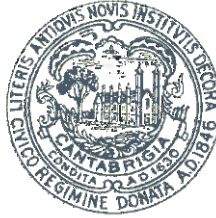


Nancy E. Glowa
City Solicitor

Arthur J. Goldberg
Deputy City Solicitor

Vali Buland
First Assistant City Solicitor



Assistant City Solicitors

Paul S. Kawai
Samuel A. Aylesworth
Keplin K. U. Allwaters
Anne Sterman
Sean M. McKendry

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

November 20, 2015

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

**Re: Action taken by Cambridge Board of Zoning Appeals on 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 to advise you pursuant to 940 CMR 29.05(5) of the action taken by the Board of Zoning Appeals on the Open Meeting Law complaint of Xavier Dietrich. A copy of the complaint dated November 9, 2015 (the "Complaint") is attached as Exhibit A. Mr. Dietrich alleges that the Chair of the BZA violated the Open Meeting Law when the Chair initially attempted to prevent Mr. Dietrich from recording the BZA's November 5, 2015 meeting after Mr. Dietrich refused to identify himself. The Chair of the BZA has acknowledged his error by stating at the BZA's November 19, 2015 meeting 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.

FACTS

Complainant Xavier Dietrich attended the BZA's November 5, 2015 meeting. He alleges that he informed the Chair prior to the meeting of his intent to video record the meeting. Shortly after the meeting began, the Chair noticed Dietrich's tripod and video camera, and asked if Dietrich was recording the meeting. Dietrich responded that he was, and that he had informed the Chair of his intent to do so prior to the meeting. The Chair then asked Dietrich to state his name; after 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.

DISCUSSION

1. The Chair has acknowledged his error.

The Chair's statements at the November 5, 2015 meeting were in error, and were based upon a misapprehension of a conversation he had with a colleague after the October 22, 2015 meeting (at which the Chair correctly advised attendees that the BZA could not require individuals recording the proceedings to identify themselves). The Chair has since acknowledged his error, making the following statement to a local newspaper:

I mistakenly stated at the Board of Zoning Appeals meeting on Thursday, November 5, that the Board had been advised by the City's legal department that the Board could require a person to identify him or herself prior to recording a meeting. The City Solicitor did not actually provide such advice to the Board. I informed the public at an earlier meeting of the Board, on October 22, that a person wishing to record our meeting was not required to identify him or herself. After that meeting, I had a conversation with a colleague in which I mistakenly formed the impression that a person was required to identify him or herself prior to recording our meeting. My statement at the November 5 meeting was as a result of that conversation. I now know that I misunderstood that conversation and that my statement on November 5 was incorrect. I did not intend to mislead the public or cause any harm. Since Mr. Dietrich continued to record the meeting after I made my statement at the November 5 meeting, I assume that there was no harm in my having done so. I intend to correct my misstatement on the record at the next meeting of the Board and to assure those in attendance that it will not be repeated.

The Chair also made a corrective statement at the BZA's next regularly-scheduled meeting on November 19, 2015. Going forward, if a person informs the Chair that he or she intends to record the BZA meeting, the Chair will permit such recording as permitted by the Open Meeting Law, subject to the requirement that any person wishing to record the meeting will advise the Chair and abide by "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." G.L. c. 30A, §20(f).

2. The remedies requested by Mr. Dietrich are unwarranted.

The remedies requested by Mr. Dietrich – which include convening a hearing and imposing penalties upon the Chair – are unwarranted in light of the Chair's public acknowledgement of his error. The Chair's statement demonstrates that he is aware that the BZA may not preclude individuals from recording meetings if they refuse to identify

themselves, as well as a commitment to avoid similar issues in the future.¹ Moreover, Mr. Dietrich was not 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 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.

Therefore, based on the above-cited prior determinations of the AGO, imposing any of the remedies requested by Mr. Dietrich is unwarranted where the Chair has apologized, acknowledge his error, and has indicated that he and the BZA will comply with the requirements of the Open Meeting Law going forward.

As required by 940 CMR 29.05(5), the BZA reviewed the allegations of this Open Meeting Law complaint within the time set forth in the Open Meeting Law. At its meeting of November 19, 2015, the BZA voted to adopt this letter as its response and resolution. Mr. Dietrich is being informed of the BZA's action by copy of this letter.

Very truly yours,

Nancy E. Glowa
City Solicitor

cc: Xavier Dietrich

¹ Indeed, as described above, the Chair has permitted the recording of BZA meetings in the past.