

LAW DEPARTMENT



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October 27, 2009

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CITY CLERK
NEWTON, MA. 02159

Kevin L. Cotter
Business Manager
Plumbers & Gasfitters
Local 12 Boston
1240 Massachusetts Avenue
Boston, Massachusetts 02125

Dear Mr Cotter:

I am in receipt of your letter to Ouida Young which was copied to the Newton Board of Aldermen, dated October 19, 2009. While I have no intention of responding to your myriad allegations and accusations, suffice it to say that your characterization of the City's role in the various proceedings you describe is a far cry from reality.

The City of Newton and its representatives have played by the rules throughout all of the circumstances that you describe. In both the bid protest and public records disputes, the City has interpreted the law differently from you and the state agencies involved. We have the right to disagree with these state agencies as well as the right to not adhere to the findings made by them. The decision of the Attorney General's Office in the bid protest and the decision of the Supervisor of Public Records in the public records dispute are not final and binding. These agencies are not the final arbiters of these issues.

We have great respect for these agencies and the decisions that they reach. However, in both the bid protest and the public records dispute, we disagreed with them based purely upon our understanding of the applicable law. These disagreements are matters of principle that make a difference to the City and have ramifications that can include additional costs and application to future projects.

Although the bid protest was resolved by virtue of a financial settlement, we remain resolute in our position on the legal issues that were raised and we firmly believe that we would

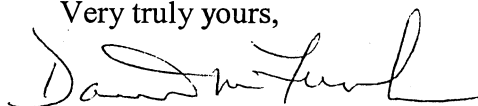
have won that case had it gone to court. Similarly, in the ongoing public records dispute, we believe that our position is legally supportable and a better read of the public records law than that which you and the Supervisor of Public Records have taken. Whether this matter goes to a higher authority remains to be seen; however, our legal position is based purely upon our read of the law. Any suggestion that the City is seeking to hide records is absolutely baseless.

As for the matters before the State Plumbing Board, as you know, those are in flux and are not yet resolved. Moreover, you are not a party to that proceeding. Nothing illegal has occurred. We will await the Plumbing Board's determination on the variance request and will take appropriate action thereafter. In addition, the City did plead its case through our contractor and his expert.

It is regrettable that you have decided to bring the discourse down to an accusatory and inflammatory level with words and phrases like "conspiracy", "unprofessional", "fraudulently", "illegal", and "in conflict". While I appreciate your frustration over not receiving **all** of the voluminous records you have requested that is not an excuse for your reprehensible and offensive tone and substance. You have every right to disagree with the City; it is unfortunate that you have chosen to disagree in such a disrespectful manner.

To the extent that we will be encountering each other on any of these ongoing issues, I suggest that the discourse remain civil and respectful. It serves no conceivable purpose to make wild accusations against the City and its officials simply because you disagree with the positions the City has taken in matters that we both may have concerns about. I trust you will receive these comments in the spirit in which they are given.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel M. Funk", written in a cursive style.

Daniel M. Funk
City Solicitor

cc: Ouida C. M. Young, Associate City Solicitor
Mayor David B. Cohen
Newton Board of Aldermen