



# CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • (617) 498-9020

## LAW DEPARTMENT

RUSSELL B. HIGLEY  
CITY SOLICITOR

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LEGAL COUNSEL

CHARLES A. WATSON  
LEGISLATIVE AGENT

October 19, 1979

Mr. James L. Sullivan  
City Manager  
City Hall  
Cambridge, Massachusetts

Dear Mr. Sullivan:

I am writing in reference to the request in Council Order No. 26 dated October 15, 1979 relative to the present status of the lawsuit involving the Harvard Square Overlay District.

Litigation involving the Harvard Square Overlay District Amendment is pending in Middlesex Superior Court (City of Cambridge v. President and Fellows of Harvard College and Louis DiGiovanni, Middlesex Superior No. 79-2777). The City is seeking a declaratory judgment affirming the procedural validity of the amendment.

The City offers three points in support of validity:

1. Over 120 days have passed from the date of enactment of the amendment without the commencement of a legal action challenging its validity; consequently, under General Laws, Chapter 40A, section 5, the procedural validity of the amendment should be affirmed.

2. On passage, the vote of "present" (6 yeas, 2 nays and 1 present), should be considered as acquiescing with the majority, thereby giving a 3/4 vote as required.

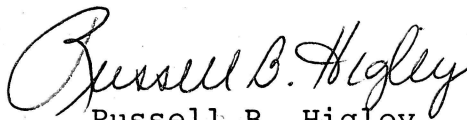
3. The provision of Chapter 40A, section 5 which requires a 3/4 vote where there has been a protest by the owner or owners of 20% of land affected or land abutting is unconstitutional: in the City of Cambridge where members of the City Council are elected under proportional representation voting, this provision allows individuals - in this case, a non-inhabitant (DiGiovanni) and a non-person (Harvard) - to control one vote in the Council in certain situations,

thereby diluting the representative vote by 1/9 in violation of the rights of the inhabitants.

The City's Motion for Summary Judgment on the first two issues was argued before Judge Travers on September 28, 1978, who subsequently denied the Motion without opinion.

Counsel is in the process of preparing a Motion asking the Court to specify what facts appear to be in controversy. A Motion for Partial Summary Judgment on the constitutional question is anticipated.

Very truly yours,



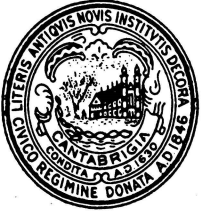
Russell B. Higley  
City Solicitor

RBH:jl

OFFICE OF THE  
CITY MANAGER

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## CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139  
Tel. 498-9011

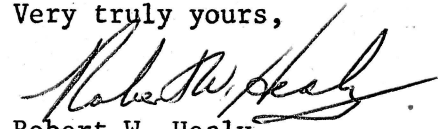
EXECUTIVE DEPARTMENT  
JAMES L. SULLIVAN  
City Manager

October 22, 1979

To the Honorable, the City Council:

With reference to Awaiting Report Item No. 32 pertaining to City Council Order No. 26 of October 15, 1979, I transmit herewith a self-explanatory communication received from Russell B. Higley, City Solicitor, regarding the lawsuit involving the Harvard Sq. Overlay District.

Very truly yours,

  
Robert W. Healy  
Acting City Manager

RWH/b

Agenda #8

0-49

Response to Awaiting Report #32 lawsuit re:  
the Harvard Sq. Overlay District.

In City Council,  
October 22, 1979

10/22/79

Placed in File -