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Lopez, Donna

From: kim@kimcourtneylaw.com
Sent: Monday, November 09, 2015 1:22 PM
To: City Council; Lopez, Donna
Cc: Xavier Dietrich
Subject: Open Meeting Law Complaint - for Submission for Communications for next City Council Meeting
Attachments: Dietrich Open Meeting Law Complaint BZA Nov 9, 2015.pdf

City Clerk and City Councillors,

Please see the attached Open Meeting Law Complaint against the Board of Zoning Appeals and Chair Constantine Alexander. The related video can be viewed at <http://bitly.com/BZAOpenMeeting2>.

Clerk Lopez, please include this with the communications to the City Council for the next regular City Council meeting.

Thank you,
Kim Courtney



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

2015 NOV 12 PM 12:45

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Xavier Last Name: Dietrich

Address: c/o Kim Courtney, 955 Massachusetts Ave., #259

City: Cambridge State: MA Zip Code: 02139

Phone Number: 6178725890 Ext. _____

Email: xavier.dietrich@gmail.com

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): Cambridge, MA Board of Zoning Appeals

Specific person(s), if any, you allege committed the violation: Constantine Alexander, Chair

Date of alleged violation: Nov. 5, 2015

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

Please see the attached letter dated November 9, 2015.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

- 1) Convene a hearing to determine whether the violations were intentional and impose penalties on Chair Constantine Alexander;
- 2) Require Chair Alexander and all Members of the BZA to attend Open Meeting Law training;
- 3) Direct future compliance with the law;
- 4) and any other appropriate action.

Review, sign, and submit your complaint

Read this important notice and sign your complaint.

Under most circumstances your complaint will be considered a public record and be available to any member of the public upon request.

I understand that when I submit this complaint the Attorney General's Office cannot give me legal advice and cannot act as my personal lawyer.

I certify that the information contained on this form is true to the best of my knowledge.

Signed: X. J. D. [Signature]

Date: 09-NOV-2015

For Use By Public Body
Date Received by Public Body:

For Use By AGO
Date Received by AGO:

To: Attorney General's Office, Division of Open Government
From: Xavier Dietrich
Re: Open Meeting Law Complaint
Date: November 9, 2015

On the evening of November 5, 2015, I attended a public meeting of the Board of Zoning Appeals (BZA) in Cambridge, MA. Before the meeting began, I informed Chair Constantine Alexander that I was going to record the meeting. My camera was on a tripod and was visible to the Board and attendees of the meeting.

After the meeting began, Chair Alexander asked if I was recording, and I responded that I had already informed him that I was recording. The Chair then asked for my name, which I declined to provide. Chair Alexander then stated that he would not allow me to record the meeting if I did not provide my name, threatened to call the police, and physically removed my camera from the room. At that point he also threatened to lock me out of the meeting.

A video of the November 5, 2015 exchange is available on line at <http://bitly.com/BZAOpenMeeting>.

It is relevant to note that I recorded a public BZA meeting 2 weeks prior on October 22, 2015. Chair Alexander was present at that meeting, and also requested my name at that meeting, which I declined to provide. He then read the M.G.L. Ch. 30A, §20(f) of the Open Meeting Law out loud, and concluded that he could not legally require me to provide my name in order for me to record. Chair Alexander is a Harvard Law graduate, an experienced attorney of over 30 years, and it was clear at the October 22, 2015 meeting that he understood the law.

A video of the October 22, 2015 exchange is available online at <http://bitly.com/BZAOpenMeeting2>.

I had no contact with or communication from Chair Alexander between the October 22, 2015 and November 5, 2015 meetings. Thus, it appears that Chair Alexander's behavior towards me at that latter meeting was intentional, and for the sole purpose of harassing me.

The right to speak anonymously at a public meeting is protected by the First Amendment. *See Buckley v. Am. Constitutional Law Foundation*, 525 U.S. 182, 200 (1999); *Talley v. California*, 362 U.S. 60, 65 (1960). Pursuant to the Open Meeting Law, "any person may make a video or audio recording of an open session of a meeting of a public body" after notifying the Chair. M.G.L. Ch. 30A, §20(f). The only limitation allowed to be imposed by the Chair on the right of "any person" to record a public meeting is the "number, placement and operation of equipment", which was not a concern of the Chair. The Chair is not permitted under the Open Meeting Law to require someone recording to provide their name or any other information in order to be allowed to record.

I ask the Attorney General's Office to take the following action against Chair Alexander:

- 1) Convene a hearing to determine whether the violations were intentional and impose penalties on Chair Constantine Alexander;
- 2) Require Chair Alexander and all Members of the BZA to attend Open Meeting Law training;
- 3) Direct future compliance with the law; and
- 4) Any other appropriate action.



Xavier J. Dietrich, II