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CITY OF CAMBRIDGE

OFFICE OF THE CITY SOLICITOR
795 Massachusetts Avenue
Cambridge, Massachusetts
02139

September 5, 2012

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

Awaiting Report No.: 12-21 re: report on 1) the ownership status of the Cambridge Street overpass and 2) on the abilities of universities and other organizations to close off property owned by them but enjoyed by the public

Dear Mr. Healy:

In response to the above-referenced Awaiting Report, please find the following response.

Cambridge Street was established as a public way in 1809 and the use of Cambridge Street as a public way has continued unabated since that time. There was never a discontinuance of that portion of Cambridge Street as a public way. This office has previously rendered an opinion in 1998 on the use and ownership of this portion of Cambridge Street. A copy of that opinion is attached here for your reference.

In 1965, the City agreed to allow Harvard University to depress a portion of Cambridge Street to create a tunnel overpass structure on Cambridge Street so that all vehicular traffic would travel on that portion of the street via the tunnel underpass to be constructed by Harvard University. The 1965 agreement provided that Harvard "will maintain the exterior roof of the tunnel and the area immediately above the tunnel as a pedestrian walkway as long as the City of Cambridge desires."

In the course of discussions between the City and Harvard regarding the repair of the Cambridge Street tunnel overpass in 2011, Harvard and the City entered into a letter agreement on December 12, 2011, in which Harvard acknowledged its maintenance obligations under the 1965 agreement, and agreed that Harvard would make certain improvements to the tunnel overpass that include improving pedestrian and bike access,

increased lighting, stormwater management improvements, as well as a variety of informal outdoor seating areas. Pursuant to the December 2011 agreement, Harvard will be responsible for the maintenance of these improvements. A copy of that agreement is attached here for your reference.

With regard to the second question raised in the order as to “the extent of the abilities of universities and other similar organizations to close off property owned by those organizations but enjoyed by the general public,” it is difficult to opine as to whether the use by the general public of university-owned land may lead to the possibility of prescriptive easements. The existence of prescriptive easements is a matter of fact-specific analysis, and therefore, the best practice is to analyze these issues on a case-by-case basis.

Very truly yours,

Nancy E. Glowa
Acting City Solicitor

Enclosures



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

February 9, 1998

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 2, regarding the installation of posting boards by Harvard University as well as an opinion received from City Solicitor Russell Higley.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachment



Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Nancy E. Glowa
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February 5, 1998

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

Re: Awaiting Report Item No. 2 of 2/9/98 regarding City Council Order No. 061 dated 12/15/97 Re: Report on Planned Installation of Posting Boards By Harvard

Dear Mr. Healy:

You have asked us to respond to the following questions posed in the above referenced Council Order:

1) Is the land over the underpass over Kirkland Street between the Harvard Science Center and Harvard Yard public or private land?

2) If it is public land, wouldn't Harvard be required to seek the approval of the City Council to place kiosks in that location, in the way that property owners must receive Council approval to place sandwich boards or tables and chairs on sidewalks?

3) If it is not public land, when was it sold to a private party (presumably Harvard) and under what terms? If this property is held by Harvard, how is it zoned? Could buildings be erected on it?

The responses to these questions are as follows:

1) In 1965, the City agreed to depress a portion of Cambridge Street, so that all vehicular traffic would travel on that portion of the street via a tunnel underpass to be constructed by Harvard University. Harvard agreed to maintain the exterior of the roof of the tunnel and the area immediately above the tunnel as a pedestrian walkway, for so long as the City desires. There was never a discontinuance of that portion of Cambridge Street as a

public way. Thus, although the vehicular portion of the public way has been depressed to the underpass tunnel, the area above the tunnel is required to be maintained as a pedestrian walkway.

2) Given the answer to the first question, the kiosks would have been "visible from a public way" and therefore not permitted. We have explained this to Harvard, and they have accepted that conclusion.

3) As indicated above, the land at issue is a public way as affected by the 1965 Agreement, and has not been discontinued as such. This property is in a Residence C-3 zoning district. Because of the 1965 agreement, whereby Harvard agreed to maintain the exterior of the roof of the tunnel as a pedestrian walkway for so long as the City desires, no buildings may be erected there.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell B. Higley". The signature is stylized and written in a cursive-like font.

Russell B. Higley

HARVARD
CAMPUS SERVICES



December 12, 2011

Robert W. Healy
City Manager
City of Cambridge
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Cambridge Overpass

Dear City Manager Healy:

This letter memorializes and confirms our discussions regarding the City's planned repair of the tunnel structure over Cambridge Street. As a result of these discussions and in conjunction with the City project, Harvard will make improvements to the surface of the structure, which is referred to in this letter as the "Cambridge Street Overpass."

We enclose the Plan for Improvements and Continuation of Pedestrian and Bicycle Access for the Cambridge Street Overpass, which outlines Harvard's improvements to the area and confirms Harvard's continued compliance with the 1965 agreements governing the Overpass area (the "1965 Agreements") which states that Harvard "will maintain the exterior roof of the tunnel and the area immediately above the tunnel as a pedestrian walkway as long as the City of Cambridge desires."

Your signature on the enclosed copy of this letter accepts Harvard's Cambridge Street Overpass Improvement Plan and Confirmation of Pedestrian and Bicycle Access which provides continued compliance with the conditions of the 1965 Agreements.

We are pleased to partner with the City on this project that will benefit the community.

Sincerely,

Lisa Hogarty
Vice President

Acknowledged and Agreed:

Robert W. Healy
City Manager
City of Cambridge

Cambridge Street Overpass Proposed Improvements and Confirmation of Pedestrian and Bicycle Access

Consistent with the 1965 Agreements and in light of Harvard University's plans to work with the City of Cambridge to repair the tunnel structure on Cambridge Street, Harvard University has evaluated potential improvements to the surface area over the tunnel. The improvements will provide continuing compliance with existing requirements regarding pedestrian access, improve safety and the quality of pedestrian and bike access over the area, and also provide amenities that can be enjoyed by the community.

The University plans to make significant improvements to the Cambridge Street overpass, as shown on the enclosed illustrative diagram. These will improve pedestrian and bike access and include a variety of informal outdoor seating areas and open space amenities. The space would continue to be used for University events and programs and for City activities and City-sponsored events and program throughout the year. Harvard will maintain the enhanced plaza improvements. Pedestrian and bike access will be maintained at all times, including during University, City and community events and during any periodic renovations or repairs.

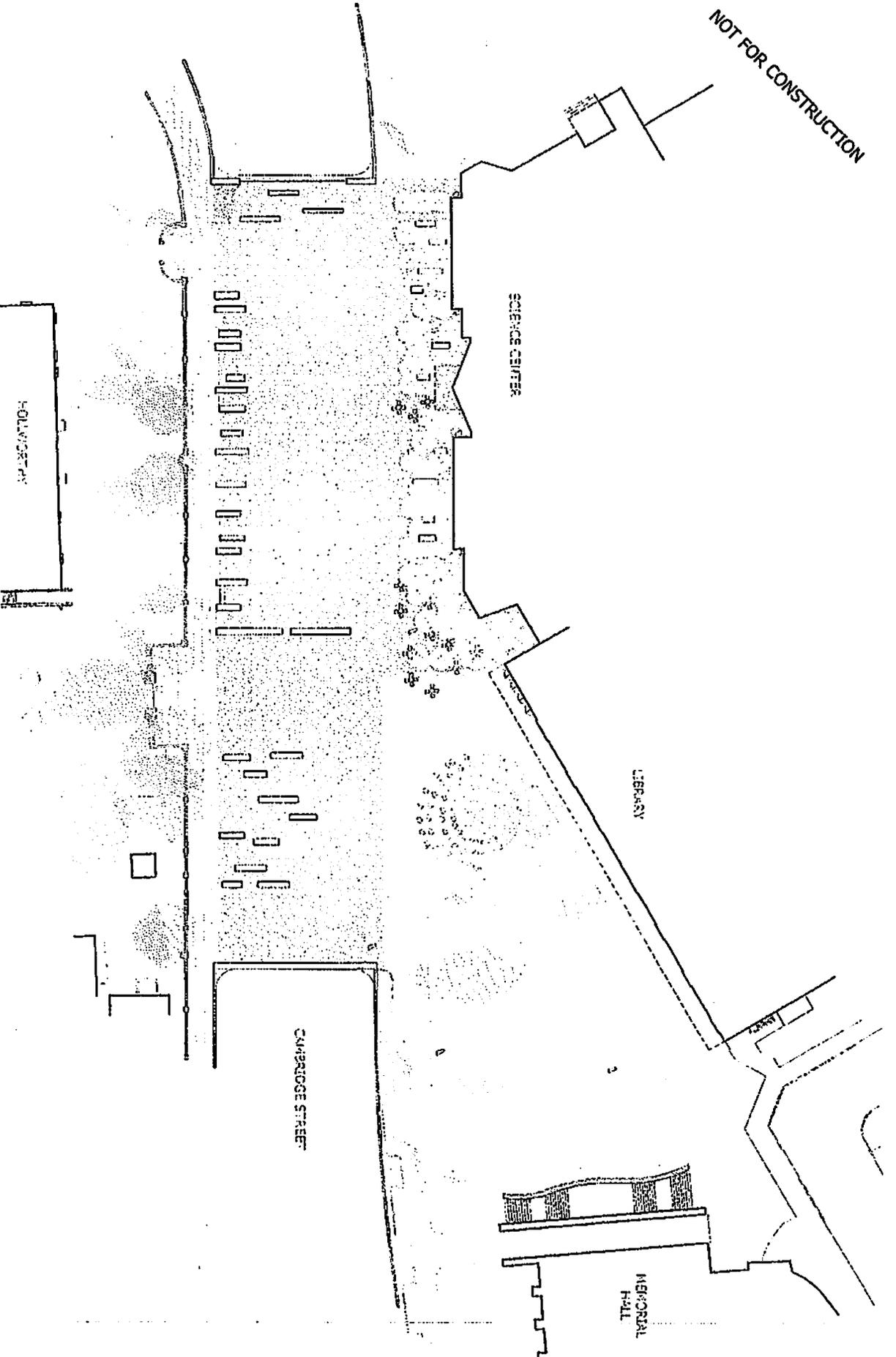
The plaza improvements for the overpass will enhance the quality and safety of both pedestrian and bike movement and maintain the existing access for pedestrians and cyclists to the overpass from Massachusetts Avenue to the West, from Cambridge Street to the East, from Harvard Yard to the South and from Oxford Street to the North. Increased lighting will improve safety.

The large, open area at the heart of the space will allow for the continued flexible use for both programmed events and small informal gatherings. The area could be used for events and activities such as exhibits and information events; musical or theatrical performances; occasional outdoor movies or streaming of special events like inaugurations; recreational activities such as ice sculpture contests or skating; markets and festivals; outdoor classes and commencement festivities. Temporary structures such as a gazebo, skating rink, covered stalls, electrical or other infrastructure connections could be installed, subject to any applicable approvals. In warmer weather, chairs, tables, and food carts could be brought in regularly.

The improvements also include important infrastructural elements such as distributed power sources, information technology elements such as Wi-Fi and tele/data connections; audio/visual equipment; surface, overhead and event lighting; improved stormwater management; structural support for tents and other temporary installations; potable water supply; utility access; structural loading for vehicles and improved vehicular access for loading and for vehicles such as food trucks.

Per the City's request, the University will create an events management system and website to provide information about scheduled programs, how to reserve space, and a calendar of events. Harvard will designate a contact person to coordinate with the City regarding City activities and City-sponsored activities.

NOT FOR CONSTRUCTION



SCHEMATIC PLAN
HARVARD COMMON SPACES PLAZA - SCHEMATIC DESIGN
HARVARD UNIVERSITY



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