

APR 21, 2013

Cambridge Planning Board

Re: Case # 32 Cottage Park Ave

Dear Members,

We, the undersigned residents of Brookford Street, urge Cambridge Planning Board to respect the well-considered decision of Judge Thomas Vallely, Justice of the Superior Court, who adjudicated the rights of Brookford Street, and the Fawcett's in the case of the Cambridge v Fawcett Oil Company, Inc., et al. (C.A. NO. 83-5824)

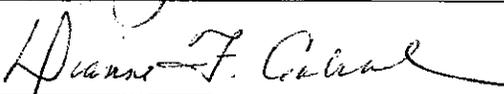
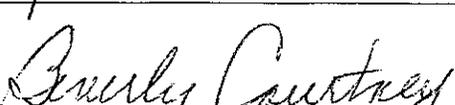
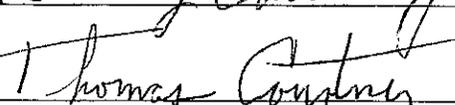
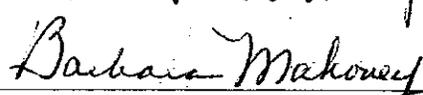
The judge considered testimony including that of a resident for 70 years on Brookford Street and some 20 exhibits illustrating nearly a century of the history of the area. He found that Fawcett had no right to access Brookford Street, and that the City had compensated by expending public funds to create and improve Tyler Court for Fawcett's use.

All residents have relied on this ruling for more than thirty years. We fought strongly for this and the Judge agreed with our reasoning. Some of the residents of Brookford Street purchased their homes because it was a dead end; while others remain on this street for the very same reason. Further, nothing has changed to make this ruling obsolete. Whatever permit you issue, we hope you would honor the rights of the residents of Brookford Street and respect the judge's decision.

During the last meeting, speakers requested that Brookford Street be opened. All of the speakers who wanted to open Brookford Street were not residents of this street with one exception who was unaware of this court order. The non-residents of Brookford Street who spoke in this vein had their own personal agenda when they voiced opening up our street.

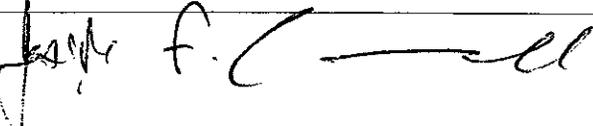
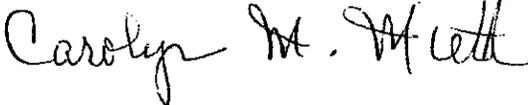
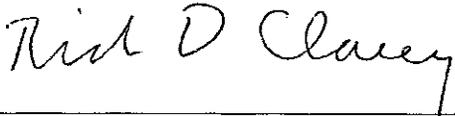
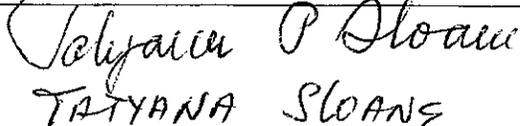
Thank you for letting the voices of the Brookford Street residents be heard.

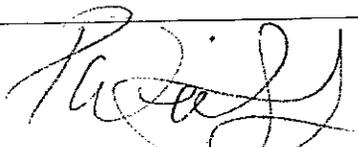
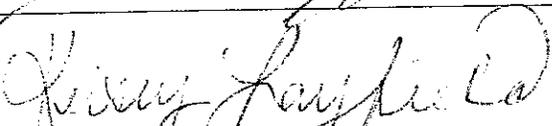
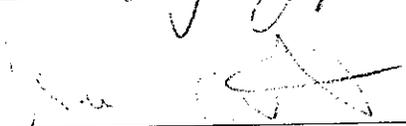
OFFICE OF THE CLERK
CITY OF CAMBRIDGE, MASSACHUSETTS
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Signature	Printed Name & Address
	ROBERT J. MCGOWAN 22 Brookford Street
	DIANNE CHIRAL 22 BROOKFORD STREET
	27 Brookford St BEVERLY COURTNEY
	27 B BROOKFORD ST THOMAS COURTNEY
	37 Brookford St. Cambr. MA 02140

Signature	Printed Name & Address
<i>Gail M. Codair</i>	Gail M. Codair 37 Brookford St Cambridge
<i>Thomas E. Codair Sr</i>	THOMAS E. CODAIR SR 37 BROOKFORD ST. CAMBRIDGE
<i>Robert F Mahoney</i>	ROBERT F MAHONEY 37 BROOKFORD ST, CAMBRIDGE
<i>Martin O. Hughes</i>	Martin O. Hughes 35 Brookford St. Camb. MA.
<i>Francesca A. Hughes</i>	FRANCESCA A. HUGHES 35 BROOKFORD ST. CAMB MA
<i>Jeffrey Suarez</i>	Jeffrey Suarez 38 Brookford St. Cambridge
<i>Yumi Yonitake Suarez</i>	Yumi Yonitake Suarez 30 Brookford St. Cambridge, MA
<i>Gregory Hassett</i>	GREGORY HASSETT 44 BROOKFORD ST, CAMBRIDGE
<i>Samuel Hathaway</i>	SAMUEL HATHAWAY 23 BROOKFORD ST #2 CAMBRIDGE
<i>Timothy Crane</i>	19 Brookford Street Timothy Crane
<i>Neal Orman</i>	23 Brookford St #1 Neal Orman
<i>James Meyers</i>	18 Brookford St. James Meyers, MD
<i>Etsuko Meyers</i>	ETSUKO MEYERS 18 BROOKFORD ST. CAMBRIDGE
<i>Walter Keller</i>	16 WALTER KELLER BROOKFORD ST

M

Signature	Printed Name & Address
	Jan Sharrar 16 Brookford St Cambridge
	Rachel Stevens 23 Brookford St, Cambridge
	Adam Lief 30 Brookford St., Cambridge
	2352 MASS AVE. ^{Joseph Carroll} Camb MA. ^{MASS AVE} Corner Brookford
	Carolyn M. Mieth 15 Brookford Street Cambridge, MA 02140
	RICHARD CLAREY 15 BROOKFORD ST CAMBRIDGE 02140
	Allisin Carroll 2552 MASS AVE APT 2 Camb. 02140
	Chris Barton 36 Brookford St 02110
	Samuel Dale Barton 36 Brookford St 02140
 TATYANA SLOANE	TATYANA SLOANE 26 BROOKFORD ST CAMBRIDGE MA 02140
	AL PERRY. 40 Brookford St. #3.
	40 Brookford St Camb Ma 02140

Signature	Printed Name & Address
	PETER WEILL 42 BROOKFORD ST CAMBRIDGE
	Brandon Mays 35 Brookford St Cambridge
	Kelsey Layfield 35 Brookford St Cambridge
	LISA C. Lambert 30 Brookford St,
Isabel Morin	ISABEL MORIN 22 BROOKFORD ST. CAMB.

Very interesting reading !!!

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Superior Court

C.A. No. 83-5524

ROBERT FAWCETT & SON CO., INC.

v.

CITY OF CAMBRIDGE

v.

BROOKFORD RESIDENTS ALLIED FOR A SAFE STREET

FINDINGS OF FACT, RULINGS OF
LAW, AND ORDER FOR JUDGMENT

Plaintiff in this action seeks declaratory judgment under G.L., c. 231A, ordering defendant City of Cambridge to remove a barricade that it claims was unlawfully erected at the point where plaintiff's land abuts Cottage Park Avenue in Cambridge. The parties agreed to submit part of the case on stipulated facts, upon which this Court has drawn reasonable inferences and made subsidiary findings where necessary.

FINDINGS OF FACT

1. Fawcett is a Massachusetts corporation

engaged in the business of selling and servicing home heating oil and equipment, with a principal place of business located at Tyler Court in Cambridge, Massachusetts.

2. Fawcett is the owner of the real estate at the locus, consisting of two parcels of land: one containing approximately 99,479 square feet, and one containing approximately 3,767 square feet. The parcels are shown and designated upon the Cambridge Assessors' Plan as Nos. 87 and 78. Parcel No. 87 is currently improved by office and garage structures which are used in connection with Fawcett's home heating fuel business and the lawn service business of an affiliated company, and portions are leased to two tenants.

3. The Fawcett property has a common boundary line with the ends of three streets: Tyler Court, Cottage Park Avenue, and Brookford Street, all of which are public ways in the City of Cambridge, which begin at Massachusetts Avenue and end at the property line of Fawcett. The smaller Fawcett parcel, No. 78, also has frontage on the side of Edmunds Street, another public way in the City of Cambridge.

4. Cottage Park Avenue was accepted as a

public way in the City of Cambridge on January 6, 1902, and is still a public way. Its common boundary with the Fawcett property has a width of 40.22 feet.

5. Tyler Court was accepted as a public way in January, 1972. Tyler Court is 20 feet wide, and because it meets the Fawcett property at an angle has a common boundary with the Fawcett property of 29.73 feet.

6. Brookford Street was accepted as a public way by the City of Cambridge on January 6, 1905, and is still a public way. Its common boundary with the Fawcett property has a width of 40.18 feet. A building two stories high existed on plaintiff's property at the end of Brookford Street from 1924 to 1979, when it was destroyed by fire. The building was constructed between ~~1916 and 1920~~. It extended across the width of the street, blocking all vehicular and pedestrian access from the property to Brookford Street from 1924 to 1979.

7. The deed by which Fawcett was granted the subject property, and the chain of title with respect to that property going back to 1900, recited by its terms that it was granting Fawcett the right to use Brookford Street and Cottage Park Avenue in common with

Very interesting reading !!!

COMMONWEALTH OF MASSACHUSETTS

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FINDINGS OF FACT

1. Fawcett is a Massachusetts corporation

others having rights therein, for "way, drainage, prospect and all other purposes for which public streets are or may hereafter commonly be used."

8. Robert W. Fawcett, then President of Fawcett, acquired the subject property in his own name on October 1, 1969. At the time when Robert W. Fawcett (hereinafter "Fawcett") acquired the subject property in 1969, Brookford Street was not used as an access for motor vehicles onto the property because of the existence of the building across the end of the street.

9. When Fawcett acquired the subject property in 1969, the sole vehicular access to the property was Cottage Park Avenue. At that time Tyler Court was not a public way and did not run all the way to the Fawcett property.

10. As a result of a petition of local residents, the Cambridge City Council on September 21, 1970, issued an order to investigate traffic on Cottage Park Avenue.

11. George Teso, Traffic Director of Cambridge, supervised a study of traffic on Cottage Park Avenue, which study found that 88 out of 275 vehicles using the length of Cottage Park Avenue, or 32 per cent of the vehicular traffic to and from the end

of Cottage Park Avenue, was truck traffic. The study also noted that there was a curve to the street, and with parking on both sides of the street, two-way traffic had 12 feet of width within which to maneuver.

12. On or about September 25, 1970, Mr. Teso filed the study report with the City Manager, who in turn submitted it to the City Council. The City Manager asked Mr. Teso to investigate the feasibility of alternate routes for Fawcett's truck traffic.

13. On November 17, 1970, Mr. Teso wrote to Robert W. Fawcett requesting a meeting regarding truck traffic on Cottage Park Avenue; and, as a result, a few weeks later a neighborhood meeting was held at the Fawcett property. Among those present at the meeting were Robert W. Fawcett, Robert R. Fawcett, George Teso, City Councillor Thomas Danehy, and Cottage Park residents Robert Cyr and William Fox.

14. At the meeting, the concern of the residents, and of Mr. Teso as Traffic Director, was heavy truck traffic on a residential street. This was the only problem discussed, and no complaint was ever made to Mr. Fawcett about automobile traffic or even light truck traffic. Robert W. Fawcett agreed that the heavy trucks created a problem for residents and stated

that he would like to help, but stated that at that time he had no other way for the trucks to get into the property. There was a discussion regarding the possibility of another route to the Fawcett property, and several alternatives were mentioned, including a possible right-of-way along the railroad tracks in back of the property, two possible routes of extending Tyler Court, then a private way, to the Fawcett property, and a possible extension of Whittemore Avenue. No conclusion was reached at this meeting as to an alternate route, but Mr. Fawcett indicated that he was favorable to another route to get truck traffic off Cottage Park Avenue, and the parties left with high hopes that the problem could be solved. At no time during the meeting or at any other time did Robert W. Fawcett state that he would give up all his rights of access over Cottage Park Avenue other than heavy truck traffic in return for Tyler Court or any other alternate route.

15. After the meeting, City of Cambridge engineers looked at three different proposals for an alternate route to the Fawcett property: a possible route through property owned by Hia-Pearl Company, a right-of-way along the railroad tracks, and an

extension of Tyler Court. After investigating the feasibility of these routes, the engineers concluded that Tyler Court was the only workable solution.

16. The route finally chosen for the Tyler Court extension was laid out on a plan dated January 4, 1972; and on January 17, 1972, the Cambridge City Council voted to make the necessary taking to extend Tyler Court to the Fawcett property line. There is no evidence that Robert W. Fawcett approved, or even saw, the plan of Tyler Court as finally approved by the City Council. The City made a payment of \$12,000 to the owner for the taking.

17. Subsequent to the taking, the City constructed the extension of Tyler Court to the Fawcett property line, in accordance with the Taking Plan, and accepted Tyler Court as a public way. The City expended approximately \$50,000 to effect the taking for Fawcett's truck route.

18. On June 26, 1972, the Cambridge City Council adopted an order requesting the City Manager to "cause the erection of a fence at the end of Cottage Park Avenue to prevent the passage of all vehicles to and from the properties located at the end of Cottage Park Avenue..." and further requesting the City

Manager to construct this fence "as soon as Tyler Court is ready for use as a public way and in such a manner as will allow for the easy passage of emergency vehicles." This order was passed by the City Council without a hearing, without any notice to Robert W. Fawcett, Robert R. Fawcett, Robert Fawcett & Son Co., Inc., or to their counsel, and without the publishing of any legal notice. In fact, neither Robert W. Fawcett, Robert R. Fawcett, the Fawcett Company, nor their counsel had any notice whatsoever of the existence of this City Council order until April of 1983, when a copy was mailed to counsel for Fawcett by an assistant city solicitor for the City.

19. On July 26, 1972, Fawcett wrote to City Manager Corcoran, stating in part that he had "delayed closing the gate on Cottage Park Avenue a week or so to let vendors be notified of the new entrance and exit." The "new entrance and exit" referred to was the extension of Tyler Court to the Fawcett property line.

20. Between July 26, 1972, and September 18, 1972, the City erected a chain-link fence across the end of Cottage Park Avenue, blocking access to the Fawcett property from Cottage Park Avenue. This fence contained no gate or other opening, and thus did not

allow for the "easy passage of emergency vehicles," as stated in the June 26, 1972, City Council order.

21. On September 18, 1972, George A. McLaughlin, Jr., counsel for Robert W. Fawcett and the Fawcett Company, sent a letter to Edward D. McCarthy, Assistant City Solicitor, protesting the erection of the chain-link fence. This letter stated, in part, as follows:

"While you and I were attempting to negotiate a reasonable solution regarding my client's use of Cottage Park, wires somehow got crossed and a permanent fence was erected across Cottage Park, barring my client and his tenants from access to his property at the end of Cottage Park Street.

"Of course, legal access to property cannot be eliminated in this fashion, but must follow appropriate action by the City Council and other City Departments."

Additionally, the letter proposed as a solution that (1) the fence be removed; (2) Mr. Fawcett at his own expense erect a new steel mesh gate at the boundary line of his property and Cottage Park Avenue; (3) Mr. Fawcett would agree to keep the gate locked and not use Cottage Park as an access except when emergency conditions block adequate access over Tyler Court (snowstorms, parked or snowbound vehicles, construction, et cetera); (4) Mr. Fawcett would use

Cottage Park for access to his property on an annual basis if and as necessary to preserve his legal rights;

(5) certain pending zoning litigation commenced by the City challenging Mr. Fawcett's use of his premises for warehousing and garage purposes would be dismissed with prejudice.

22. There was no written contract between Robert W. Fawcett and the City of Cambridge regarding the establishment of Tyler Court or the closing off of Cottage Park Avenue. Although there was no legal and enforceable contract, written or oral, that Fawcett abandon all access to Cottage Park Avenue, it was understood between Fawcett and the City that Fawcett, in consideration for the construction of Tyler Court for truck access, would use Tyler Court for truck access and give up his right to use Cottage Park Avenue after Tyler Court became available for such use. There was a misunderstanding of the very loose agreement between the parties. Fawcett intended to give up only the right to use Cottage Park Avenue for truck traffic; the City believed that he had given up all access to Cottage Park Avenue, and proceeded to construct the fence and, later, the barricade. What is clear is that Fawcett agreed to give up access to Cottage Park Avenue

for truck traffic in consideration for the newly constructed access to Tyler Court. There is no mention in any correspondence, memoranda, or other record of the City of Cambridge regarding any agreement by Robert W. Fawcett to have a fence erected at the end of Cottage Park Avenue. Furthermore, there is no mention in any of the correspondence or memoranda of Mr. Teso, the City Manager, the City Solicitor's office, or the neighbors about anything except truck traffic on Cottage Park Avenue.

23. The chain-link fence remained at the end of Cottage Park Avenue until 1982, when it was removed in an unknown manner. During the course of the following year, Robert R. Fawcett used Cottage Park Avenue a few times for light vehicles.

24. In September, 1983, the City Manager was notified by residents of Cottage Park Avenue that the fence-type barrier had disappeared from the end of Cottage Park Avenue. During the course of the following year, the City Manager reviewed the matter and determined that the City Council order of June 26, 1972, authorized a replacement of the barrier. He ordered city workers to erect a new barrier.

25. The Cambridge City Manager, Robert Healy,

ordered the Cambridge Department of Public Works to erect the barricade at the end of Cottage Park Avenue on September 14, 1983.

26. On September 14, 1983, the City's Department of Public Works erected a barricade across the end of Cottage Park Avenue at the point where it meets the Fawcett property line, consisting of a series of three poles approximately one foot in diameter with a steel rail across the top. This barricade was erected in front of Fawcett's own chain-link-fence gate to its property.

27. The City did not notify Robert Fawcett & Son Co., Inc., Robert W. Fawcett, Robert R. Fawcett, or their representatives of the City Council meeting discussing a possible barricade, nor the order to erect the barricade on September 14, 1983.

28. Counsel for Robert Fawcett & Son Co., Inc., Robert W. Fawcett, and Robert R. Fawcett had no knowledge of the City Council order of June 26, 1972, until a copy of the order was forwarded to them by Assistant City Solicitor David O'Connor on or about April 4, 1983.

29. In February, 1979, the building on the Fawcett property at the end of Brookford Street was

destroyed by a fire. No structure was rebuilt upon that locus.

30. In 1982 Fawcett removed the foundation wall on the building that had been destroyed by the fire, and installed a fence with a gate on its property at the end of Brookford Street, where Brookford meets its property line.

31. At some time prior to 1925 a curb existed at the end of Brookford Street running parallel with the foundation wall of the Fawcett building, and this curb existed for many years.

32. There is presently no curb across the end of Brookford Street where the Fawcett property abuts it. When it was removed and the circumstances that resulted in its removal are not known.

33. In October, 1982, the City Council confirmed that Brookford Street was a dead-end street.

34. The City of Cambridge recently put new curbing along the sides of Brookford Street, but they did not install curbing at the end running parallel to the Fawcett property line where the curb referred to in Paragraph 31 existed.

35. In June, 1986, plaintiff on occasion used the gate at the end of Brookford Street.

36. On June 5, 1986, Fawcett applied to the city council for permission to construct a driveway.
On June 9, 1986, Brookford Street residents petitioned the City Council to erect a barrier to prevent Fawcett from using Brookford Street to access his property.

37. On June 16, 1986, the City Council directed the City Manager to investigate whether Fawcett had violated the October 18, 1982, order declaring Brookford Street a dead-end street.

RULINGS OF LAW

1. Plaintiff, as owner of land at the end of Cottage Park Avenue, is an abutter on Cottage Park Avenue and has a right of access on Cottage Park Avenue as an incident of ownership. Anzalone v. Metropolitan District Commission, 257 Mass. 32 (1926).

2. Defendant City of Cambridge could regulate plaintiff's right of access by making reasonable regulations as to plaintiff's use of Cottage Park Avenue. Anzalone, supra at 37.

3. While plaintiff cannot be prevented from entering from his land upon ways which the public has a right to use, id at 37-38, defendant City of Cambridge

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has a duty to grant plaintiff access subject to such reasonable regulations and requirements as it deems necessary for the public safety and convenience. Id.

4. Defendant City of Cambridge's restriction of all truck traffic on Cottage Park is a reasonable regulation necessary for the public safety. Id.

5. Defendant's installation of a barrier restricting all vehicular traffic by plaintiff unreasonably regulated plaintiff's access, where it exceeded the scope of the City Council's order, the residents' stated concerns, and the agreement of the Fawcetts.

6. Defendant's failure to notify plaintiff of the City Council deliberation on its access to Cottage Park Avenue notwithstanding, plaintiff's prior oral promise to defendant to refrain from using Cottage Park Avenue for truck traffic in exchange for an alternate route was an enforceable agreement between the parties. Hickey v. Green, 14 Mass. App. Ct. 671, 676 (1982).

7. Where no further negotiation was contemplated by either party after their meeting with area residents in November, 1970, the parties' agreement was sufficiently specific as to truck traffic to create an enforceable contract. See Hickey, supra.

8. Plaintiff is estopped from asserting the statutory bar of G.L., c. 43, Sec. 29 requiring that contracts with municipalities be in writing, where defendant, in reasonable reliance on plaintiff's promise to use an alternate truck route and with its continuing assent, created a suitable route for plaintiff's use at a cost of \$50,000. Hickey, supra at 673-674; see also Pappas v. Psarros, 24 Mass. App. Ct. 596, 598 (1987).

9. Where plaintiff has a reasonable and appropriate access to the public highway system, the City Council's 1982 affirmation that Brookford Street remain a dead-end street reasonably regulated the extent of plaintiff's access to Brookford Street. LaCroix v. Commonwealth, 348 Mass. 652, 657 (1965).

10. Where a curb existed at the end of Brookford Street where it meets plaintiff's property and where plaintiff maintained a building at that point that prevented plaintiff's and plaintiff's predecessor in title access to Brookford Street for at least 55 years, plaintiff has conclusively and unequivocally manifested an intent to abandon the easement and established a purpose inconsistent with the easement of access to Brookford Street.

11. Where the building on plaintiff's property constituted a permanent restriction of all access to Brookford Street from plaintiff's property for at least 55 years, plaintiff's predecessor in title abandoned its right to the easement of access to Brookford Street. Sindler v. William M. Bailey Co., 348 Mass. 589, 593 (1965).

12. The building's complete obstruction of the easement of access to Brookford Street and plaintiff's consequent failure to use the easement for at least 20 years were unequivocal acts by plaintiff and its predecessor in title inconsistent with the easement, which operated to extinguish the easement of the entire right of way by prescription. Yagjian v. O'Brien, 19 Mass. App. Ct. 733, 737 (1985); compare Lemieux v. Rex Leather Finishing Corp., 7 Mass. App. Ct. 417, 421, 423-424 (1979).

ORDER

The court orders that a declaration enter, declaring that defendant's restriction of all truck traffic on Cottage Park Avenue is lawful. The court

orders that defendant remove the present barrier in front of plaintiff's property on Cottage Park Avenue and replace it with one that permits pedestrian and automobile access.

The court further orders that a declaration enter, declaring that plaintiff has no right of access to Brookford Street.

James L. Vaneely
Justice of the Superior Court

*Fawcett has since bought Norbury
that house property, extending to
W R Grace parking lot.*