

TOWN COUNSEL

During 2006, Town Counsel was asked to render numerous legal opinions related to zoning and other land use matters, interpretations of Town By-Laws and Special Acts relating to Belmont, and we have been handling several litigation matters. Presently there are eleven cases in active litigation involving various Town departments.

Town Counsel has been active in advising the Planning Board regarding several proposed zoning amendments, and we did extensive work regarding the site plan requirements for the Town's new senior center.

Town Counsel has also provided services to the Board of Selectmen regarding the disposition of the Central Fire Station and the Harvard Law Fire Station. We have also continued to be actively involved in implementing the various aspects of the Memorandum of Understanding for the development of the McLean Hospital site, and we have been representing the Office of Community Development with respect to the issuance of the sewer connection permit for the proposed senior housing project on the McLean site.

We extend our appreciation to the Board of Selectmen for their confidence in appointing this firm as Town Counsel, and appreciate the assistance and cooperation on all matters from the Board of Selectmen, Town Administrator, department heads, boards, committees and other Town personnel. We look forward to working with the members of the Town Government in the future.

Respectfully submitted,
John W. Giorgio, Esq., for the Firm of Kopelman and Paige, P.C.

STATUS REPORT ON PENDING LITIGATION MATTERS PENDING WITH TOWN COUNSEL

1. Arbella v. Town of Belmont
Norfolk Superior Court C.A. No. 05-01501-B
(02600-0050)

The plaintiff seeks recovery against the Town in subrogation for \$2,868.19 paid to its insured for property damage allegedly caused by a fallen public shade tree. The Town has responded to the complaint and has served interrogatories and requests for production of documents to the plaintiff seeking information and documentation relating to its liability and damage claim.

2. Bell Atlantic Mobile of Massachusetts Corporation, Ltd.
d/b/a Verizon Wireless v. Belmont Zoning Board of Appeals
Land Court No. 06 MISC 328230-GHP
(02600-0054)

This is an appeal resulting from conditions imposed by the Zoning Board of Appeals on the grant of a special permit to install and operate a wireless telecommunications facility on a monopole located at 12-20 Church Street. In November 2006, the parties filed a joint motion for remand to the Zoning Board of Appeals. The Court granted the remand and the Board completed the remand proceedings, filing its decision with the Town Clerk on February 9, 2007. The parties are awaiting whether an appeal from the remand decision is filed by an entity other than the plaintiff as the plaintiff was satisfied with the decision after remand. If no appeal is filed, we anticipate that the case will be dismissed.

3. Bell Atlantic Mobile of Massachusetts Corporation, Ltd.
d/b/a Verizon Wireless v. Belmont Zoning Board of Appeals
Land Court No. 06 MISC 328229-GHP
(02600-0055)

This is an appeal resulting from conditions imposed by the Zoning Board of Appeals on the grant of a special permit to install and operate a wireless telecommunications facility on a monopole located at 78 Concord Avenue. In November 2006, the parties filed a joint motion for remand to the Zoning Board of

Appeals. The Court granted the remand and the Board completed the remand proceedings, filing its decision with the Town Clerk on February 9, 2007. The parties are awaiting whether an appeal from the remand decision is filed by an entity other than the plaintiff as the plaintiff was satisfied with the decision after remand. If no appeal is filed, we anticipate that the case will be dismissed.

4. Brennan, et al. v. Town of Belmont
Middlesex Superior Court, C.A. No. 06-03264-H
(02600-0056)

This action was commenced in October 2006 in which the plaintiffs are alleging personal injury, property damage, and damages in nuisance for sewage back-up in the basement of property located at 101 Goden St. The Town is currently engaged in responding to discovery requests.

5. Ehler v. Town of Belmont, et al.
Middlesex Superior Court, C.A. No. MICV2006-03933
(02600-0057)

This is an action commenced in November 2006, in which the plaintiff is seeking to recover damages for personal injury as a result of a slip and fall accident that occurred at the entrance to the Homer Building. The parties are currently engaged in discovery.

6. Forster v. Town of Belmont
Middlesex District Court, C.A. No. 0452CV1097
(02600-0040)

This is an action commenced in April 2005 by the plaintiff to recover an alleged overcharge for sewer and water charges due to a faulty water meter. A status conference was held on January 23, 2006. The parties are currently engaged in discovery.

7. In the Matter of McLean Hospital Corporation Sewer Connection
Division of Administrative Law Appeals, Docket No. DEP-06-486
(02600-0063)

This is an appeal filed in December 2006 by the Belmont Citizens Forum, Inc. of the issuance of a sewer connection permit for a senior housing project. The connection permit was issued by the Department of Environmental Protection after the Town signed off on the application. The pre-filed testimony of the Director of the Office of Community Development was filed in January 2007.

8. N. Sacca & Sons, Inc. v. Belmont Zoning Board of Appeals
Middlesex Superior Court, C.A. No. MICV2006-04379
(02600-0066)

This is an appeal by the plaintiff challenging certain conditions attached to the special permit issued by the Zoning Board of Appeals to permit change of nonconforming use to allow overnight parking and storage of commercial vehicles on property located at 50 Brighton Street. The action was commenced in December 2006. The parties have agreed to a temporary stay of the litigation while the Zoning Board of Appeals considers the renewal of the special permit.

9. U.S. National Bank v. Town of Belmont
Middlesex Superior Court, C.A. No. 06-2511
(02600-0065)

This is an action commenced in November 2006, in which the plaintiff seeks a declaration that there is no municipal lien on property located at 39 Gorham Road. The Town has, however, released all liens on the property.

10. Verizon New England, Inc. v. N. Sacca & Sons v. Town of Belmont and JF2, LLC d/b/a on Target Utility Services
Boston Municipal Court, C.A. No. 06-01CV00482
(02600-0061)

This is a third party complaint filed by N. Sacca & Sons against the Town for indemnification for damages to underground cables manufactured by Verizon. The third party is alleging that the Town was negligent in overseeing the work in the road. The action was commenced in December 2006.

11. Wynott v. Town of Belmont
Middlesex Superior Court, C.A. No. 06-1146C
(02600-0052)

This is an action commenced in May 2006 in which the plaintiff is seeking to recover damages for personal injury as a result of a slip and fall accident that occurred at the Belmont High School pool on July 28, 2004. The parties are currently engaged in discovery.

CASES CLOSED IN 2006

1. Belmont Board of Health v. Hakioglu
Middlesex Superior Court, C.A. No. 2005-02651D
(02600-0039)

This was an action to compel the defendant's compliance with a condemnation order concerning premises at located at 166 Concord Avenue. The Board of Health obtained a preliminary injunction on August 9, 2005, ordering the defendant to comply. He failed to do so and the Board of Health then filed a complaint for contempt on September 13, 2005. Thereafter, the premises were destroyed by a fire, and the remnants of the building were demolished.

2. Belmont Board of Health v. Purecoat North, Inc.
Middlesex Superior Court, C.A. No. 2005-04426F
(02600-0014)

This was an action to enforce an October 18, 2005 order of the Board of Health requiring the defendant to abate the emission of nuisance odors from its facility located at 39 Hittinger Street. A preliminary injunction hearing was held on January 3, 2006, and in a decision issued on January 11, 2006, the Superior Court issued a preliminary injunction ordering the defendant to abate the nuisance within thirty (30) days. The defendant appealed the decision. While the appeal was pending, the defendant filed a counterclaim asserting that the odors in the neighborhood were emanating from property owned by the Town adjacent to the facility. Because the Board of Health had not received any complaints since the issuance of the preliminary injunction and in order to avoid further litigation, the Board stipulated to a dismissal of the case without prejudice to its right to revive the action if the problem resurfaces. The appeal and the defendant's counter-claim were also dismissed.