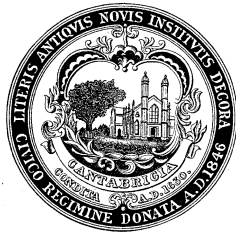


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CITY OF CAMBRIDGE

Office of the City Solicitor
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February 26, 2016

Amy Nable, Assistant Attorney General
Director, Division of Open Government
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: Open Meeting Law complaint of Xavier Dietrich dated November 9, 2015

Dear Ms. Nable:

On behalf of the Cambridge Board of Zoning Appeals ("BZA"), I am writing in response to Mr. Dietrich's February 13, 2016 letter, in which he asks the Attorney General's Office to pursue his complaint, and makes various allegations regarding the motive for and circumstances surrounding the events of which he complains, which transpired at the November 5, 2015 meeting of the Cambridge Board of Zoning Appeals.

Mr. Dietrich's Complaint was dated November 9, 2015 and alleged that when the Chair of the BZA discovered that Dietrich was videotaping the BZA's November 5, 2015 meeting, the Chair asked Dietrich to state his name; when Dietrich refused to do so, the Chair informed him that he would not be permitted to record the meeting if he did not provide his name. The Chair attempted to physically remove Dietrich's recording equipment from the room, but when Dietrich brought his equipment back in and continued recording, the Chair permitted him to record the meeting and proceeded to conduct the meeting as usual. Dietrich recorded the meeting and has posted a clip from his recording online on YouTube. The BZA provided your office with a response to the Complaint on November 20, 2015, detailing the BZA's corrective action in response to the Complaint. As described in that response, the Chair of the BZA acknowledged his error by stating at the BZA's November 19, 2015 meeting that he was mistaken in his earlier comments, that he did not intend to mislead the public, and that attendees wishing to record the proceedings need only notify the Chair of their intent to do so and abide by any reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting.

Mr. Dietrich's February 13, 2015 letter describes the BZA's response as "unacceptable" and, without any factual basis, ascribes various nefarious motives to the Chair. Mr. Dietrich baldly asserts first that the Chair "actually lied to the public in an open meeting for the sole purpose of intimidating the public" and later that "the reason for the Chair's sudden change of position and desire not to have the meeting recorded" was that during the meeting at issue, the BZA granted a variance to a restaurant "in violation of the Board's ethical and other legal obligations." Mr. Dietrich offers no factual support for either of these theories, nor does he address the statement the Chair made – that he had no intent to mislead the public – or that the Chair has continued, in subsequent meetings, to permit attendees to record BZA meetings consistent with the corrective statement he made on November 19, 2015.

Mr. Dietrich does not contend – nor could he – that he was prejudiced by the Chair's error, since he nonetheless was able to record the November 5, 2015 meeting. "The goal of [the Attorney General's] office in enforcing the Open Meeting Law is achieving compliance with that law. Where a public body acknowledges it violated the law...and takes steps to ensure compliance going forward, [the Attorney General's] office will generally find that to be sufficient remedial action in response to a complaint." OML 15-118. Moreover, in the context of a complaint that a School Committee improperly required an attendee to seek permission from the Chair prior to recording the meeting, rather than simply notifying the Chair, the AG's office has previously found that

In its response to the complaints, the Committee acknowledged that the Chair made a mistake during its March 20 meeting by suggesting that attendees needed to seek permission from, rather than simply notify, the Chair prior to recording the meeting. The Committee has adopted language for use during future meetings, and instructed the Chair to announce during meetings that 'anyone in the audience who would like to record the meeting should let the Chair know.' We find this to be appropriate remedial action in response to this violation and order no additional relief.

OML 14-133.

For the reasons described above and in the BZA's November 20, 2015 response to Mr. Dietrich, imposing any of the additional remedies requested by Mr. Dietrich is unwarranted where the Chair has apologized, acknowledge his error, has indicated that he and the BZA will comply with the requirements of the Open Meeting Law going forward, and has, in fact, complied with those requirements in the intervening meetings since the BZA's initial response was submitted.

Very truly yours,

Nancy E. Glowa
City Solicitor

cc: Xavier Dietrich