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Date: Thu, 21 Jul 2022 17:38:50 -0400

Subject: Town Counsel Complaint

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Please see the attached letter concerning Arlington Town Counsel Doug Heim.

Thank you.

Chris Loreti

p.s. Kelly Lynema, since this letter is relevant to the 18-20 Belknap St. hearing, could you kindly have it posted as correspondence received for the July 25 hearing, and

Christian Klein, could you kindly forward this letter to your colleagues on the ZBA, whose email addresses don't appear on the town website. Thank you.

July 21, 2022

Mr. Sandy Pooler,  
Arlington Town Manager  
730 Mass. Ave.  
Arlington, MA 02476

Dear Mr. Pooler:

Congratulations on your appointment as Arlington's Town Manager.

I was especially pleased to see that an attorney was appointed to the position given my interest in zoning issues and my concern about the lack of proper enforcement of the town's Zoning Bylaw.

It is for that reason I am writing to you. I am filing a formal complaint against Arlington Town Counsel Douglas Heim for his memo of August 13, 2020 to the Arlington Redevelopment Board.

In this memo Town Counsel willfully misrepresents both the state Zoning Act and the town's Zoning Bylaw to argue that the ARB can waive requirements of the Zoning Bylaw beyond what the bylaw (and state law) explicitly authorizes, without first requiring applicants to obtain a variance from the Zoning Board of Appeals<sup>1</sup>.

This insupportable interpretation of the law was first advanced by a local attorney who frequently appears on behalf of developers before the ARB at hearings on July 6, 2020<sup>2</sup> and July 20, 2020<sup>3</sup>. Town Counsel incorporated these bogus arguments in to his August 13 memo along with numerous other misrepresentations of fact and law to advance the claim that "...EDR pursuant to c. 40A sec. 9 vests broad discretion to provide modifications, or exceptions to dimensional, density and special regulations..." to the ARB<sup>4</sup>.

As a former member of the ARB, and the Chair at the time the special permit was granted for the Brigham's Redevelopment, I take particular exception to Town Counsel's false account of that development's permitting. Contrary to Town Counsel's suggestion that the ARB allowed an exception to the landscaped and usable open space requirements, the ARB imposed conditions on the development to allow public access through and on part of the site. These conditions were to satisfy EDR Standard 3—Open Space. They were not used to reduce the dimensional requirements for on-site landscaped and usable open space.

It should also be noted that this development did have dimensional violations of the Zoning Bylaw. That is why it was referred to the ZBA for variances before coming before the ARB for an EDR special permit. If Town Counsel's flawed interpretation of the bylaw had been observed at that time, there would have been no need for it to obtain these variances.

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<sup>1</sup> This has the effect of giving the ARB, as the town's Planning Board, more authority than the law allows, while denying the Zoning Board of Appeals its sole authority to grant variances.

<sup>2</sup> See: <https://youtu.be/ORidWpQg3lw?t=9964>

<sup>3</sup> See: <https://youtu.be/yXFX2RkwhRM?t=182>

<sup>4</sup> In fact, the Zoning Bylaw extends considerable discretion to the ARB in how it applies the EDR standards (special regulations) of Section 3.4.4. In no way does the discretion granted by Section 3.4 extend to other parts of the Zoning Bylaw.

I want to emphasize that various town officials including members of the Select Board, Redevelopment Board, Zoning Board of Appeals, and Town Counsel himself have been made aware of numerous flaws in his August 13, 2020 memo by myself and others. Yet Town Counsel has done nothing to address these flaws, and the memo remains posted on the ARB website<sup>5</sup>. Without objection from Town Counsel, attorneys for developers use it to rationalize the zoning violations of projects that come before the ARB. For a recent hearing, it was referenced at least once in an 11<sup>th</sup> hour filing by the attorney representing the applicant and included in its entirety at least twice in materials submitted to the ARB<sup>6</sup>.

The refusal of Town Counsel to withdraw or correct his August 13, 2020 memo raises serious questions about his professional conduct. In addition to his politicized interpretation of the law to serve the interests of selected town officials<sup>7</sup> and the developers they support, the memo also raises the question of just who Town Counsel represents—private developers coming before the ARB or the Town and the bylaws passed by Town Meeting.

Since you, as Town Manager, are the appointing authority for Town Counsel, I am requesting that you exercise your authority under Section 16 of the Town Manager Act to investigate his conduct in writing the August 13, 2020 memo, his refusal to correct it, and his acquiescence in allowing it to be used by developers to violate Arlington's Zoning Bylaw. I also ask that you have the memo immediately removed from the ARB website, and inform anyone who requests a copy of it that it is under review.

I realize that questions of professional conduct by attorneys in Massachusetts may best be raised with the Board of Bar Overseers, and I would be happy to do so if you prefer. I believe this matter should be dealt with and corrected within the town, however. I look forward to learning how you intend to do so, for if no action is taken internally by the town on this matter, I am sure it will be just a matter of time before action is taken elsewhere.

Thank you for considering this request. If you have any questions about it or need further clarifications, I can be reached at the address below or by telephone at 781-641-2578.

Sincerely,



Christopher Loreti,  
Former Member and Chair of the Arlington Redevelopment Board  
56 Adams St.  
Arlington, MA 02474

cc: Arlington Redevelopment Board  
Arlington Select Board  
Arlington Zoning Board of Appeals  
Douglas Heim, Arlington Town Counsel

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<sup>5</sup> See: <https://www.arlingtonma.gov/home/showpublisheddocument/52673/637340294495730000>

<sup>6</sup> See: <https://arlington.novusagenda.com/agendapublic/AttachmentViewer.ashx?AttachmentID=15941&ItemID=14189>  
<https://arlington.novusagenda.com/agendapublic/AttachmentViewer.ashx?AttachmentID=15994&ItemID=14261>  
<https://arlington.novusagenda.com/agendapublic/AttachmentViewer.ashx?AttachmentID=15995&ItemID=14261>

<sup>7</sup> In this regard, his conduct is much like that of some of our former president's attorneys.