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March 15, 2017

Daniel Kolenda, Chairman
Southborough Board of Selectmen
Town House
17 Common Street
Southborough, MA 01772-1662

HAND DELIVERED TO SOUTHBOROUGH TOWN HALL

RE: Leo F. Bartolini, Jr., Appointee to and Member of the Zoning Board of Appeals

- 1. Removal Proceedings from Zoning Board of Appeals Initiated by Residents Group**
- 2. State Ethics Commission Complaints by Same Residents Group**

Dear Chairman Kolenda and Board Members:

As you know I represented Leo F. Bartolini, Jr. before your Board on various occasions in 2016 and 2017, and I also represented him relative to two complaints that were filed with the State Ethics Commission in December, 2016 and January, 2017. Mr. Bartolini incurred attorney's fees in the sum of twelve thousand one hundred twenty-four dollars and 50 cents (\$12,124.50). My non-itemized bill for services is enclosed herewith. A full and complete itemized bill is available upon your request.

Mr. Bartolini, a dedicated public servant for many years, was clearly the target of a group of disgruntled, malicious and mean-spirited individuals with two separate agendas which were/are not necessarily exclusive of each other. Mr. Bartolini requests that the Board of Selectmen authorize reimbursement to him of the \$12,124.50 that he had to spend in defending his actions as a duly appointed town official on the Southborough Zoning Board of Appeals. We realize that this is an unusual – but not unprecedented – request, and we hope to convince you that the circumstances in this instance not only warrant such a payment, but they require it morally and equitably. Before commenting on why Leo Bartolini should be reimbursed, it will be helpful to review what got us to this point.

The first group of detractors is from the neighborhood where a major housing project had been proposed and was being reviewed by various Town Boards, especially the authorizing Zoning Board of Appeals. Several people were displeased that the ZBA, under the stewardship of Chairman Bartolini, collectively made decisions relative to the Park Central Drive development project. Specifically, most of the people in the general vicinity of the Park Central project were/are opposed to any significant development of what has become identified as the

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Depietri property (reference to the titular head and owner of the development company, William Depietri). The second group of Bartolini detractors are people with grudges against Mr. Bartolini, often dating back many years, over his service to the Town of Southborough on the ZBA and other committees or boards.

These two groups had every right to voice their displeasure over, and concerns about, the Park Central project. What separates them from the vast majority of people who engage in reasonable discourse in our democratic system of government, was the lack of civility, the brazen disregard of facts and the vitriolic tone of their comments which were directed toward Mr. Bartolini. At times some of them acted like hooligans, and at one meeting the police had to remove a man for his disruptive behavior.

As you will recall, I first appeared before the Board of Selectmen at a Public Hearing on December 6, 2016. It was convened in response to a request by a Residents Group for the immediate removal of Leo F. Bartolini, from the Zoning Board of Appeals for reasons alleged in two separate Citizen Petitions (the first is dated July 9, 2016 and filed on July 21, 2016 and the second is dated September 1, 2016 and filed on September 29, 2016). When the Residents Group did not get the result they wanted from your Board after filing their first petition (even though Mr. Bartolini agreed to step down as Chairman), they rewrote their first set of grievances, added an allegation about an alleged chauvinist reference and masked the original complaints in slightly different language in an effort to appear to be raising new allegations against Mr. Bartolini. They succeeded in getting your Board to schedule a public hearing.

The Residents Group was represented by Attorney Gary S. Brackett of the Worcester firm of Brackett & Lucas. Attorney Brackett also filed on behalf of the Residents Group two Complaints with the State Ethics Commission for alleged violations by Mr. Bartolini of the Conflict of Interest Law (MGL c. 268A). Notwithstanding the confidential nature of most filings with the Ethics Commission and with apparent disregard for the likely damage to Mr. Bartolini's good name and standing in the community that he has served selflessly for dozens of years, and with no concern for the outcome of the investigation by the Ethics Commission, Attorney Brackett publicly disclosed and disseminated the Residents Group's toxic complaints alleging an unethical and illegal relationship between Mr. Bartolini and Mr. Depietri.

Attorney Brackett filed an initial complaint with the State Ethics Commission on behalf of all the people who had signed the Residents Petitions by letter dated December 15, 2016. At the December 6th Public Hearing, Attorney Brackett disseminated to the people in the hearing room, copies of Conflict of Interest Disclosures that Mr. Bartolini had filed in the past and Attorney Brackett suggested that they were improper, contradictory and in violation of the conflict statute.

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He told the Board that he was going to file his ethics complaint soon. On December 19, 2018, by a 2-1 vote the Board of Selectmen voted to not make a decision on the removal request pending the decision by the State Ethics Commission.

As they did with the two Petitions filed with the Board of Selectmen, the Residents Group, through Attorney Brackett, filed a second "Supplemental Complaint" with the Ethics Commission on or about February 22, 2017. It was a rehash of the first complaint with the inclusion of the Disclosures that Mr. Bartolini had previously filed as required by Chapter 268A. As he had done with his first ethics complaint, Attorney Brackett disseminated it far and wide in the Town of Southborough, in what again can only be interpreted as a malicious and intentional effort to publicly malign Mr. Bartolini.

The Board of Selectmen, with an election approaching and a change in members imminent, scheduled a meeting for April 3, 2017 to vote on the issue of whether Mr. Bartolini should be removed. The Board voted unanimously that he should not be removed. There were comments made and concerns raised by some Board members about some things allegedly done by Mr. Bartolini. Board members expressed their concern for the potential chilling effect and negative precedent that removal from office could have for people considering serving on a board or committee – or for those individuals on current boards and committees. The three voting members of the Board of Selectmen voted unanimously to NOT remove Leo Bartolini from the ZBA.

The logical question that your Board will no doubt consider in evaluating Mr. Bartolini's request for reimbursement of the legal fees is whether or not there is legal precedent for such a payment, and if not why should the Board of Selectmen authorize such a payment? I am not aware of such a precedent, but I am also not aware of any prohibition that would prevent the Board of Selectmen from making such an authorization. I am aware of a somewhat analogous situation involving the Southborough Planning Board who were ordered by a Worcester Superior Court Judge to pay Mr. Depietri legal fees for his attorney in the sum of \$4,645.50 for filing an unauthorized lawsuit against the Zoning Board of Appeals (See Southborough Planning Board v. Leo F. Bartolini, David Eagle, Paul Drapanos, as they are members of the Southborough Zoning Board of Appeals, and William Depietri – docket no. 1685CV001363B). That lawsuit involves a complaint filed against the ZBA by the Planning Board challenging the ZBA's grant of a Comprehensive Permit to Mr. Depietri. The case in chief was dismissed on a finding by the Court that the Planning Board had no standing to file the complaint against the ZBA and Mr. Depietri. The Order on William Depietri's Motion For Sanctions was entered on June 19, 2017 under the court's equitable jurisdiction authority.

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Mr. Bartolini is asking you, the Board of Selectmen, to exercise your equitable authority, in a manner similar to the action you took on behalf of the Planning Board members, to grant his request for attorney's fees. He is asking you to decide that the Petitions For Removal and the Ethics Complaints were filed in bad faith with ulterior motives in an effort to subvert the decisions of the ZBA in which he participated.

If the Board of Selectmen had voted to remove Mr. Bartolini for the alleged bad conduct and/or if the State Ethics Commission had determined that he had committed an ethical violation or violations, then he would not be making a request for reimbursement of his legal fees. That did not happen, and he was exonerated of any wrongdoing. As an appointed, nonpaid volunteer serving his community, he, or any other similarly situated board or committee member, should not be expected to incur legal fees without support from the town he or she serves.

Southborough, like any other community, should encourage competent people to volunteer to serve on various boards and committees. These people will be more likely to volunteer if they know that the Town of Southborough will support them if they are unfairly attacked or forced to retain legal counsel to defend themselves. Each situation should be judged on its particular facts. Fortunately, these situations occur infrequently, but when false and misleading allegations are made, your appointees and volunteers should be confident that you will support and assist them.

We look forward to your response.

Very truly yours,



Warren S. Heller

WSH:rlj
cc: Leo F. Bartolini, Jr. (in hand)
Town Counsel Aldo A. Cipriano (via email and/or regular mail)
Town Administrator Mark J. Purple (via email and/or regular mail)
encl: (1) as stated

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December 19, 2016

Leo Bartolini
62 Oak Hill Road
Southborough, MA 01772

A. RE: Selectmen's Removal Hearing – NON-ITEMIZED BILL FOR SERVICES

11-23-2016 Initial Phone Conference with Leo Bartolini – retained me on 11-28-16;
11-28-2016
to 12-6-2016 Multiple meetings with client; reviewed multiple documents, including Citizens Petitions, documents pertaining to the Park Central Project; interviews with potential witnesses; communications with Town Administrator and others prior to hearing; researched various aspects of the law pertaining to ZBA and hearing procedures; prepared presentation to the Board of Selectmen and appeared at the removal hearing on December 6, 2016 on behalf of client;

Total Hours: = 34.15 Hrs. @ \$250.00 per hour = **\$8,537.50**

12-1-2016 Received on Account: - 4,800.00

Balance Due: **\$3,737.50**

12-19-2016 Received on Account: -\$3,737.50

Balance Due: 0.00

TOTAL AMOUNT RECEIVED: \$8,537.00

February 14, 2018

B. RE: Post -12-6-2016 Removal Hearing proceedings and Ethics Commission investigation
NON-ITEMIZED SUPPLEMENTAL BILL FOR SERVICES

12-19-2016 Attended BOS meeting (arrived shortly after they started discussion) – BOS voted 2-1 to not vote on Leo's removal pending the Ethics Commission findings;

12-20-2016 Obtained copy of Atty. Brackett's 12-15-16 Complaint to the State Ethics Commission (SEC) and reviewed same;

- 2-22-2017 Office conference with client – reviewed the Supplemental Complaint and its attachments;
- 4-3-2017 Attended BOS meeting – Selectmen deliberated and voted unanimously to NOT remove Leo Bartolini from ZBA.
- 10-13-2017 to 10-18-17 Interaction with investigator from the State Ethics Commission; reviewed documents and provided response to concerns and allegations raised in the two (2) complaints filed by Atty. Brackett;
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- 11-22-17 Received and reviewed Confidential letter addressed to me from Monica Brookman, Chief of the Enforcement Division of the State Ethics Commission indicating they “are not conducting any further investigation into [Leo’s] actions at this time.”
- 11-27-2017 Office conference with Leo – prepared a letter addressed to Daniel Kolenda, Chairman of the BOS enclosing a copy of the SEC’s decision and advised him that Leo will no longer recuse himself when Mr. Depietri attends the ZBA meetings;

Miscellaneous: Many additional phone conferences with Leo, reviewed file, etc.

Total Hours: 14.35 Hrs. @ \$250.00 per hour = **\$3,587.50**

Balance Due: **\$3,587.50**

2-14-2018 Received on Account: **\$3,587.50**

Balance: **0.00**

TOTAL PAID

12-19-2016 Bill **\$8,537.00**

2-14-2018 Bill **+3,587.50**

Total: **\$12,124.50**