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January 31, 1983

Robert W. Healy
City Manager
Cambridge, MA

RE: Cambridgeport Industrial Area Rezoning

Dear Mr. Healy:

Presently before the City Council is a petition for the comprehensive rezoning of that portion of the city known as the Cambridgeport Industrial Area. Public hearings on this petition, as originally filed by Mr. Gary Quinton on behalf of the Simplex Steering Committee, were held by the City Council and the Planning Board on November 4, 1982 and November 9, 1982, respectively. In response to comments made by members of the public and concerns voiced by Councillors and Planning Board members at these two hearings, the City's Community Development Department has drafted amendments to the original "Quinton Petition" which have been presented to the City Council in the form of a "Substitute Petition," to be considered for ordination at the Council's January 31st meeting.

A question has been raised whether the Substitute Petition may be validly ordained without a further public hearing under G.L. c.40A, §5. I am of the opinion that it can, and set forth here reasons for this opinion.

In the past two years, six petitions have been filed with the City Clerk seeking to rezone all or part of the so-called

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Cambridgeport Industrial Area.¹ Two² of these were limited in scope, but the other four,³ including the 1982 Quinton proposal now before the City Council, have all been comprehensive in nature, proposing to create a new comprehensive zoning plan to guide the imminent redevelopment of this under-utilized area. Public comments regarding these sundry plans were aired at public hearings before the City Council and Planning Board on at least seven dates in 1981 and 1982. The participants to the ongoing debate have remained largely the same: MIT - owning some 60% of the land affected, smaller commercial and industrial interests, the Simplex Steering Committee - representing existing residential neighborhoods within and adjacent to the area, and the Community Development Department - seeking to strike an acceptable compromise among competing interests. While no two plans have been identical, each has attempted in differing degrees to reconcile the development aspirations of area landowners with existing uses and with the present and future needs of the greater Cambridge community. In other words, the planning issues arising from the Cambridgeport Industrial Area are not new, nor are the opinions of participants concerning the various directions proposed for its redevelopment.

1. The Cambridge Industrial Area lies roughly between Massachusetts Avenue to the north, the Boston University Bridge rotary to the south, Brookline Street to the west, and the PennCentral Branch railroad tracks west of Vassar Street to the east.

2. A September 10, 1981 filing by Walter Milne on behalf of MIT sought to rezone the immediate Simplex Area - the northerly third of the larger Cambridgeport Industrial Area, bordering on Massachusetts Avenue. A June 29, 1981 filing by Decia Goodwin et al. addressed only the southern tip of the area, from Chestnut Street to the B. U. Bridge.

3. Three filings have originated from either RoseMarie or Gary Quinton et al. on behalf of the Simplex Steering Committee - March 26, 1981, August 3, 1981 and September 30, 1982. A second March 26, 1981 proposal was filed on behalf of the Planning Board.

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Although at first glance the Substitute Petition appears almost entirely new, it is in fact substantially similar to the original Quinton Petition. First and foremost, with two minor exceptions, both address in a comprehensive fashion the same area of land - and the exceptions are parcels originally affected by the Quinton Petition but omitted from the Substitute Petition.

Second, the new districts created in the Substitute Petition each contain use and dimensional restrictions similar or identical to those in the new districts of the original Quinton Petition. It will be seen that the Business BB-3 district of the Substitute Petition is almost identical to the new Quinton Business BC-2 district. Each create new and similar Industrial IB2 and IB3 districts. The Substitute's new Residence C1A is substantially similar to Quinton's C1B, except that its inclusionary housing provisions have been eliminated. Inclusionary housing was also omitted from the Quinton Industrial IA1 district, leaving a district very similar to the IB2 district. Both utilize the existing Business BA1 classification. Overlay districts originally proposed by Quinton have been incorporated into overlay concepts in the Substitute Petition: the Fort Washington Overlay District protections are provided for by special regulations within the Cambridgeport Industrial District Overlay. Similarly, many of the Housing Requirement Overlay provisions have found their way into the PUD-6 district requirements.

Third, review of the zoning maps accompanying each proposal will reveal similar districting concepts. The base and overlay districts of the Substitute Petition impose restrictions analogous to those of the Quinton Petition for most of the area. Where there are differences, the Substitute Petition is less or equally restrictive.

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Judicial review of analogous situations in Massachusetts and elsewhere has generated a rule with respect to the need for further notice and hearing where proposed zoning legislation is amended after the required public hearing but prior to enactment. As was stated by our Appeals Court in Carstensen v. Cambridge Zoning Board of Appeals, 1981 Mass.App.Adv.Sh. 315, 416 N.E.2d 522, 526 (1981), "[p]roposed ordinances under consideration by a city council may under go substantial changes or be abandoned entirely" [without further hearing]. Generally speaking, a second or further hearing is required only when the change or amendment to the proposed is "of a fundamental character," or "change[s] the identity of the proposal." Town of Burlington v. Dunn, 318 Mass. 216, 218-20, 61 N.E.2d 243, 244-45 (1945). See also 1 Anderson, American Law of Zoning, §4.15 (1976); 1 Rathkopf, The Law of Zoning and Planning, §10.04 (1982); 7 Rohan, Zoning and Land Use Controls, §50.03[2][c](1982); and cases cited therein. Thus no further hearing was required in the Burlington case where an amendment was proposed by the Planning Board after the public hearing which altered the proposed zoning district lines, adding a number of parcels to a business zone. Nor were further hearings held required in Doliner v. Town Clerk of Millis, 343 Mass. 10, 175 N.E.2d 925 (1961)(changes in zoning district classification of various parcels); Sullivan v. Board of Selectmen of Canton, 291 Mass. 115, 196 N.E.2d 185 (1964)(more than doubling area to be less restrictively zoned); or Johnson v. Town of Framingham, 354 Mass. 750, 242 N.E.2d 420 (1968)(changing uses to be permitted in amended district classification, requiring special permit for use proposed to be allowed as of right, and changing the section of the by-law into which these now provisions would be inserted). In none of these cases was the provision as finally enacted deemed to be of a fundamentally different character from the original amendment proposal.

A different result was reached in Fish v. Town of Canton, 322 Mass. 219, 77 N.E.2d 231 (1948), where the amendment as enacted bore no resemblance whatsoever to the original proposal. The original proposal, as presented to a public hearing conducted by the Planning Board and as contained in the Town Meeting Warrant read: "To see if the town will vote to repeal in its entirety the present zoning by-law of the Town of Canton or take any other action in relation thereto." The Planning Board disapproved this article, and the Town Meeting voted it down, but at an adjourned session an amendment was offered to the article which did not repeal the zoning by-law but amended certain use and dimensional regulations and rezoned certain parcels of land. The Court held this amended article to be of a "truly fundamental" character from that originally proposed and struck down the amendment.

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Just as it is clear from a review of the authorities that the test to be applied in such cases is a subjective one, it is also clear that the substitute Cambridgeport rezoning petition does not fall neatly into one line of cases or another. The changes wrought in the original Quinton petition are numerous. In some cases, district lines have been redrawn within the area to be rezoned, and the specific use and dimensional restrictions have been reworked. The essential goals of the two proposals, however, are substantially similar, and most districts in the Quinton petition have a direct analogue in the substitute.

One further and significant point is made by Rathkopf in discussing the need for further hearings where the proposed rezoning is a comprehensive one:

Most of the cases so holding deal with a proposal affecting a single parcel of land or a relatively small area or a regulation affecting few uses or landowners. However, the rule which has evolved in such cases has also been invoked in cases in which there has been a challenge to the manner in which a particular parcel has been rezoned where its rezoning was part of a general comprehensive revision of zoning classifications of large areas of a community, where the prepublic hearing proposals for such parcel differed from the classification accorded it thereafter.

One purpose of a public hearing is to learn what the views of members of the community toward the proposal are. In particular, its purpose is to hear the views of landowners with respect to classification proposed to be given their or their neighbors properties. A public hearing with respect to a proposed general revision of the zoning map may result in many changes in the zoning as originally proposed and each further public hearing on the new proposals would have tendency to promote further objections and further changes. If each change from that proposed, no matter how small in relation to the mapping of the whole, were to require a new notice of public hearing, specifying

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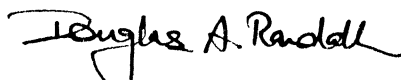
the various manners in which all lands were to be zoned, not only would the legislative process become excessively burdensome and expensive, but the land-owners would be left without any definite knowledge of the zoning status of their and their neighbors' properties for long periods of time.

The requirements of due process should be satisfied by a notice of hearing which indicates that a comprehensive revision is to take place, which advises persons interested where and when a map of the proposed rezoning (and accompanying text) may be examined, and that the proposals shown thereon may be changed as a result of further study or of the views expressed at the public hearing, thus imposing the burden upon interested persons to keep themselves informed of changes in the proposal.

Rathkopf, op.cit. at §10.05, p.10-23. There is no doubt that this proposal is comprehensive in nature, seeking to rezone an area containing over 4 million square feet of land (about 100 acres) into a variety of base and overlay districts. Where, as here, there have been numerous public hearings addressing a variety of proposals for the rezoning of the same general area, and where the planning department has made its views known, it must be concluded that the views of members of the community have been made abundantly clear to the City's legislative body. If, following the enactment of the amended proposal some affected individual could establish that he had been adversely prejudiced by the lack of opportunity to comment upon this latest scheme, perhaps the amendment could be invalidated as to that individuals property, but it is difficult to imagine that any Cambridgeport landowner could be unaware of the various proposals placed before the City Council.

In mu opinion, no further public hearing is required before the Substitute Petition for rezoning the Cambridgeport Industrial Area may be ordained. It is my further opinion that if enacted, this comprehensive zoning amendment can survive judicial scrutiny on this point.

Respectfully submitted,


Douglas A. Randall

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