

PLUMBERS & GASFITTERS LOCAL 12 BOSTON



United Association of Journeymen and Apprentices of the Plumbing and
Pipe Fitting Industry of the United States and Canada
Affiliated with the A. F. of L. and C. I. O.



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October 19, 2009

Transmission by Fax: 617-796-1254

City of Newton
City Hall
Ouida Young
Associate City Solicitor
1000 Commonwealth Ave.
Newton Centre, MA 024459

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CITY CLERK
NEWTON, MA. 02159

To Whom It May Concern:

We are contacting you in regards to the public records we had requested and subsequently appealed to the Supervisor of Records for failing to respond. On September 16, 2009, Mr. Alan Cote, the Supervisor of Records in the Secretary of State's Office, issued a 10 day order to you and the City of Newton to provide those documents outlined in our request dated February 13, 2009, which you claimed were not public records. On September 28, 2009, you sent correspondence to Mr. Cote asking for reconsideration of his decision. On September 30, 2009, Mr. Cote advised you and the City of Newton that their office conducted a thorough review and declined to reverse the findings, and furthermore, reaffirmed the original decision dated September 16. Finally, on October 1 2009, we received a letter from you based on our phone call inquiring about the records in question and when they will be made available. Your response dated October 1, 2009, was very disturbing, and according to the testimony given in reference to the Newton High School project at the State Plumbing Board meeting on October 7, we find the position taken by the City Solicitor's Office unprofessional and begs the question as to what your office may be concealing. Our office cannot believe that this is the position of the City of Newton, but you are quoted as saying, **"Please be advised that the City of Newton respectfully disagrees with the Supervisor's decision"**.

This letter is being sent to the Alderman of the City of Newton to establish a chronology of events that have taken place on the Newton High School project to create a better understanding of certain events on this project.

1. On Thursday June 12, 2008, trade contractor bids were submitted for the plumbing trade. The only plumbing trade contractor who did not provide an update statement with their bid was Sagamore Plumbing. When questioned at the bid opening by Mr. Harry Brett, Business Agent of Plumbers Local 12, he was informed that this was not necessary based on a current legal opinion. Also, the bid by Sagamore was the lowest bid received and was approximately \$500,000 below the second bidder and the amount budgeted for the plumbing section of the project by the construction manager.

KEVIN L. COTTER
BUSINESS MANAGER
SECRETARY-TREASURER

HARRY J. BRETT
BUSINESS AGENT

GEORGE B. DONAHUE
BUSINESS AGENT

TIMOTHY G. FANDEL
BUSINESS AGENT

2. On Friday June 13, 2008, there was a meeting with certain project people whom we believe were representatives from the architects, the construction manager, and Mr. Juusola from Turner Construction. After the meeting a call was placed to Mr. Harold of Sagamore Plumbing to instruct him to get the update statement to them immediately. This fact is corroborated with a copy of an email received in one of our public records requests.
3. Soon after this took place a bid protest was filed with the Attorney General's Office contesting the bid of Sagamore Plumbing.
4. On or about June 19, 2008, Dimeo forwarded to the City of Newton correspondence to allow a trade contract to be executed with Sagamore Plumbing. The City Solicitor approved this based on their opinion that the protest cannot and would not succeed.
5. The contract was executed with Sagamore Plumbing on or about June 23, 2008.
6. The plumbing permits were issued on or about July 11, 2008. NOTE: There was no application or permit issued for the flushing water system.
7. On August 18, 2008, the bid protest decision was issued which allowed the protest of the bid from Sagamore Plumbing, contrary to the legal opinion of the City Solicitor.
8. In September of 2008, a letter was forwarded to Mayor Cohen from City Solicitor Daniel Funk instructing the City to enter into a settlement agreement with the second bidder, Commonwealth Plumbing, to prevent any legal actions to force the contract with Sagamore rescinded. The settlement was for \$100,000.
9. Based on documents received by this office, project meeting minutes, we have uncovered in the schedule of work that the trench to be excavated for the plumbing to and from the 40,000 gallon tank, the installation of the 40,000 gallon tank, and the plumbing pipe to and from the 40,000 tank, were to be installed and completed around October of 2008. NOTE: This is the underground portion of the Flushing Water System.
10. In December of 2008, a test was performed by Sagamore Plumbing on the outgoing pipe from the 40,000 tank to the building and submitted to the Construction and Project Managers.
11. On January 14, 2009, an application was filed with the State Board of Plumbers and Gasfitters for approval of the reuse water system or dedicated system, known as the Flushing Water System. The application was filed by Mr. Seth Johnson, a mechanical engineer from Vanderweil, and he listed Sagamore Plumbing on the application to install this system. The application, for the entire installation, was approved by Mr. Peluso of the State Plumbing Board and he specifically stated: "pipe size for this system to be in compliance with 248CMR and approved by local plumbing inspector, **system to be installed with attached requirements**".
12. On February 13, 2009, our office requested certain public documents relating to this system because it was our belief that a conflict was starting to arise as to who installed the system.
13. On March 4, 2009, we appealed the position of the City Solicitor in reference to certain documents requested. It was the "City's" position that certain records were not in her position and therefore cannot be disclosed, even though they are specifically project related.

14. On September 16, 2009, the Supervisor of Records issued a decision that agreed with our argument for the disclosure of these particular project records.

15. Sometime in September of 2009 our office received copies of other public documents which included the inspection reports and logs from the plumbing inspectors. In the logs, on July 1, the inspector made an entry that indicated he was meeting with Mr. Frank Allard from Dimeo who disclosed the following, "the storm water piping of the Flushing Water System was installed by laborers and not plumbers and the piping used was PVC which is not legal material for this application". It was noted that the inspector called Mr. Joseph Peluso about this discovery and Mr. Peluso reaffirmed that this is the work of the plumber and would have to be replaced by a plumber and a chance for a variance is very slim. The plumbing inspector contacted Chip Cronin, foreman for Sagamore Plumbing and advised him on the matter.

16. On September 30, 2009, after receiving a letter from Ouida Young for reconsideration of the decision on the 16th, the Supervisor of Records reaffirmed the original ruling.

17. On October 1, 2009, we received a letter from Ouida Young, Associate City Solicitor, and she stated that the City of Newton respectfully disagrees with the decision and will not obtain the records as ordered for disclosure.

18. On October 7, 2009, a meeting was held by the State Board of Plumbers and Gasfitters and on the agenda, item 3, was an application for a variance from Mr. Nicholas Parnell, Building Commissioner, for the Newton North High School Project..

These events and their time line are critical to the questions that are mounting in reference to the high school project. At the meeting with the Plumbing Board, the architect in his presentation and testimony disclosed, and affirmed, that the laborers, unlicensed workers, installed the 1300 feet of underground plumbing that is a critical part of the flushing water system. The architect also affirmed the fact that this large scope of work was included in the plumbing bid package. They admitted that this was a mistake and was the work of the plumbers. During the hearing there was much discussion in reference to the application for a variance for illegal work already installed. The City of Newton was asked to address the Board about any hardships, an opportunity to plead their case, and no one from the City responded to this offer. In the end, the potential for a variance was left open based on strict testing requirement to assure the safety of the illegal system installed.

Other questions are now being asked in reference to the information gathered by this office and other State agencies Did the mechanical engineer have knowledge of the system being installed illegally? Did the mechanical engineer file an application fraudulently knowing that the work underground was already completed, misleading the State Board of Plumbers? Was the plumbing contractor who submitted the lowest bid with this scope of work planning to perform this work, or was there a deal made to have lower paid workers install the plumbing? And if so, who would benefit from this, the CM, the Project Manager, the plumbing contractor? Based on the events that have taken place how can the City Solicitor take a position that does not involve absolute transparency. As an officer of the Court, and the legal representative of the City of Newton, who truly is being represented and who is being shielded, the tax paying citizens of the City of Newton, or the contractors? When there is an order from the Commonwealth for full disclosure of public records wouldn't the proper approach be to insure openness and transparency and instruct the contractors that they must comply. The estimate for the removal and replacement of this illegal system is \$250,000 according to the architects at the Plumbing Board meeting. Taking into account that there was a cost to install this illegal system, who pays, the tax payers?

The Associate City Solicitor, Ouida Young, appears to be in conflict and continues to be inconsistent with the responsibilities of a City Solicitor. Wouldn't the Solicitor's Office insure that they are serving the greater good and needs of the citizens and tax payers of the City of Newton? Ouida Young insisted that her legal opinion in the original bid protest was incontrovertible and they continued at their own peril, and she was incorrect. She also insisted that her legal opinion in reference to certain public records was also indisputable, and again she is incorrect. Furthermore, isn't it arrogant to state that the City's position respectfully disagrees with an administrative order and disrespects the authority of the Secretary of State's Office? Does the City truly disagree with the order, or does the city demand absolute transparency? Our office demands that Ouida Young, Associate Solicitor, and Mr. Daniel Funk, the City Solicitor, adhere to the ruling and order from the Supervisor of Records to insure openness and fairness. With the events that have taken place, being factual and supported by public documents and the testimony at the public meeting with the Plumbing Board, one can only assume that the continuous refusal to adhere to such an order lends itself to the question of a conspiracy, and if so, at who's expense, the tax payers? Please direct the City Solicitor's Office to disclose all the records that have been requested and comply with any and all orders from the Supervisor of Records in the Office of the State Secretary.

Sincerely,



Kevin L. Cotter
Business Manager

Cc: Scott F. Lennon, Ward 1 Alderman
Stephen M. Linsky, Ward 2 Alderman
Anthony Salvucci, Ward 3 Alderman
Jay Harney, Ward 4, Alderman
William Brandel, Ward 5 Alderman
George E. Mansfield, Ward 6 Alderman
R. Lisle Baker, Ward 7 Alderman
Cheryl Lappin, Ward 8 Alderman
Allan Ciccone, Jr., Ward 1 Alderman at Large
Carlteen P. Merrill, Ward 1 Alderman at Large
Susan Albright, Ward 2 Alderman at Large
Marcia T. Johnson, Ward 2 Alderman at Large
Ted Hess-Mahan, Ward 3 Alderman at Large
Greer Tan Swiston, Ward 3 Alderman at Large
Leonard J. Gentile, Ward 4 Alderman at Large
Amy Mah Angiolo, Ward 4 Alderman at Large
Paul Edward Colette, Ward 5 Alderman at Large
Brian E. Yates, Ward 5 Alderman at Large
Victoria Danberg, Ward 6 Alderman at Large
Kenneth R.L. Parker, Ward 6 Alderman at Large
Sydra Schnipper, Ward 7 Alderman at Large
Verne Vance, Ward 7 Alderman at Large
Mitchell Fischman, Ward 8 Alderman at Large
John D. Freedman, Ward 8 Alderman at Large