

## **REPORT OF THE TOWN COUNSEL (F/Y 2007)**

In matters in litigation, two Land Court actions were brought by private residents to extinguish paper streets in which the Town no longer has a legal interest; also in the Land Court, Mass Hort brought an action seeking to shift greater vehicular access to Elm Bank to the Dover side. In an effort to regulate properly a food service establishment providing take-out service only, the Town brought a Declaratory Judgment in Superior Court, seeking an Order that the establishment qualified as a common victualler, and thus was subject to the Town's regulations applicable to common victuallers generally; simultaneously the Board of Selectmen sought a by law change at Town Meeting to cover the issue. Town Meeting adopted the bylaw change, which mooted the Declaratory Judgment action and it was therefore dismissed. Also pending in Superior Court was a police officer's claim for eligibility for a Master's Degree incentive under the Quinn Bill. Zoning appeals were pending in both the Superior Court and the Appeals Court. In the District Court, Judgment entered favorable to the Chief of Police on a citizen's appeal of the Chief's denial of an application for a gun permit.

At the administrative level, the Town filed an appeal against the Contributory Retirement Appeal Board of the decision by the Public Employee's Retirement Administration Commission on the manner of accounting for an employee's contribution to buy back time for military service. Also pending in the Division of Administrative Law Appeals was 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 on the application by the Fire Chief of the employee's involuntary accidental disability retirement. 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.

The sea change of private and public development in Town has not ebbed. Assistance was given to the relevant Town officials in their review and monitoring of the Linden Square Development, the redevelopment of the Wellesley Inn, and the prospect of a multi-use development at 27 Washington Street, among others. The proposed project at 139 Linden Street, including an aspect in which the site owner seeks to partner with the Board of Selectmen for a c.40B development of affordable housing, remained pending. The owners at the Star Market site have initiated discussions on a likely redevelopment of that location for a newly configured supermarket.

Assistance was also given to Town officials in their handling of the several major Town projects pending during the year, including the startup of a major review of the High School, in which the title and acquisitional history of the High School land were studied, and the school building grant program analyzed. Attention was given to the restoration of the Sprague Fields, including the legality of using Community Preservation Act funds for the purpose. The legal status of the Playing Fields Task Force was reviewed. Attention was also given to the ongoing renovation project at the Middle School, and the winding up of several of the elementary school projects. Attention was given to the legal aspects of the joint enterprise between the Municipal Light Plant and the Department of Public Works to construct a garage facility as authorized by Town Meeting.

Environmental matters requiring attention during the year included the Morses Pond EPA/DEP matter on which special counsel has been instrumental, and several

wetlands encroachment matters were reviewed. The Town's acquisition of a lot on Burnett Lane was furthered, and the prospect of the Town acquiring the most westerly portion of the Cochituate Aqueduct was studied.

The variety of subjects on which legal advice and opinions were requested continued to cross the broad spectrum of municipal responsibility. For example, assistance was given to the Library Trustees in the implementation of their approach to enter into leases of portions of the two branch libraries in an effort to raise funds and thereby further the Trustees' policy to "save the branches". Assistance in regulatory enforcement by the relevant Town officials was provided in the areas of zoning, public works, wetlands and food licensing. The Town's procedure for non-criminal disposition of bylaw and regulatory infractions was again reviewed. Several questions arose again this year on the impermissibility of using municipal funds or other municipal resources to advocate a favorable result on a referendum question. Advice was given on the legal effect of a citizens' petition seeking to place an Article in the Town Meeting Warrant on a matter of international policy.

As before, requests continued to be received for opinions on the Conflict of Interest Law, the Uniform Procurement Law, the Open Meeting Law and the Public Records Law. Records 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 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.