



# CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

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## LAW DEPARTMENT

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LEGAL COUNSEL

March 11, 1988

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

Re: Parcel of land at corner of Day Street and Massachusetts Avenue

Dear Mr. Healy:

By order of March 7, the City Council has requested my opinion as to whether, if a rezoning petition were filed regarding the above parcel, it would constitute "spot zoning."

The term, "spot zoning" has been variously defined. In 3 Rathkopf, Law of Zoning and Planning, section 28.01(1), it is defined as follows:

..."spot zoning" refers to the rezoning of a small parcel of land to permit a use which fails to comply with a comprehensive plan or is inconsistent with the surrounding area, grants a discriminatory benefit to the parcel owner, and/or harms neighboring properties or the community welfare.

And in 18 MPS Randall and Franklin, Municipal Law, section 614 (1982), the authors state:

It has been pretty clearly established by court decisions that a zoning ordinance or bylaw, or an amendment to either, which singles out a lot and

Mr. Robert W. Healy  
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imposes restrictions on that lot which are less onerous than the restrictions on the surrounding area, is invalid as "spot zoning".

For example, in Lamarre v. Commissioner of Public Works of Fall River, 324 Mass. 542, 545 (1949), "spot zoning" is defined as:


...a singling out of one lot for different treatment from that accorded to similar surrounding land indistinguishable from it in character, all for the economic benefit of the owner of that lot.

Although most definitions include the requirement that the treatment benefit the owner of the lot, it has also been suggested that "spot zoning" takes place if there is "singling out a parcel of land for special treatment as compared to other parcels in the same zoning district." Canteen Corp. v. Pittsfield, 346 N.E.2d 732, 735 (1976). In other words, it may be "spot zoning" if the particular parcel is burdened rather than benefitted.

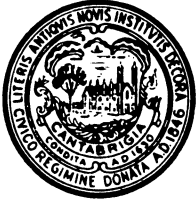
It should also be noted that, although there may be a singling out of a parcel, if the public welfare will be promoted an amendment may be upheld. See Durand v. Superintendent of Buildings of Fall River, 354 Mass. 74 (1986).

Although it is impossible to give a definitive opinion without knowing the details of any proposed rezoning, the court would apply the foregoing principles.

Very truly yours,

  
Russell B. Higley

RBH/es



**CITY OF CAMBRIDGE**  
CAMBRIDGE, MASSACHUSETTS 02139  
TEL. 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

RICHARD C. ROSSI  
Deputy City Manager

March 14, 1988

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 29 relative to the filing of a rezoning petition regarding the parcel of land at the corner of Day Street and Massachusetts Avenue, enclosed please find copy of the opinion of the City Solicitor.

Very truly yours,

Robert W. Healy  
City Manager

RWH/mbf  
Enc.

Agenda Item No. 9 **0-15**

Re: enclosed opinion from the City Solicitor  
in response to Awaiting Reptot Item No. 29  
on the parcel of land at the corner of Day  
St. & Mass. Ave.

In City Council,

March 14, 1988

3-14-88

Placed on file.