C. C. 106

Calendar #14

City of Cambridge

MASSACHUSETTS

In City Council 2/22/ 1982

Motion of Councillor David Sullivan
— for Reconsideration —

	YEA	NAY	ABSENT	PRESENT
Mr. Daniel J. Clinton		✓		
Mr. Thomas W. Danehy		✓		
Mr. Francis H. Duehay	✓			
Ms. Saundra Graham	✓			
Mr. Leonard J. Russell		✓		
Mr. David E. Sullivan	✓			
Mr. Walter J. Sullivan		✓		
Mr. Wylie	✓			
Mayor Vellucci		✓		
	4	5	0	

Reconsideration Fails

Cn 1 #44

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR D. SULLIVAN

February 8, 1982

Date

Councillor David Sullivan has notified the City Clerk of his intention to move Reconsideration of the vote of the City Council on February 8, 1982 adopting an order relative to the expenditure of funds in connection with the appeal by the Rent Control Board of the recent condominium decision by Judge Arthur Sherman.

David E. Sullivan

Signature

C. C. 106

Ord 1

City of Cambridge

MASSACHUSETTS

In City Council February 8 1982

	YEA	NAY	ABSENT	PRESENT
Mr. Daniel J. Clinton	✓			
Mr. Thomas W. Danehy	✓			
Mr. Francis H. Duehay		✓		
Ms. Saundra Graham		✓		
Mr. Leonard J. Russell	✓			
Mr. David E. Sullivan		✓		
Mr. Walter J. Sullivan	✓			
Mr. Alfred Vellucci	✓			
Mr. David Wylie		✓		
	5	4	0	

Ord 1 A

Cal #14 order adopted

COMMONWEALTH OF MASSACHUSETTS
CAMBRIDGE DIVISION
DISTRICT COURT DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, SS. RC18-1981

IRENE D. POLEDNAK, Plaintiff VS. CAMBRIDGE RENT CONTROL BOARD, Defendant	FINDINGS, RULINGS AND ORDER FOR JUDGMENT

1. The plaintiff brings this complaint seeking declaratory relief pursuant to St. 1976, Ch. 36, Sec. 10 of the actions of the Rent Control Board of the City of Cambridge in denying her a "removal permit" so-called under Ordinance No. 926 of the City of Cambridge which regulates the removal of controlled rental units from the market.

2. The record of the Board's proceedings are before me and my sole function in reviewing the Board's action is to decide whether the Board's decision is supported by the facts which were before it and was legally justified. Sherman vs. Rent Control Board of Brookline, 367 Mass. 1,(1975).

3. It is the plaintiff's contention that she falls

outside of and is exempt from the restrictions of the Ordinance by its own terms.

4. Section 1(c) of Ordinance No. 926 provides as follows: "Removal regulated. No owner or other person shall remove from the market any controlled rental unit, unless the Board after hearing grants a permit. The Board may issue orders and promulgate regulations to effectuate the purposes of this Section, and to prescribe the procedure for applications, notice, hearings and the granting and withdrawal of permits ....."

5. Section 1(b)(4)(i) appearing under the heading "Definitions" provides as follows:

"Removal from the market as applied to a controlled unit, includes but is not limited to:

> Occupy, as an owner of the unit which is a condominium unit if the last previous occupant was a tenant, however, if the same person will occupy the controlled rental unit as a condominium unit owner, this Ordinance will not apply."

6. The findings of fact as made by the hearing examiner and adopted by the Board are not in dispute. The plaintiff entered into a tenancy at will agreement for Unit 308 at 50 Fallon Street, Cambridge, Massachusetts, on June 9, 1980 and commenced her occupancy on or about July 1, 1980 at the agreed-upon rent of $384.00 per month.

7. At the time of the execution of her rental agreement, although she was aware that the apartment was for sale as a condominium unit, she had no intention of purchasing same.

8. A specific finding was made by the hearing examiner that it was not until on or about August 1, 1980 that the plaintiff first entertained an intention to purchase her apartment. After the execution of the purchase and sale agreement on or about August 8, 1980 she acquired title to the condominium unit on September 6, 1980.

9. At the time she entered into her tenancy it was her intention to remain a tenant indefinitely and there is no question as to her good faith in renting the unit nor is there any question of good faith on the part of the landlord-condominium developer in the rental and subsequent sale of the unit to the plaintiff.

10. Prior to the plaintiff's occupancy of the subject premises, the same had been occupied by two persons who had vacated the premises voluntarily.

11. Regulation 13-01(u) as promulgated by the Board pursuant to Ordinance No. 926 defines "last previous occupant" as that phrase is employed in Section (b)(4)(i) of the Ordinance as "the last occupant prior

to August 10, 1979." (emphasis supplied)

12. Based upon the Ordinance and the Regulation the hearing examiner and the Board had denied the application of the plaintiff for a "removal permit" so-called with the specific finding that she was not "last previous occupant", notwithstanding the fact that she is and was a tenant and would be the same person who had occupied the controlled rental unit as a condominium owner.

13. It is the contention of the Board that its Regulation is a reasonable and necessary construction of the Ordinance and substantiated by Flynn vs. City of Cambridge, Mass. , 418 N.E.2d 335 (1981).

14. I recognize that the purpose of the Ordinance was to restrict the conversion of controlled rental units by way of the condominium method as a result of the emergency shortages of low and moderate rental units in the City of Cambridge. However, I do not find that it was the intention of the city council from the nature of the history of rent control in the City of Cambridge to perpetuate the use of real estate for rental purposes in the City of Cambridge.

15. The language of the Ordinance is clear and

specifically excludes the plaintiff as a result of her status as a tenant who will occupy the controlled rental unit as a condominium owner. Section (d) of the Ordinance recognizes hardships to existing occupants as well as the aggravation of the shortage of rental units.

16. There is no finding by the Board that the actions of the plaintiff and her landlord constituted a subterfuge for the purpose of evading the clear language of the Ordinance. There would be no hesitancy on my part in sustaining the validity of any regulation which precluded the issuance of a removal permit on the finding of such bad faith.

17. It is not the Court's intention to substitute its judgment for the administrative judgment of the Board which should be accorded that weight which it is fairly entitled to receive. However, subject to the implied constitutional limitation that an administrative agency may not legislate, the delegation of power to make rules and regulations cannot extend to the making of rules which subvert the statute reposing such power, or which are contrary to existing laws, or which repeal or abrogate statutes. Wyeth vs. Board of Health, 200 Mass. 474.

18. An interpretive regulation must not be overruled except for weighty reasons. An administrative rule or regulation made in the exercise of the power delegated by statute should be construed together with the statute and make, if possible, an effectual piece of legislation in harmony with common sense and sound reasoning. Younie vs. Director, Division of Employment Security, 306 Mass. 567.

19. Administrative agencies may not act arbitrarily and capriciously in the enactment of rules and regulations in the exercise of their delegated powers. Anzalone vs. M.D.C., 257 Mass. 32. Whether a regulation is reasonable depends on the character or nature of the subject matter. While I recognize that where an administrative agency has acted within statutory bounds and has made a choice among possible alternatives adapted to the statutory end which a rational person could have made, that the regulation is to be considered reasonable, the agency may not legislate in extension of the act under which it purports to exercise its authority.

20. "The reasonableness of a regulation is to be tested by what can happen under it rather than by what actually did happen." Commonwealth vs. Diaz, 326 Mass. 525, 532. If the Board's regulation were to be consid-

ered as reasonable then a tenant who occupied August 9, 1979 and who vacated in September 1979 might leave Cambridge, return in 1985, purchase the unit and claim the right of exemption as the "last occupant" prior to August 10, 1979 for purposes of evicting one who had continuously occupied as a tenant in the interim. I cannot conceive that as the intent of the legislative body which enacted the Ordinance nor as a reasonable interpretation made by the Board.

21. I view the Ordinance as having its purpose the intent to maintain housing stock in the City of Cambridge consistent with a tenant's desire as the "last occupant" to convert his tenancy to that of an owner-occupant at his option should the opportunity present itself. All this I find to be consistent with the "considerations" mandated by Section (d) of the Ordinance.

CONCLUSION AND ORDER FOR JUDGMENT

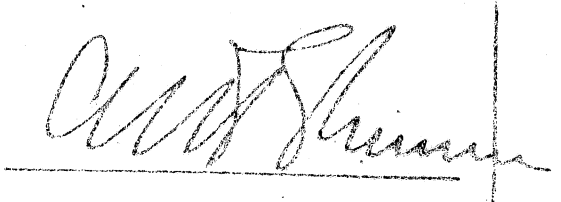
1. Regulation 13-01(u) is invalid in that it unreasonably subverts the clear language of the Ordinance.

2. The Board was in error in failing to recognize that the plaintiff's unit was and is exempt from the operation of Ordinance No. 926.

3. The Board was in error in failing to grant to the plaintiff a removal permit to which she was entitled under the unambiguous language of the exemptions contained in Ordinance No. 926.

4. Counsel for the plaintiff shall prepare a form of judgment consistent with this opinion for submission and approval of this Court within twenty days of the date of the entry hereof.

December 7, 1981



Arthur Sherman, Justice

CCM-101

City of Cambridge

Calendar Item No. 14

IN CITY COUNCIL

February 8, 1982

COUNCILLOR WALTER SULLIVAN

ORDERED: That it is the sense of this City Council that the City Manager not sign any contract to expend money relative to the appeal by the Rent Control Board regarding the recent condominium decision issued by Judge Arthur Sherman.

In City Council February 8, 1982.
Adopted by a yea and nay vote:-
Yeas 5; Nays 4; Absent 0.
Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:-

Paul E. Healy

Order # 5 F-46

C.W. Sullivan order re: no expenditures of funds be made in connection with the appeal of the Rent Control Board in connection with the condominium decision issued by Judge Sherman.

#Co/ #14- 2/22/81

Reconsideration Fails

#14 4-5-0

Calendar

1/25/82

2/8/1982

OWJ Removed from Table

Order Adopted

5-4 0

CPS Reconsideration

which failed

2/22/82

In City Council,

January 18, 1982

1/18/1982

Charter Right

By

Councillor Graham

1/25/1982

Tabled by C. Walter Sullivan