

REPORT OF THE TOWN COUNSEL (F/Y 2008)

Continuing the trend noticed over the past few years, considerable attention was given during the year to land use issues in connection with both public and private developments. The Town-owned projects included still the Middle School, where a windup of the major renovations is still underway; the proposed new High School, in which assistance was given to the newly created School Building Committee; the Sprague Fields, where construction is now well underway, and the DPW/MLP garage construction project. The DEP's request for some monitoring at Morses Pond was reviewed.

The number of private projects is significant. The proposed mixed-use development at 27 Washington Street, which has received most of the required permits from applicable Town boards, is currently the subject of some four new lawsuits, all appeals of one sort or another of the Town's permitting decisions, and the project itself is currently undergoing Site Plan Review by the Board of Appeals. The proposed re-use of the Wellesley Inn site on Washington Street remains pending. The significant development approved in prior years at Linden Street nears completion, and concurrent with it, the Town has completed its acquisition of a strip of land along Linden Street at the intersection of Weston Road to facilitate traffic circulation and pedestrian safety. Other private projects, in one stage of maturing or another, have been reviewed, including participation in the Town's watchful eye on the St. James Church locus; the Wellesley Motor Inn re-development; the Plymouth Chrysler property's re-development; and the Taylor block.

Affordable housing projects that were reviewed in one form or another during the year included the Walnut Street Fire Station project, all details of which were successfully concluded and the Town's certification compliance issued; the proposed Affordable Housing Project at the intersection of Hillside Road and Washington Street was reviewed; the proposed mixed-use development at 139 Linden Street, approved by the Board of Selectmen as a LIP project, on which a Partnership Agreement has been executed, is proceeding; and a request by the developer of Fells Hollow to amend the terms of residency was reviewed.

In addition to proposing, permitting, monitoring and completing the several public and private land use projects described above, the Town completed its own acquisition of several pieces of real estate during the year. Three properties along Seaver Street were purchased with Town Meeting's approval, and added to the High School campus. In addition, three interior parcels presumed to be owned by the Town historically, but not susceptible of being confirmed, were re-acquired through eminent domain, as was one parcel at Schofield School having a similar history. The property commonly known as 11 Burnett Lane was gifted to the Town, and title confirmed. The property at 496 Washington Street, formerly owned by the American Legion, passed to the Town on the vote of the Legion's Trustees, and title has been confirmed as good in the Town. One of the land exchanges previously authorized by Town Meeting was completed, and the other is still pending.

The Town's planners and others proposed two new concepts in land use control, both of which were reviewed, and both of which were adopted by Town Meeting. Large house review and the Neighborhood Conservation District Bylaws are now on the Town's books. Their initial implementation is already ongoing. Matters in litigation included the enforcement action brought several years ago by a resident on Manor Avenue in the Land Court, which proceeding was successfully resolved by entry of final judgment in the Town's favor. This was affirmed at the Appeals Court level; the matter has been further appealed to the Supreme Judicial Court.

Advice was given on several enforcement matters, including the Zoning Enforcement Officer's effort to restrict the illegal use of a three-family dwelling.

Assistance was given during the year to most of the Town's departments. In the field of education, attention was given to several special education cases; out-of-district issues, and residency claims; and disciplinary issues. A teacher summonsed into a private family court matter was advised of her rights as a witness in that delicate situation. The management of the High School activities account was reviewed. On Health Department issues, advice was given on implementation of the work plan at the Linden Street development, and on a matter brought to enforce an Order of Condemnation on a private dwelling. The Celebrations Committee was assisted in defending a claim for compensation by a band which traveled to Wellesley in anticipation of the Town parade which, however, was cancelled due to inclement weather; that matter was tried to a successful conclusion. Assistance was given the Natural Resources Commission in several matters, and its effort as the Town's tree warden to monitor the removal of public shade trees without permission was supported. The Library Trustees were advised on its application to Town Meeting for approval of the lease arrangements entered into in order to provide some cash flow to "keep the branches open" pending the Trustees' major fund drive to the same purpose. The Retirement Board was assisted in continuing to manage the manner of accounting for an employee's contribution to buyback time for military service. A matter pending in the Division of Administrative Law Appeals on a Fire Department employee's claim that the law did not require him to appear for an examination by a medical panel as ordered by the Retirement Board was remitted to Labor Counsel who continues to prosecute that matter. As usual, several cases were managed for the Board of Assessors before the Appellate Tax Board and for the School Department before the Bureau of Special Education Appeals. Among other issues presented by the Department of Public Works, the proposal to engage Special Counsel was supported in the Water Division's resistance to its effort to condition the Town's re-registration statement.

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. Record and witness subpoenas were attended to. All sessions of the Annual Town Meeting and Special Town Meetings were prepared for and attended, as were all sessions of the Board of Selectmen's weekly meetings.

The Town continues to be ably represented specially by Morgan, Brown & Joy, the Town's Labor Counsel, and by the following special counsel: Goodwin Proctor, Special Counsel on the EPA's cleanup at Morses Pond; Peter J. Epstein, Esq., Special Counsel for Cable Television and Communication issues; and Robert J. Gad, Esq., Special Counsel on the pending Land Court action related to 27 Washington Street.

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

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