance with applicable minimum regulatory capital requirements.[4] The Bank must also meet the requirements of the Commonwealth's Community Reinvestment Act ("CRA"), section 14 of chapter 167 of the General Laws and its implementing regulations 209 CMR 46.00 *et seq.* and similar federal CRA provisions. In July of 1999, the examiners of the Division examined the Bank and found that its record of performance under CRA was "Satisfactory."

Statutory Framework

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and in opposition were received during the comment period including a petition signed by 22 individuals in opposition to the proposed transaction.

[3] A mutual holding company formed by a savings bank possesses all the rights, powers and privileges of a mutual savings bank under G. L. c. 168, except deposit taking powers, in addition to the powers granted by the enabling statute. G. L. c.167H §§6-7.

[4] *See* 12 CFR Part 325 (FDIC Capital Maintenance Regulations).

companies.[7] The Federal Reserve approved the application of Cambridgeport to acquire the Bank and to convert to stock form on February 1, 2000.

The Division has carefully reviewed whether the Petitioner has met the approval standards set forth in 209 CMR 33.35. Specific grounds for approval for a mutual holding company conversion are found in 209 CMR 33.35(2).[8] Alternatively, six separate grounds for disapproving a mutual holding company conversion are found in 209 CMR 33.35(3). Presumptive disqualifiers relating to the applicant's managerial resources and its post conversion business plan, which includes its ability to meet community credit needs, are found in 209 CMR 33.35(5)(a)-(b). Protesting commenters essentially argue that the application is inherently unfair to depositors and that community credit needs will not be met, unless the applicant undertakes a series of written lending and other Community Reinvestment Act related commitments.

The Division primarily looks to the Petitioner's Plan of Conversion; the independent appraisal; confidential state and federal financial safety and soundness reports of examination, including their assessment of management; its bank subsidiary's CRA public evaluations and ratings; and the Petitioner's post conversion business plan to determine whether grounds for approval under 209 CMR 33.35(2) exist. The Division

[7] The FDIC's regulations are found at 12 CFR Parts 303 and 333. The OTS's Mutual Holding Company Regulations are found at 12 CFR Part 575.

[8] The Regulation specifically sets out the following standard: (a) the formation of a stock holding company will be fair and not prejudicial to the depositors of all its subsidiary banking institution(s); (b) the public interest will be served by the proposed conversion of the mutual holding company to stock form; (c) approval will not result in unsafe or unsound banking practices; (d) the financial and management resources of the converting mutual holding company are satisfactory; and (e) the competence, character, and banking experience of the converting mutual holding company and its resulting subsidiary banking institutions or

community banking organization. Public interest arguments relating to the Bank's post conversion lending and CRA performance rating also were raised. Procedural issues relating to the adequacy of notice of the pending application and the sufficiency of information provided to depositors were cited. The Division considered each of the Protesters' arguments in the context of controlling statute and regulation.

Depositor Interests

A major objective of both the Massachusetts and OTS mutual to stock conversion regulations is the protection of depositor interests. Under both regulatory structures, depositors are entitled to receive nontransferable subscription rights in the mutual institution's stock offering.[10] The regulations' extensive system of stock purchase priorities also are clearly designed to give depositors preferential status above other stakeholders, non-depositors within the community and outside investors.[11] A mandatory liquidation account is also established for the benefit of eligible account holders in the event of a subsequent liquidation of the converting institution. [12] Under existing law, this is the complete extent to which depositors' inchoate "ownership rights" are addressed in a conversion from mutual to stock form.[13] Massachusetts and cognate federal banking

[9] These regulations incorporate by reference the detailed Plan of Conversion requirements of Subpart A (governing standard bank level conversions) and Subpart C (governing the issuance of minority shares by a mutual holding company).
[10] *See* 209 CMR 33.05, which is applicable to a mutual holding company conversion by virtue of 209 CMR 33.36.
[11] *See* 209 CMR 33.05(3) through 209 CMR 33.05(11); 209 CMR 33.06(1) through209 CMR 33.06(7).
[12] *See* 209 CMR 33.05(12).
[13] *See, York v. Federal Home Loan Bank Board,* 624 F.2d.495, 499-500 (4th Cir. 1980) (Depositors' limited property or ownership rights are not deprived by a federally chartered thrift converting to stock form under the FHLBB mutual to stock conversion regulations); *In re City Savings Bank of Berlin,* 113 N.H. 378, 309 A.2d 31 (1973) (Depositors have limited ownership rights in mutual savings banks which do not include a right to cash option upon a merger); *Andover Savings Bank v. Commissioner of Revenue,* 387 Mass. 229,

among the various stakeholders are beyond the scope of this application.[17] These broad public policy questions have been answered by 209 CMR 33.00 *et seq*. Accordingly, the application's depositor stock subscription rights provisions, are "fair" to depositors, as a matter of law, since it complies with the mutual holding company conversion regulations' requirements.

Management and Employee Compensation

The Protesters also allege that the conversion application's management and employee stock subscription, qualified employee stock ownership plan ("ESOP"), stock option, stock grant and compensation provisions are excessive, and therefore are unfair to depositors. They also allege that there is an inherent conflict between management and depositor interests in a conversion from mutual to stock form. Subpart D of the Conversion Regulations and the Commonwealth's banking laws address these generalized concerns. Management and employee stock subscriptions are subject to individual and aggregate limitations, which are subordinated to depositor subscriptions under the Regulations and the Petitioner's Plan of Conversion.[18] Moreover, management and their associates are prohibited from purchasing more than 30% of the total offering of shares.[19] ESOPs are subject to similar limitations and restrictions.[20] Post conversion

[17] These broader policy issues were most recently raised by the FDIC in its 1994 "white paper" on mutuality. *See* 59 Fed. Reg. 30357 (June 13, 1994). After extensive public comment, the FDIC ultimately rejected any effort to reallocate ownership interests in converting FDIC insured state-chartered thrift institutions in its final rule, 12 CFR Parts 303 and 333, which was issued on November 30, 1994.
[18] *See* 209 CMR 33.05(4).
[19] *See* 209 CMR 33.05(8), which is applicable to a mutual holding company conversion by virtue of 209 CMR 33.36.
[20] *See* 209 CMR 33.28(1) governing aggregate purchase limitations for both qualified and nonqualified ESOPs.

determines that management and employee benefit provisions are not unfair to depositor interests.

Post Conversion Independence

Several individuals commenting at the public hearing and in written comments expressed concern that the Petitioner's conversion to stock form would lead to its acquisition by a larger competitor. They expressed the view that Cambridgeport should remain in mutual form as a means of preserving the Bank as a community banking institution. The Protesters also allege that the Petitioner's sale is imminent and that depositors would not enjoy the benefits of any takeover premium associated with an acquisition. [25] The Division has reviewed these general concerns.

The vulnerability to hostile takeovers of banking organizations that convert from mutual to stock form is a matter of regulatory concern. Takeover attempts could thwart a converted institution's post conversion efforts to prudently deploy conversion proceeds, to continue to serve community banking and credit needs, and to adjust to the organizational and financial demands of a publicly owned organization. Consequently, both the Massachusetts and OTS conversion regulations contain extensive post conversion anti-takeover provisions to protect against takeovers.[26] Moreover, the resulting stock entity may employ any corporate charter anti-takeover devise permitted under applicable banking or business corporation law. The Division also notes that the

[25] The Petitioner categorically denied this allegation. *See Petitioner's Supplemental Letter,* dated February 4, 2000 at 7.

The Division has carefully reviewed the Bank's lending record and its most recent CRA report of examination. Upon review, there is no evidence to support the claim that the Bank purposely reduced its lending to low- and moderate-income borrowers in preparation of its proposed conversion from mutual to stock ownership. Several factors appear to have impacted the level of lending to low- and moderate-income borrowers, including a large volume of refinanced loans, continued increased competition for all loans within its assessment area, and rising real estate values.

Moreover, the Protesters' references to the Bank's "poor lending performance" appear to be unfounded. The Bank's current CRA performance rating is "Satisfactory". This rating is supported by the fact that the Bank's loan-to-asset ratio significantly exceeds it peer. In addition, the Bank has performed better than the aggregate in lending to both low- and moderate-income individuals and within low- and moderate-income geographies. The Bank's percentage of lending to low- and moderate-income borrowers has also exceeded that of its closest peers. Consequently, the Bank's past record of low to moderate-income lending among individuals is good for an institution of its size and complexity. Its record of community development however is weak, but insufficient to offset its satisfactory rating in the "lending test" component of its CRA performance public evaluation. It also may be reasonably expected that the proceeds raised from Cambridgeport's conversion stock offering will enhance its ability to lend and invest in all areas. Accordingly, the Petitioner is expected to meet overall community credit needs on an ongoing basis.

received a full and fair disclosure of the transaction's structure, risks and other material information necessary for informed decision making through the Petitioner's Notice and Information Statement. This mandatory disclosure material also was reviewed and approved by the Division prior to its distribution to corporators. Cambridgeport's stock offering and sales materials, which will be sent to eligible depositors and investors, are subjected to a similar review standard and approval process. Accordingly, the Division concludes that the Petitioner has conformed to applicable to regulatory notice and disclosure requirements.

Conclusion

Based upon the foregoing review and the entire record before it, the Division concludes that Cambridgeport's petition to convert to stock form meets the approval standard set forth in 209 CMR 33.35(2) and that the enumerated grounds for disapproval found in 209 CMR 33.35(3) and the presumptive disqualifiers found in 209 CMR 33.35(5)(a)-(b) are inapplicable.

The Division has undertaken a complete review of the following submitted documents: (a) Certificate of minutes of Special Meeting of Corporators of the Bank held on February 2, 2000 and further related certificates thereof; (b) Appraisal Report prepared by RP Financial, LC., as of October 8, 1999 and updated as of January 7, 2000; (c) Draft of Prospectus of February 9, 2000 and supplemental changes submitted and approved as of February 14, 2000; (d) Copies of proposed marketing materials including

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29 *Supra* at 1-2.

6.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager *Richard C. Rossi, Deputy City Manager*

June 5, 2000

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 00-23, regarding a report on issues related to the Port Financial Corporation, received from City Solicitor Russell B. Higley.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
Attachment

795 Massachusetts Avenue, Cambridge, Massachusetts 02139 Voice: 617.349.4300 Fax: 617.349.4307 TTY: 617.349.4242 Web: www.ci.cambridge.ma.us

Consent Agenda #6 1415

Relative to AW Rpt. #00-23
regarding a report on issues
related to the Port Financial
Corporation.

S-141

In City Council June 5, 2000

PLACED ON FILE