

Lopez, Donna

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**From:** Michael Hawley [mike@media.mit.edu]  
**Sent:** Monday, September 08, 2014 8:23 AM  
**To:** Lopez, Donna  
**Subject:** Fwd: Carlone Amendment & Sullivan Courthouse

Dear Ms. Lopez,

I forgot to cc you on the below. Sorry!

Mike

MH / 617-510-5963

Begin forwarded message:

**From:** Michael Hawley <mike@media.mit.edu>  
**Date:** September 8, 2014 at 6:47:37 EDT  
**To:** "<council@cambridgema.gov>" <council@cambridgema.gov>  
**Cc:** "Paden, Liza" <lpaden@cambridgema.gov>  
**Subject:** Carlone Amendment & Sullivan Courthouse

Dear Councilors:

Our City is verging on permitting the Sullivan Courthouse renovation — unless you take steps to put this matter on a more prudent tack.

I regret that I cannot speak personally at the Council meeting. But I write to urge you to act in any way you can, not just as a Council but as individuals, not only by passing the Carlone Amendment but by taking other steps, to help the Planning Board deny the requested permits. Regardless of wherever you may feel you stand on that matter, please: hear me out.

Watching the Sullivan Building grind through our permitting process is like watching a camel get shoved through the eye of the proverbial needle. Of course, the "camel thing" is meant to be absurdly impossible. But the Sullivan Building? It's just business as usual. We all know the Courthouse is a colossal aberration, and clearly, that's what has caused the dysfunction around it. And yet: *the Sullivan Building proposal is likely to be approved by the Planning Board.*

The City is at the brink of a legal precipice. If you fail to act, this project could drag us over the edge. You tried valiantly before, but your unanimous Policy Order (O-13) failed. And now, the requested permits to renovate the Courthouse are about to be approved by a Planning Board that cannot seem to say "no." The Community is up in arms. Approving this permit not only flagrantly contradicts your clear, unanimous Policy Order: it goes against the vast majority of residents — many of them your constituents — who have spoken so strongly and thoughtfully against it and are imploring you to exercise leadership. Approving this permit perpetuates an atrocious fiasco that we all agree was a mistake that never should have been built. It does not remotely begin to rectify the incalculable costs and detriments suffered by East Cambridge for nearly 50 years as result of this failure. It tramples on the intent of the aspirational 1813 founding gift. It has prompted MEPA violations. It would violate numerous of our zoning ordinances. It would make parking, traffic, congestion and so many other things much worse. And ultimately, if you fail to act, your inaction risks leaving the City legally liable in an egregious way.

Some Councilors have said there will be a lawsuit either way, as if it's six of one, half a dozen of the other.

It is not.

When a Planning Board denies a permit, a developer may appeal, but developers almost always lose such cases: courts grant great discretion to Planning Boards on enforcement of zoning. That's routine.

But in this case, if the Planning Board grants the permits, these likely will be judged unlawful. The resulting legal case is not routine at all.

As a warning, here is a precedent for you.

In a different city, three big skyscrapers were recently finished. They are gleaming modern glass towers, 27, 32 and 37 stories high. They cost hundreds of millions of dollars to build. Every apartment in them has already been paid for, perhaps a thousand units, including multimillion dollar penthouses with breathtaking views of the historic city below. They are ready for a grand champagne opening. Ready for occupancy.

But: *they will never open.*

The city is Istanbul. And just two weeks ago, the highest court in Turkey issued the final ruling: *these huge towers must be pulled down.*

The reason? Those skyscrapers are grossly inappropriate in the context of the historic city — they do not fit the master plan, if you will. Istanbul is a World Heritage Site with a centuries-old skyline shaped by the Blue Mosque, the Hagia Sofia, the Topkapi Palace. Developers, Investors, Apartment-buyers are hopping mad. Legal damage will be stratospheric — this is likely to cost hundreds of millions of dollars. And who's on the hook for the damages? The Istanbul municipal authorities — the city officials who blithely issued the illegal permits for these buildings.

Cambridge isn't Istanbul, but we are about to make the same sort of permitting mistake. Our well-oiled permit-granting machine is running amok in much the same way. Much like Istanbul, our big-permit-granting process essentially never says: **NO**. The last 49 big special permits were granted. None were denied. Forget about nuances, like whether or not some were withdrawals, or others were approved with conditions. The stark fact is, our permit process has not said "**NO**" in longer than anyone can recall. Like Istanbul, our permit process does not really heed a master plan or larger context for appropriate urban design. Like Istanbul, big developers eagerly take advantage of that. Indeed, Developer's lawyers *explicitly instruct* our Planning Board that they are legally **required** to grant permits: not only is this not true, it is preposterous. And, like Istanbul, the pattern of narrowly approving big permits willy-nilly in general disregard of a larger plan could plunge our City into a serious legal quagmire — *unless you act*.

If the Sullivan Courthouse permits are approved, or approved with conditions, this matter will go to court, and our City may ultimately be forced to pay a steep price for erroneously granting big permits.

We are earnestly trying to warn you: our City is in a risky position here. You have the two leading land use attorneys in Boston — Mark Bobrowski (representing the community) and Martin Healy (representing the Developer) — with diametrically opposite views. One of them is wrong, and it is not likely to be us. We feel that Ms. Glowa has erred in her opinion, but regardless, you have not taken the time to hear from Attorney Bobrowski. Shouldn't you at least call him, and listen, and make up your own minds? And isn't it obvious that given such opposite opinions, it is imprudent for the City to choose sides — particularly when the community is outraged?

It is not only hundreds of community members who are begging for your leadership on this and related matters of planning. It seems the Planning Board is seeking your help, too. We find it extraordinary that Chairman Hugh Russell has publicly said, repeatedly, that the Sullivan Courthouse is the most complicated and difficult case they've ever been confronted with. The Board is clearly struggling. Why? The struggle is that it's hard to say "yes" to the proposed renovation of the Courthouse. It's such a stupid idea in so many ways. What is being proposed is technically wrong, legally wrong, morally wrong, grossly inappropriate from a planning perspective, protested by the citizenry — and could be hugely costly for the city. Regarding the legal pickle, Mr. Russell himself has publicly said that he fails to see how the Durkin case (which is core to the City Solicitor's argument) matters here. And yet, other members of the Planning Board have evinced that they feel they must follow the City Solicitor's opinion without question, regardless of whether or not it they believe it to be correct.

Before you all debate Mr. Carlone's amendment yet again, I urge you to listen to what hundreds and hundreds of community members have been raging about. I urge every one of you to ask yourself: Do you want to approve this permit, perpetuate the fiasco of the Courthouse, and possibly let the City wind up on the losing end of a costly, corrosive, embarrassing legal battle? Yes, or no?

As Americans, things like the Sullivan Building should offend us. When our own government fails us on such a scale, costing taxpayers hundreds of millions of dollars in direct and indirect damages, all of us must act to fix what is wrong. When the government builds offensively bad mistakes, all of those lousy mistakes begin add up. They add up to places not worth defending. They come to symbolize institutions not worth caring about.

But if we can **fix** this mess, we will be righting a terrible government wrong. And we **can** do this. Many members of our City have been fighting to right this wrong. Some of you are helping, and I hope more of you will. If we succeed, we will give hope to people across the country who, for years, had given up trying to fix the government messes in their own back yard. Our democracy depends on all of us acting to build better futures. And with the Courthouse, we have a real chance to do that. As Seth Teller put it, this isn't just a once-in-a-lifetime opportunity: it is a **once in forever opportunity**.

The prudent course is clear. Do everything you can to help the Planning Board **deny** this permit. It is the prudent way to keep the City from veering into a costly, losing, legal mess. Seek out the opposing attorney's views and weigh them yourself. Reiterate Policy Order O-13 with a stronger order recognizing that the revised proposal failed to meet the terms of O-13. Recognize that the wise course in this case is to simply deny this proposal on the grounds that it appears to be ineligible for a special permit. Pass the Carlone Arrendment. Consider other steps to reform our permitting process and strengthen the master planning effort. Write letters as individuals. Steer our City away from a far worse mess.

Folks: you cannot allow the status quo to continue in this case. Inaction is not an option. It's hero time.

Please: do something.

Michael Hawley