

**From:** Carol O'Hare [c.burchardohare@att.net]  
**Sent:** Sunday, January 11, 2015 12:37 PM  
**To:** City Council  
**Cc:** Rossi, Rich; Glowa, Nancy; Murphy, Brian; Dash, Stuart; Lopez, Donna; Paden, Liza  
**Subject:** City Council/Planning Board Roundtable, 1/12/15: Legal Opinion re "may" v. "will normally" grant

City Councillors and Planning Board members:

For your convenience, here's a "re-send" of my 1/5/15 Email about the City Solicitor's legal opinion.

Yes, this is a separate question from possibly changing the special permit criteria. But, that does not mean that significant difference between "may grant" v. "will normally grant" should be brushed aside as mere semantics and legal niceties.

What's more, the City Solicitor has offered to write her opinion, which would allow everyone to focus on the opinion, instead of the continuing debate about whether it should be written at all.

Carol O'Hare

P.S.

Donna Lopez: Please file this with the Official Record.

Liza Paden: Please transmit this to the Planning Board.

---

**From:** Carol O'Hare [<mailto:c.burchardohare@att.net>]  
**Sent:** Monday, January 05, 2015 9:08 AM  
**To:** Cambridge City Council  
**Cc:** Richard Rossi; Nancy Glowa, Esq.; Donna Lopez; Brian Murphy; Stuart Dash; Liza Paden  
**Subject:** City Council: Reconsideration - Legal Opinion re "may" v. "will normally" grant

Mayor Maher, Vice Mayor Benzan and City Councillors:

At the City Council's 12/1/14 Roundtable Meeting, the City Solicitor rendered her spoken legal opinion on the difference between instructing our Planning and Zoning Boards that special permits "may be granted" v. "will normally be granted." I'm writing in connection with the Reconsideration\* listed on your tonight's Agenda.

1. **Unless one ignores a plain-English analysis, one must conclude that there is a "distinction with a difference" among: "may" grant > "will normally" grant > "shall" grant.**
2. Unless there's some compelling legal or creditable, strategic reason to withhold the Solicitor's written opinion (or even the legal research and memo on which it must have been based), what is the problem with releasing it? That's especially so when Cambridge is so development-overheated right now. Is this protected lawyer/client advice? Would it make the City more vulnerable in a pending or potential legal challenge to a special permit grant or denial, e.g., the East Cambridge Courthouse challenges?
3. The Costa legal opinion presented to you with "Teague Petition #2" raises questions that deserve to be addressed in writing so that the City Council can best decide on the merits of Part 2 of the Teague Petition. Costa opinion <https://drive.google.com/file/d/0B-ZbJdsEcl8S2pJTUQwTzI0Y0E/view>.
4. If for no other reason than having the public record include a reasoned analysis (for reference now and in the future), the City Solicitor's advice on this should be available to City officials, boards, personnel and the public. Although the 12/1/14 Roundtable minutes are a start, they lead to more questions than answers. [http://www2.cambridgema.gov/cityclerk/RoundTableMeetingMinutes.cfm?instance\\_id=31](http://www2.cambridgema.gov/cityclerk/RoundTableMeetingMinutes.cfm?instance_id=31)
5. Also, for comparison, it's relevant to learn whether any other Massachusetts planning and zoning boards are subject to the "will normally grant" mandate.

\*Tonight's City Council Agenda includes "Reconsideration filed on Dec. 16, 2014 by Councillor Mazen on Part (2) relating to granting special Permits in Section 10.43, remained in committee. *The question comes on passing to be ordained on or after December 29, 2014 Part (1)*. Planning Board Hearing held November 18, 2014.

Petition expires February 10, 2015." It refers to Ordinance Committee proceedings summarized at [http://www2.cambridgema.gov/cityClerk/CommitteeReport.cfm?instance\\_id=836](http://www2.cambridgema.gov/cityClerk/CommitteeReport.cfm?instance_id=836).

34

Thank you for your time and consideration.

Sincerely,

Carol O'Hare  
172 Magazine St.

Cc: Donna Lopez, City Clerk: Please file this with the Official Record.  
Liza Paden: Please transmit this to the Planning Board

--

You received this message because you are subscribed to the Google Groups "Fresh Pond Residents Alliance" group.

To unsubscribe from this group and stop receiving emails from it, send an email to [fresh-pond-residents-alliance+unsubscribe@googlegroups.com](mailto:fresh-pond-residents-alliance+unsubscribe@googlegroups.com).

To post to this group, send email to [fresh-pond-residents-alliance@googlegroups.com](mailto:fresh-pond-residents-alliance@googlegroups.com).

Visit this group at <http://groups.google.com/group/fresh-pond-residents-alliance>.

For more options, visit <https://groups.google.com/d/optout>.