

Correspondence received by the Concord Select Board

Week Ending – September 9, 2024

1. Miguele Echavarri 255 Commonwealth Ave
2. Tanya Gailus 62 Prescott Road

From: Miguele Echavarri <miguele@intelimapinc.com>

Sent: Monday, September 9, 2024 11:51:44 AM

To: Kerry Lafleur <klafleur@concordma.gov>

Cc: Gail Dowd <gdowd@concordma.gov>; Anthony Ansaldi <aansaldi@concordma.gov>; finance mail <finance@concordma.gov>; Mark Howell <markhowell@concordma.gov>; Cameron McKennitt <cmckennitt@concordma.gov>; Wendy Rovelli <wrovelli@concordma.gov>; Mary Hartman <mhartman@concordma.gov>; Terri Ackerman <tackerman@concordma.gov>; 'Kath, Ryan (NBCUniversal)' <Ryan.Kath@nbcuni.com>; 'Polk, Justin (AGO)' <Justin.Polk@mass.gov>; 'Anderson, Deborah (AGO)' <deborah.anderson@mass.gov>; 'Leelyn, Shannan (AGO)' <Shannan.Leelyn@mass.gov>

Subject: Are performance bonds required on Town projects? Did the Town misrepresent itself to the AG?

You don't often get email from miguele@intelimapinc.com. Learn why this is important

Dear Kerry,

I'm writing this email because I'm concerned the Town isn't taking appropriate steps to protect public investments on capital projects; more specifically, not requiring performance bonds unless mandated by Mass Law (as asserted by your office earlier this year). Due to the large number of capital projects on the horizon, I've included members of the Select Board and Finance Committee on this email. As with previous emails, I'm keeping a larger group of residents and taxpayers informed on this matter (though they're not directly copied).

Earlier this year, your office claimed that Cole wasn't required to obtain a performance bond; that any references to a bond within its contract was a mistake. This seemed like a poor business practice and prompted the following question from me, "Does that mean that, unless required by law, your office doesn't require performance bonds in town construction contracts?"

- Your office answered that, "The Town follows the requirements set forth in Massachusetts General Law. Further, it does not, nor has not, imposed more stringent requirements for projects bid under G.L. 30, s. 39M or G.L. 149." In other words, unless required by law, the Town doesn't require contractors to obtain performance bonds. (refer to attached for email)

At the time, I didn't take this statement seriously because (frankly) I thought you must've misspoken. Claiming the town doesn't require contractors to obtain performance bonds unless required by law — is like me foregoing homeowners' insurance because I own my house. We don't take these actions because they're legally required, we take them because they're fiscally prudent and necessary to protect our investments.

However, I'm now taking these statements seriously and so should town leaders and FinCom. Last week I corresponded with the Attorney General's office and they reiterated Town claims that performance bonds weren't required by Cole, that references to those bonds within the Gerow Park contract, IFB and bid forms were an oversight and inadvertently included. When I researched further, I discovered that town counsel also had made these claims directly to the AG's office and it appears they have accepted it as fact.

Because of this recent development with the AG's office, and because of upcoming capital projects and a need to avoid the fate of Gerow Park, I feel it's reasonable for the public to ask (and expect answers) to the below questions.

Question-1: Is it Town practice to not require performance bonds on projects unless they're required by Mass Law (as indicated by your office).

Question-2: If your office misspoke and performance bonds are required on town projects – why was Cole exempted from obtaining such a bond?

- Please note – I've reviewed other Town contracts and they required performance bonds, even the contract to mow the cemetery required a bond. Also, White's Pond and Rideout (projects similar to Gerow) required performance bonds. Why was the Gerow Park contract treated differently?

Question-3: If your office misspoke and performance bonds are required on town projects – did Town officials and town counsel misrepresent themselves to the Attorney General's office when [a] they informed the AG that a performance bond wasn't required by Cole when it actually was and [b] when they informed the AG that contractual and IFB language, specifically requiring such a bond, was "inadvertently" added?

Question-4: If your office misspoke and performance bonds are required on town projects – can you tell me why I (a member of the public, who has continually paid taxes for the last 32 years) was told otherwise?

Sincerely,

Miguel Echavarri

255 Commonwealth Ave

Sent: Monday, September 9, 2024 at 09:49:50 AM EDT

Subject: Membership of CCC related, from an MCC webinar

Dear Select Board members,

I attended an MCC webinar last week on Local Cultural Council funds. I believe their video should be available soon.

At the end, during Q and A, the presenters said that it was OK for artists to be members of the LCC and be able to apply for funding at the same time, provided they follow disclosure and recusal practices.

A member of our CCC who is experienced in town governance was present, and they expressed concern about conflict of interest issues. I followed up with these concerns. The response was that the MCC had considered all these all pros and cons, and overall they found it more participatory and productive for the community to allow artists to serve, even if they would also apply for grants.

This was interesting, and I wanted to inform you. I do not know how in our new CCC this policy would apply to District grant fundings - as opposed to LCC fundings.

I know conflict of interest has been a non-addressed issue in some other committees or subcommittees.

I look forward to the Ethics informational event you organized for September 25th. Thank you for that.

Tanya B. Gailus

62 Prescott Road

p.s. The new Charge for the CCC looks very helpful. I am glad the CCC had excellent input on that. I was also lucky to express my thoughts to them for the first draft. Thank you for your efforts.

I will forward this note to the CCC Chair also.