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CITY OF CAMBRIDGE

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June 16, 1998

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

Re: *City Council Order 18, dated April 27, 1998 and Amended Order*
Calendar Item #7, dated May 4, 1998

Dear Mr. Healy:

The above-referenced order inquired into issues related to the change of taxable property to non-taxable property and received an initial response from the City Treasurer. During the City Council discussion relating to the Treasurer's response it became clear that the Council wanted further information regarding the authority of the City to regulate institutional expansion. Accordingly, I am providing a summary of the special legislation and the Institutional Use Regulations adopted pursuant to that legislation.

The Zoning Act, at M.G.L. c.40A, §3, identifies several subjects which zoning may not regulate. The statute provides in relevant part that:

No zoning ordinance or by-law shall... regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

This provision of the state statute prevents cities and towns from prohibiting educational uses through zoning.

In 1979 the City Council, responding to increasing concern of over institutional expansion into residential neighborhoods of the city, submitted a Home Rule Petition to the legislature which led to the enactment of Chapter 565 of the Acts of 1979 which provides as follows:

*AN ACT RELATIVE TO USE OF CERTAIN LAND IN THE CITY OF
CAMBRIDGE WITHIN RESIDENTIAL DISTRICTS.*

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding the provisions of section three of chapter forty A of the General Laws, the city of Cambridge is hereby authorized to regulate and restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by a religious sect or denomination, or by a nonprofit educational corporation within all residentially zoned districts which require a lot area of one thousand two hundred square feet or more per dwelling unit.

SECTION 2. The provisions of section one of this act shall not apply to land or structures owned or controlled by Harvard College.

In 1980 the City Council submitted a further Home Rule Petition to the legislature which led to the enactment of Chapter 387 of the Acts of 1980 which provides as follows:

*AN ACT REPEALING THE EXEMPTION OF HARVARD COLLEGE
FROM THE LAW RELATIVE TO USE OF CERTAIN LAND IN THE CITY
OF CAMBRIDGE WITHIN RESIDENTIAL DISTRICTS*

Be it enacted, etc., as follows:

SECTION 1. Section two of chapter five hundred and sixty-five of the acts of nineteen hundred and seventy-nine is hereby repealed.

SECTION 2. This act shall take effect upon its passage.

The City persuaded the legislature that the pressures resulting from expansion of large institutions such as Harvard and MIT created circumstances in Cambridge justifying special legislation permitting zoning provisions restricting educational uses in residentially zoned districts.

After the passage of the special legislation the Community Development Department produced the Cambridge Institutional Growth Management Plan ("Plan") (1981) which made findings and recommended objectives for regulating institutional

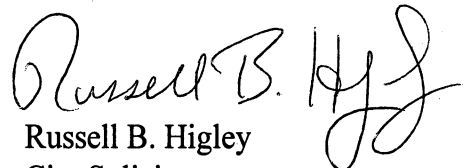
growth. The Plan in part formed the basis for the passage of the Institutional Use Regulations which are codified in §4.50 of the Zoning Ordinance (copy attached).

It is only by virtue of the special legislation that the City is permitted to restrict institutional uses. The special legislation limits the City's authority to regulate institutional uses to those districts which require a lot area of 1200 sq. ft. or more per dwelling unit. This permits institutional use regulation in the following districts: Res. A-1, Res. A-2, Res. B, Res. C, and Res. C-1. Such regulation cannot extend into additional districts without further special legislation.

Essentially, the Institutional Use Regulations (IUR) define Institutional Overlay Districts based upon the findings in the Plan. The regulations also define Existing Lot Status depending upon whether or not the lot is or has recently been in residential use. In general, the regulations prevent or discourage conversion of residential property to institutional uses. The prohibitions are stronger when the property lies outside of defined institutional overlay districts. *See*, Cambridge Zoning Ordinance §4.56, Table of Institutional Use Regulations, and § 4.55.1—Existing Lot Status.

Please let me know if I can be of further assistance in this matter.

Very truly yours,


Russell B. Higley
City Solicitor



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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 22, 1998

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 10, which requested further information on how the taxable property may become converted to non-taxable property and what is the authority of the City to regulate institutional expansion, received from City Solicitor Russell Higley.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
Attachment

45PS
Consnet Agenda #13

Relative to further information
on how the taxable property and
what is the authority of the City
to regulate institutional expansion.

In City Council June 22, 1998

PLACED ON FILE