

COPY
FROM THE OFFICE OF
HALE AND DORR
28 STATE ST., BOSTON 02109

November 25, 1974

Edward D. McCarthy, Esq.
City Solicitor
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Re: Common Victualer's License
405 Rindge Avenue
Cambridge, Massachusetts 02140

Dear Sir:

We represent Lehigh Investment Trust ("Lehigh"), which is the owner of property located at 405 Rindge Avenue (corner of Rindge Avenue and Alewife Brook Parkway), Cambridge, Massachusetts. The property in question has long been used as a restaurant, first by Waldorf Systems, Inc. and then more recently by Kelly's.

Lehigh has recently entered into negotiations with a prospective tenant (Krimea, Inc.), pursuant to which Krimea, Inc. would operate a restaurant at the subject location. Accordingly, Krimea, Inc. has requested from the License Commission of the City of Cambridge a common victualer's license.

The License Commission advised Lehigh and the prospective tenant that the application for a common victualer's license must first be heard by the City Council. As a result, a hearing before the Cambridge City Council was requested and was scheduled for October 7, 1974. Lehigh, the prospective tenant and their respective counsel appeared on October 7, 1974 before the City Council, but the matter was deferred until a later date because of the press of current business. On October 21, 1974, the matter was again scheduled for hearing before the City Council and the parties in interest with their counsel appeared.

At the October 21, 1974 hearing before the City Council, questions were raised by several members of the City Council as to the purpose of the hearing. Several members indicated

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that they did not believe that the City Council should be involved in decisions as to the granting of common victualer's licenses. At the hearing, the City Manager reported that the matter was being considered by the City Council because of the order of the City Council adopted September 10, 1973, a copy of which is enclosed.

The September 10, 1973 City Council order, among other things, ordered that the City Manager be requested to direct the Superintendent of Buildings to refrain from issuing any building permits to any proposed drive-in restaurants within the City of Cambridge. This order also provided that the City Manager be requested to direct the License Commission to refrain from issuing any license to "any new drive-in establishment in the City of Cambridge until such time as the City Council has had the opportunity to hold a public hearing relative to the conduct of the drive-in establishment...."

On behalf of Lehigh, I submitted that it was not appropriate for the City Council to conduct a hearing with respect to the proposed application for a common victualer's license because the business to be conducted by the prospective tenant is not a new drive-in establishment. When the first and second orders are read together--the first relating to the issuance of building permits and the second relating to the issuance of licenses of new drive-in establishments--it is clear that the City Council was concerned with the construction and operation of new drive-in establishments.

In the present case, no necessity exists for building a new structure for a drive-in establishment. The building is already on the property and has a long operating history as a restaurant. In 1955 Waldorf Systems, Inc. signed a fifteen-year lease with Lehigh of the land at 405 Rindge Avenue and erected a building on the property. The building was erected and was operated as a restaurant. Before the expiration of the lease, Waldorf assigned its rights under the lease to Kelly's, which operated a restaurant on the premises through the expiration of the lease and then renewed the lease for an additional five-year period. Kelly's encountered difficulty in the operation of the business and was released by Lehigh from its obligations under the lease in late 1972. Thus the business of a restaurant at the subject location was conducted for approximately seventeen years.

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The prospective tenant intends to continue the same use--operation of a restaurant--and therefore it is our opinion that the City Council order of September 10, 1973 is not applicable because this is not a "new drive-in establishment" and therefore the License Commission may issue the license without first submitting this matter to the City Council for a hearing.

At the hearing on October 21, 1974, a motion was made that this matter be referred to you by the City Manager for an opinion by you as to whether City Council permission is required in the present case prior to issuance of a common victualer's license.

Based upon the foregoing, we hereby respectfully request that you issue your opinion to the effect that the application for a common victualer's license for the business (as described above) to be conducted at 405 Rindge Avenue does not require a hearing (under the September 10, 1973 order) by the City Council prior to acting upon such license application, and that you provide the License Commission and the undersigned with a copy of such opinion.

If you desire any additional information or if you would like a discussion of this matter in more detail, I would be pleased to meet with you for that purpose.

Very truly yours,

Paul P. Brountas

cc: Mr. Charles Maliotis
Lehigh Metal Products Corp.
134 Alewife Brook Parkway
Cambridge, MA 02140
Jeremiah J. Sullivan, Jr., Esq.
4 Brattle Street
Cambridge, MA 02138
Theo Mantho, Esq.
850 Providence Highway
Dedham, MA 02026

LAW OFFICES
BUCUVALAS AND BUCUVALAS
114 STATE STREET - SIXTH FLOOR
BOSTON, MASSACHUSETTS 02109
TELEPHONE (AREA CODE 617) 523-6467

C. M. BUCUVALAS
MICHAEL G. C. BUCUVALAS

May 31, 1974

James Sullivan, Esq.
City Manager
City Hall
Cambridge, Ma. 02139

Dear Sir:

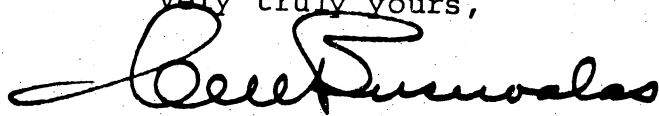
Please be advised that we own a parcel of land at the corner of Alewife Brook Parkway and Rindge Avenue, in Cambridge. Until recently a restaurant was operated on it for close to twenty years, first by Waldorf's System and secondly by Kelly's. After long negotiations, we entered in a lease agreement with McDonald's Corp. This lease was subject only to the condition that McDonald's would be able to obtain a Common Victualer License from the City of Cambridge. The commencement date of the lease was October 1, 1973. McDonald's made the necessary tests in connection with the use of the land, found them satisfactory, and proceeded to apply for a Common Victualer License. At first, the City Council registered objections, but subsequently withdrew them and recommended the granting of the license. In the meantime, the Licensing Board denied the license. On May 9, 1974 McDonald's gave us written notice of the cancellation of its lease with us, on the ground that it could not obtain a Common Victualer License from the City of Cambridge; and demanded the return of all the rental payments. A copy of its letter of Cancellation is enclosed herewith.

Obviously, if we cannot rent these premises for a restaurant, this property is being denied the use for which there is a demand. It follows that it will be a piece of property without any earning power, despite its heavy real

James Sullivan, Esq.
May 31, 1974
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estate tax. To put it more bluntly, the City of Cambridge, for no apparent reason, is attempting to destroy the value of this property. It appears to us that this is an abuse of discretion by the Licensing Board of the City of Cambridge and we might have to resort to the Courts for relief.

Very truly yours,



C. M. Bucuvalas
Attorney for
LEHIGH INVESTMENT TRUST

cmb:hgk
Enclosure
#1707-4

November 18th, 1974

Board of Assessors
City of Cambridge
City Hall
Cambridge, Massachusetts 02139

Gentlemen:

As Chairman of the Board of Trustees of the Lehigh Investment Trust located at 134 Alewife Brook Parkway, Cambridge, Massachusetts, I am requesting from the Board of Assessors of the City of Cambridge to abate in full the property owned by the Lehigh Investment Trust at the Corner of Rindge Avenue and Alewife Brook Parkway, covered by real estate tax bill No. 363300.

We ask for this abatement because of the fact that the City Council of Cambridge and the License Board have rejected two applications for a restaurant to be situated on said premises. The first rejection was made to MacDonald's Corporation and the other to Krinea, Inc. Krinea Incorporated has an application pending since September, 1974 and no action has been taken up to now. We feel that our company has been discriminated against by the City Council and the License Board as we have been deprived of utilizing this property for the same kind of business that it had previously been used for the past seventeen years.

For this reason, we feel that we are entitled to a full abatement and if we are not going to get just consideration from the Licensing Board, then we are going to bring a suit against the City of Cambridge for discrimination without reason for depriving us of the opportunity to utilize the property and for bringing our company a serious hardship.

Enclosed is a copy of a letter that our attorney, Mr. C. M. Bucuvalas, sent to the City Manager on May 31st, 1974.

Sincerely yours,

LEHIGH INVESTMENT TRUST

Charles Maliotis, Chairman

CM/c
Encs.

TAX RATE PER \$1000
 SCHOOL : 60.22
 GENERAL: 125.08
 TOTAL: 185.30

COMMONWEALTH OF MASSACHUSETTS
 CITY OF CAMBRIDGE
 OFFICE OF THE COLLECTOR OF TAXES

NOTICE OF
 REAL ESTATE TAX
 FISCAL YEAR ENDING
 JUNE 30, 1975

BASED UPON ASSESSMENTS AS OF JANUARY 1, 1974, YOUR REAL ESTATE TAX FOR THE FISCAL YEAR COMMENCING JULY 1, 1974 AND ENDING JUNE 30, 1975 UPON THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE IS AS FOLLOWS:

LOCATION	LAND AREA	VALUE OF LAND	DES. OF BLDGS.	VALUE OF BLDGS.	TOTAL VALUATION

ORIGINAL

TOTAL VALUE	TAX	TOTAL TAX

TO: CHARLES MALIOTIS &
 MARY MALIOTIS &
 ALEXANDER D VARKAS &
 CHARLES M BUCUYALAS TRUSTEES O
 LEHIGH INVESTMENT TRUST
 134 ALEWIFE BROOK PKWY

1ST PAYMENT	PAYABLE BY	
2ND PAYMENT	PAYABLE BY	MAY 1, 1975

363300

ALL PAYMENTS MUST BE MADE TO COLLECTOR OF TAXES OFFICE

CITY OF CAMBRIDGE
 8130 A.M. TO 4130 P.M. DAILY

BY MAIL OR AT THE CLOSED SATURDAYS

REQUIRED PAYMENTS NOT MADE BY NOVEMBER 1 OR MAY 1 ARE SUBJECT TO INTEREST AT 8% PER ANNUM FROM THE FIRST DAY OF THE PRECEDING MONTH

FREDERICK J. REARDON
 COLLECTOR OF TAXES

INTEREST	
DEMAND	
CHARGES AND FEES	
TOTAL	

SEE REVERSE SIDE FOR FURTHER INFORMATION.

THIS FORM APPROVED BY COMMISSIONER OF CORPORATIONS AND TAXATION

FORM 208

TAX RATE PER \$1000
 SCHOOL : 60.22
 GENERAL: 125.08
 TOTAL: 185.30

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 CITY OF CAMBRIDGE
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BASED UPON ASSESSMENTS AS OF JANUARY 1, 1974, YOUR REAL ESTATE TAX FOR THE FISCAL YEAR COMMENCING JULY 1, 1974 AND ENDING JUNE 30, 1975 UPON THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE IS AS FOLLOWS:

LOCATION	LAND AREA	VALUE OF LAND	DES. OF BLDGS.	VALUE OF BLDGS.	TOTAL VALUATION
136 ALEWIFE BROOK PKWY REG 105	44.066	30.800	RESTAURANT	26.800	

TOTAL VALUE	TAX	TOTAL TAX
57.600	10,673.28	10,673.28

CAMBRIDGE MASS

1ST PAYMENT	PAYABLE BY	
2ND PAYMENT	PAYABLE BY	MAY 1, 1975

363300

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INTEREST	
DEMAND	
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TOTAL	

SEE REVERSE SIDE FOR FURTHER INFORMATION.

THIS FORM APPROVED BY COMMISSIONER OF CORPORATIONS AND TAXATION

FORM 208

Handwritten notes:
 74- 75
 Kuller

51022 - BAY STATE SYSTEMS

51022 - BAY STATE SYSTEMS

LEHIGH INVESTMENT TRUST

Declaration of Trust recorded with Middlesex Registry of Deeds

134 ALEWIFE BROOK PARKWAY - CAMBRIDGE, MASSACHUSETTS 02140

617 - 864-9500

CHARLES MALIOTIS
Chairman of the Board of Trustees

December 3rd, 1974

Mr. Walter Sullivan
28 Putnam Avenue
Cambridge, Massachusetts

Dear Mr. Sullivan:

Enclosed is a copy of a letter that our attorney, Paul P. Brontas, sent to City Solicitor, Edward D. McCarthy. Also enclosed is a copy of another letter that our attorney, C. M. Bucuvalas, sent to City Manager, James Sullivan.

On November 18th, 1974, I sent a letter to the Board of Assessors of the City of Cambridge in which letter I state that unless we receive just treatment by the City Council and by the License Board, we intend to sue the City for discrimination and for depriving our company of the right to utilize this property. Copy of this letter is also enclosed.

Since there has been no income on this property, we are unable to pay the taxes to the City and I am enclosing a copy of the applicable tax bill.

I feel that the City Council started this harassment; therefore, I think that the City Council should solve this problem.

Sincerely yours,

LEHIGH INVESTMENT TRUST



Charles Maliotis, Chairman

CM/c

Encs.

1975
12/9/74
W. Chan W. Anderson
The Office
Dist. Bureau



City of Cambridge

6.

IN CITY COUNCIL

December 9, 1974

Mayor Sullivan

WHEREAS:

This City Council on October 21, 1974 passed an order that the City Manager be requested to confer with the City Solicitor in order to review the common victuler license request of Bardhyl Babo, for a dining room and cafeteria at 405 Rindge Avenue, Cambridge in order to determine if all appropriate laws and ordinances of the City of Cambridge are being complied with, and

WHEREAS:

This City Council has not been given a progress report on this matter, therefore be it

RESOLVED:

That the City Manager be and hereby is requested to immediately and without delay take whatever action he deems necessary and proper in order to comply with the pertinent laws and ordinances of the City so that a common victuler's licenses may be granted to Bardhyl Babo at 405 Rindge Avenue.

Order withdrawn by unanimous consent of the City Council.

Order # 6 **577 P**

M. Sullivan common victuler's license for
405 Rindge Avenue.

In City Council,
December 9, 1974

12/9/74
Order withdrawn
By unanimous
consent of
the City
Council.