

ROBERT H. HALE  
(617) 573-0407  
rhale@palmerdodge.com

TELEPHONE: (617) 573-0100  
FACSIMILE: (617) 227-4420

October 25, 1996

Edward J. Collins, Jr.  
Collector-Treasurer and Chief  
Financial Officer  
City of Boston  
One City Hall Plaza, Room 603  
Boston, Massachusetts 02201

Re: Cummings Trust - Burlington/Woburn Property

Dear Ed:

At your request, we have further reviewed the terms of the gift to the City of Boston under the will of Mary Cummings of certain land in Woburn and Burlington. We have also looked at the relevant case law on the issue of whether the City may invoke the doctrine of *cy pres* to sell the property now held in trust, and use the proceeds for public park purposes. Based on a 1988 Evaluation Report prepared by Meredith & Grew, Incorporated, the property if developed to its highest and best use may have a market value well in excess of \$25 million. Enclosed is a memorandum touching on a number of the issues involved.

Assuming (1) we can further document that Mrs. Cummings' intent was to benefit the City of Boston and not to restrict the Woburn and Burlington land in perpetuity for park purposes, and (2) we receive the anticipated level of cooperation from the Attorney General's office, it should be possible to gain probate court approval for the application of the doctrine of *cy pres* and the sale or other disposition of the property.

As discussed in the attached memorandum, the language of the will itself supports the position that Mrs. Cummings predominately intended to benefit Boston. However, any evidence or documentation that the City can provide demonstrating Mrs. Cummings' intent will be useful in persuading the Attorney General's Division of Public Charities to support the proposal to dispose of the land.

If we are successful in showing that Mrs. Cummings had a general charitable intent to benefit Boston, the probate court should allow a modification of the specific purpose of the trust under the doctrine of *cy pres*, but only if the original purpose has now become impossible, impracticable, or illegal. Thus, we must also demonstrate that the land is not suitable for a park because of its current condition and because of its distance from Boston. Note that the difficulty of maintaining a park outside of the City limits may not be a sufficient justification for selling the land without further evidence that the property has fallen into disrepair or is otherwise inappropriate for use as a public park. The absence of sufficient assets to support the park under

the Cummings will or otherwise is also relevant. Based on our conversations to date, I understand that in fact the land is not suitable for park purposes and that we should be able to document that to the court.

Under the contemplated *cy pres* petition, we would ask the court to approve the sale for its fair market value. Revenues raised by such a sale, however, should be earmarked for purposes similar to that intended by Mrs. Cummings -- namely, the acquisition and/or maintenance of public parks for Boston residents. At this point we also assume that the proposed sale of land must be ratified by the state legislature and the Boston City Council, because the sale involves a disposition of public park land.


Due to the dynamics of the legislative and judicial process and the likelihood that various interests (including residents of Burlington and Woburn) will be interested in the ultimate use of the Cummings land, the City may wish to consider opportunities under the state's open space bond program and other public and private sources to maintain the Cummings property as open space (through a state, local or private, non-profit purchase of the property from Boston) while still achieving a direct benefit for Boston residents through creation of a trust fund for the acquisition and maintenance of Boston parks from the proceeds of such sale.

As an action plan, we suggest the following steps should be taken:

- Collect any records available in the City's files relevant to the land. In particular, is there evidence of Mrs. Cummings' intent to benefit Boston? In addition, does the City have information on the disposition of property located on North Market Street which the Cummings will also purported to convey to the City? What became of the other assets, if any, left to the City under the residual clause of the will?
- Outline how the City plans to market the property and use the proceeds in a manner that satisfies Mrs. Cummings' general charitable intent; reappraise the property and research development options and impediments to maximize market value.
- Research and outline alternate disposition options to preserve the Cummings property as park land while still establishing a Boston parks trust fund.
- Prepare a petition to be submitted along with any relevant evidence to the Attorney General for his review and approval.

If you have any questions on the enclosed memorandum please feel free to call either Art Page or me directly. Following your review I suggest a brief meeting with relevant City officers to determine the best course of action and the next steps to further this endeavor.

Very truly yours,



Robert H. Hale

cc: David Passafaro  
Arthur Page  
John Rattigan