

## **REPORT OF THE TOWN COUNSEL (F/Y 2005)**

The pattern of considerably reduced amounts of litigation first seen last year was continued this. In the Appeals Court, two zoning cases were argued, one resulting in a favorable Judgment upholding the Decision of the Zoning Board of Appeals and the other in a remand to the Land Court. Also pending in the Land Court was an action brought to eliminate a paper street. Two property damage cases were managed during the year in the Superior Court; a personal injury case was brought, and a contractor's claim was filed which is still unresolved. In the District Court, a decision of the Chief of Police to deny a gun permit was appealed, resulting in a final Decision upholding the Chief. An appeal of a parking ticket issued many years ago was immediately dismissed. The only litigation in the Federal Court system were three bankruptcy matters, one of which was filed during the year. Several matters pending in the Appellate Tax Board were successfully resolved. There were no other administrative matters in litigation this year.

The intensity of land use issues continued unabated. Considerable attention was given during the year to several private developments in Town, including the proposed reuse of the former Diehl's site along Linden Street, which was reduced to a development agreement which was subsequently approved by Town Meeting along with the necessary rezoning. The long saga of the proposed development at 27 Washington Street became longer, notwithstanding the Board of Selectmen's effort to bring productive focus. The Town engaged with the developers of the Wellesley Inn property, especially focusing on the hope that at least the iconic exterior features will be reflected, if not literally saved, in the architectural plans for the condominiums being proposed here. Follow up issues were dealt with on Hastings Village, the transfer of the leasehold interest at Wellesley Gateway, and on the Abbott Street daycare project.

Major Town projects requiring attention included those at Bates School, the Sprague Fields, the Fiske pre-school building, the Sprague School building and the Middle School renovation. The possibility of acquiring the westerly portion of the Cochituate Aqueduct seemingly has faded from view because of the attendant costs.

As always, requests for legal advice on municipal issues were responded to, including on the Town's form of governance; on the form of ballot questions; on the issues raised by placing the Hills Library building on the National Historic Register; and on limitations on using proceeds from the sale of Town-owned real estate. A citizen's request to add to the seasonal display at the Town Hall was reviewed. The issues raised by the death of the former Executive Director were numerous, including those attendant to the Board of Selectmen's search for his successor. Environmental issues continue to require attention, including the successful closing out the Town's status as a potentially responsible party in a superfund site in New Hampshire. The successful completion of the remedial work by the EPA and DEP at Morses Pond was achieved, but the Town's status as a potentially responsible party for sharing in the costs of the cleanup has not changed.

The usual volume persisted on requests for opinions on the Conflict of Interest Law, the Uniform Procurement Law, the Open Meeting Law and the Public Records Law. Records subpoenas continue to be attended to. Several of the Town's enforcement officers were assisted in their duties. All sessions of the Annual Town Meeting and Special Town Meetings were prepared for and attended, except for two sessions due to illness, which were

covered by the undersign's law firm. The Board of Selectmen's weekly meetings were attended without exception.

The Town Continues to be ably represented specially by Morgan, Brown & Joy, the Town's labor counsel, and by the following special counsel: Robert K. Gad, Esq., special counsel on certain zoning and regulatory aspects of the proposed private development at 27 Washington Street; Goodwin Proctor, special counsel on the EPA cleanup at Morses Pond; and Peter J. Epstein, Esq., special counsel for Cable Television and Communication issues.

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