

Written by Bob Sprague Monday, 19 July 2010 17:26

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## Mass. Ave. vote, plan to change width targeted



### Town counsel rejects claims by attorney, expert

A lawyer retained by an East Arlington resident who opposes the redesign of Mass. Ave. from Pond Lane to Cambridge calls the August 2009 selectmen's vote advancing the proposal illegal. A consultant working for Eric Berger, a retired educational administrator, says Mass. Ave. is a "highway" whose width cannot be reduced.

Town Counsel Juliana Rice has rejected the arguments offered by attorney Michael J. Rossi of Cambridge and A. Theodore Mariolis, an attorney in Leominster who specializes in title issues and Bay State roadway history.

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**May 9:** [Go-slow Mass. Ave. group moves on legal, engineering fronts](#) | [Full text of letter, memo](#)

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Mass. Ave. plan at Capitol Square showing bike lanes.

In a sharp retort, Rice wrote July 14 that she and the state transportation agency rejects Rossi's view. She wrote that accepting his argument would mean that curb bumpouts and other traffic-calming measures are illegal.

In a July 1 letter, Rossi wrote that Berger, his client, believes the project plans are "seriously flawed" and unsupported by insufficient research. The proposal to eliminate travel lanes in each direction will hinder traffic flow and increase "cut-through" drivers.

Berger is a member of East Arlington Concerned Citizens Committee.

Further, Rossi wrote that Berger believes the selectmen exceeded their authority when they [voted in August 2009](#) to advance the plans then represented.

The full text of Rossi's July 1 letter lays out his basis for objecting, which focuses on the definition of a "highway" under Chapter 82 of the Mass. General Laws.

"A critical issue," he wrote is whether the one-mile stretch is a highway as the statute defines it, "such that its width may not be diminished by act of the Arlington Selectmen."

The addition of bike lanes and bumpouts would result in a narrowing of the current thoroughfare. They violate MGL 82 S. 17, Rossi says.

To support his argument, Rossi included a June 18 memo from Mariolis, who is said to have reviewed source dating to Colonial times and concluded that Mass. Ave. is a highway because it was laid out by Middlesex County commissioners as a county highway.

### Town counsel responds

YourArlington asked Rice, the town counsel, whether she agreed with Rossi's assertion that the selectmen's approval violates state law and why as well as what bearing she believes the Mariolis memo has on this issue.

Her reaction begins with this observation:

"The Massachusetts Department of Transportation has reviewed and rejected Mr. Rossi's argument, as do I. If one accepts his reading of the law, then curb bump-outs and other measures in use here in Arlington and throughout the Commonwealth to promote traffic calming and pedestrian safety are illegal."

She continues: "Even if the cited statute applies here and is enforceable in the manner Mr. Rossi supposes -- which I do not concede -- I do not agree that construction of the proposed roadway would be in violation of that statute."

"MassDOT is in communication with the Town's engineering firm to ensure conformance of the roadway design to MassDOT standards and I am sure that it will be in conformance."

"I am equally sure that, if called upon to review the validity of MassDOT's roadway standards, the courts will exercise the proper deference to MassDOT's interpretation of the law it is charged with enforcing and its technical expertise in the creation and implementation of roadway standards that best serve the needs of communities and travelers."

### Mariolis memo summarizes history

To trace the history of how the road that became Mass. Ave., attorney Mariolis provided a memo dated June 18.

It cites a 1635 map of Cambridge showing the road that became Mass. Ave. leading to what appears to the Alewife Brook (then called "Menotomy Brook"). The road is described as the "Highway to Menotomy." Historians say that in 1635 the place we now call Arlington was then terms Menotomy.

In the 19th century, Mariolis wrote, parts of Mass. Ave. were incorporated into the Middlesex Turnpike, managed by a corporation. In 1841, the turnpike corporation was dissolved. Its thoroughfares became county roads the next year.

"Regardless of the early history of Massachusetts," Mariolis concludes, "I am of the opinion that the more recent history of the road is controlling."

That is, the Mass. Ave., from Cambridge to Pleasant was "laid out in 1889" by the Middlesex County commissioners as a county highway having a width of 98 feet, as described in MGL 82.

Mariolis included his resume, which details more than 30 years' experience in his areas of expertise.

The engineering firm involved in the town project, [Faye, Spofford & Thorndike](#), plans to resubmit the 25-percent plans to Mass. Highway this month. A formal hearing is to be held in September. The aim is to advertise the project in December.

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*This story was published Monday, July 19.*

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#### Related links to Mass. Ave. project:

**April 9:** [More data sought for Mass. Ave. project plans](#)

**April 17:** [Mass. Ave. Corridor memo calls for 'extensive revisions'](#)

**Advocate**, [Aug. 6, 2009](#) | [YourArlington](#), [August meeting](#) | [Adam Auster's blog](#) | [E. Arlington Concerned Citizens \(Part 2\)](#) | [Livable Streets Coalition](#) | [Town project information](#)

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