

REPORT OF THE TOWN COUNSEL (F/Y 2014)

The two major themes presented in recent town counsel annual reports, the increasing attention to the prospect for potential land acquisitions and the decrease in matters winding up in litigation, continued this year.

In the former category, although it is still in the anticipatory stage as it has not yet closed, the prospect for acquiring 900 Worcester Street has received attention almost weekly, for one reason or another. The Town still waits on word from the Roman Catholic Archdiocese of Boston, owner of that site, that the vigilers' appeals of the Cardinal's decision to close that parish have been completely resolved. Upon receipt of word to that effect from the Archdiocese, the Town's Agreement allows it to initiate a due diligence exploration of the site. Assistance was given negotiating the due diligence plan. Future events will be determined after that exercise is completed.

Another major focus of land acquisition was 494 Washington Street, a privately owned property abutting the Town owned property at the former American Legion site. The possible acquisition of this site has been on the Town's radar screen for some period of time, and recently jumped into new prominence when the requested permit for the Tolles-Parsons Center as a Project of Significant Impact was denied. The Planning Board's concern, or at least one of its concerns, was the parking proposal for town-owned property across Washington Street, posing a possible pedestrian hazard. So a new plan was considered, including acquiring 494 Washington Street which abuts the site. Town Meeting approved that plan, and on June 3, 2014 the site was acquired by the Town. Title has been approved. A reapplication for the Project of Significant Impact permit is planned. As part of the negotiations the prior owner will continue to have possession of the property for nine months from closing.

The prospective acquisition of the most westerly portion of the Cochituate Aqueduct, starting from the Natick Town line and ending just south of where the Aqueduct crosses over the Worcester Turnpike (Route 9), has also been on the Town's screen for several months, and ongoing communication with the Division of Capital Asset Management and Maintenance, the state agency in control of the land, has been productive. The transaction has several parts, including the planned conveyance out of a 11,000 sq. ft. parcel to Bike Realty LLC, in consideration of its providing the entire purchase price for the larger site, all as negotiated by the Board of Selectmen. The transfer of the 3 Seaver Street parcels acquired as a part of the planning for the construction of the new High School will be transferred to permanent open space as a further component part of this acquisition. The transaction is likely to close soon.

In matters in litigation, a resident brought an action in Superior Court which contested the Town's planning for the rehabilitation of the Fuller Brook Park Reservation in general, and some decisions of the Wetlands Protection Committee in particular. After considerable attention by the Wetlands Protection Committee and others, on which assistance was provided, that matter was resolved and the project is now proceeding under the direction of the Fuller Brook Park Committee.

An action was brought in the Land Court by the new owner of 910 Washington Street, appealing a Planning Board decision not to approve the owner's plan to divide his property into two lots. The underlying issue in that case is to determine the legal status of the town's zoning map enacted in 2003, under a Warrant Article in which the Planning Board disclaimed an effort to accomplish any substantive change in zoning districts but rather simply to substitute a computer-generated plan for the prior plan which had been hand drawn. Nevertheless, the zoning district affecting this owner's property turned out to be placed differently in the new plan, thus raising the issue of the extent to which, if at all, the new zoning map should stand, with or without the change above noted. My successor is actively involved in the matter.

Towards the end of this fiscal year, Wellesley College announced plans to sell its considerable land holdings off of Weston Road, colloquially known as the North Forty. The Board of Selectmen, the Planning Board and others are actively considering what the impact might be were the site to be developed, and also the possibility of the Town acquiring all or a portion of this site. A Committee has been formed by the Selectmen to begin the Town's due diligence on the many issues to be dealt with, and successor Town Counsel will be a part of that steering group.

Other land use issues on which legal advice was given during the year included several encroachment matters, in which private property owners have either intentionally or inadvertently expanded the use of their property into abutting town land; the containment of the issues presented by the bankruptcy of the developer at 978 Worcester Street, including the Town's calling of the performance bond filed with the Town in connection with it; and an appeal of a decision of the Zoning Board of Appeals' granting a permit for new construction at 23 Thomas Road. Legal advice was given in connection with several town building projects, including the Municipal Light Plant Administration Building; the effort to restore the chimneys at the Hills Branch Library building; the projects for Middle School seating; and the Fire Station Number One floor. Contracts for the Construction Manager and the Architect for Fiske and Schofield School buildings were reviewed. The lingering issues in the MLP/DPW Garage Construction project were finally resolved.

Miscellaneous advice attended to during the year included, among many other issues, defining the legal parameters appropriate to reviewing request for expenditures of the Community Preservation Committee's "administrative funds"; responding to the question of whether an insurance deductible qualifies as a settlement under the Town's bylaws; whether using school trust funds to provide financial support for students embarking on missionary travel would be unconstitutional; and an opinion was rendered on the meaning of the Massachusetts rule that municipal funds may not be used to support the advocacy of a referendum to be decided by the voters. Advice was given in several licensing areas of town, including on the Board of Selectmen's effort to regulate marijuana dispensaries, and that Board's initiative to permit the sale of beer and wine in specialized food stores.

As before, requests continued to be responded to on the Conflict of Interest Law, the Uniform Procurement Law, the Open Meeting Law and the Public Records Law. Records and witness subpoenas were attended to. All sessions of the Annual and Special Town Meetings were

prepared for and attended, as were almost all sessions of the Board of Selectmen's weekly meetings. Meetings of other boards were attended when requested.

The Town continues to be ably represented specially by Morgan, Brown and Joy, the Town's Labor Counsel and other special counsel in education matters and regulatory matters involving the Municipal Light Plant.

More detailed reports are contained in the monthly reports of the Town Counsel, which remain available for public inspection.

I retired as Town Counsel at the close of this fiscal year, after serving in this position for thirty seven years. I express my deep appreciation and respect for all those in town government, elected, appointed, staff and volunteer, who, together, make this Town as special as it truly is. I also express my thanks to James A. Goodhue, Esq., my law firm partner, who has himself developed a close working relationship with many of the Town's administrators and has helped me considerably in the discernment of the legal issues confronting the Town, and in their resolution. The Board of Selectmen has appointed Miyares and Harrington to succeed me, to whom I extend my congratulations and very best wishes as Wellesley's newest Town Counsel.