

## TOWN COUNSEL

During 2007, 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 ten cases in active litigation involving various Town departments. Eight cases were closed in 2007.

Town Counsel has been providing on-going advice and assistance to the various town boards and commissions that have considered permits in connection with the housing project proposed at the Uplands site. We have also continued to provide significant legal services in connection with the on-going development at the McLean Hospital 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. Coalition to Preserve the Belmont Uplands v. Belmont Zoning Board of Appeals and AP Cambridge Partners II, LLC  
Land Court Misc. Case No. 07-PS-346988-GHP  
(02600-0067)  
This is an action filed in March 2007 by a Citizens Group from the decision of the Zoning Board of Appeals to grant a comprehensive permit to construct 299 housing units on the Belmont Uplands site. Recently, the developer informed the Court that it intended to appeal the decision of the Conservation Commission to approve an order of conditions issued for the same project and has filed a motion to postpone the trial date due to the pendency of the anticipated appeal of the order of conditions.
2. 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.
3. Forster v. Town of Belmont  
Cambridge 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 Town has filed a motion for summary judgment.
4. N. Sacca & Sons, Inc v. Belmont Zoning Board of Appeals  
Middlesex Superior Court, C.A. No. 07-2873  
(02600-0071)  
This is an appeal from a decision of the Zoning Board of Appeals on remand granting in part and denying in part a special permit for a change, alteration, and/or extension of a non-conforming commercial operation at 50 Brighton Street. The parties are engaged in discovery.
5. Petroleum Traders Corporation v. Town of Belmont, et al.  
Middlesex Superior Court, C.A. No. 07-1173  
(02600-0070)  
This is a declaratory judgment action which involves a cooperative contract between the plaintiff and ten communities including Belmont for the delivery of reformulated gasoline for the period of July 1, 2006 to June 30, 2005. The plaintiff unilaterally attempted to increase the cost per gallon by 43 cents during the contract. The cooperative communities disputed the plaintiff's right to increase the price and refused to pay the increased costs. The contract was originally negotiated by the Town of Brookline which has taken the lead in defending the lawsuit. The plaintiff recently propounded discovery to each of the defendants. A final pretrial conference will not be scheduled until September, 2009.
6. Shea v. Town of Belmont  
Cambridge District Court, C.A. No. 0752CV1379  
(02600-0076)  
This is an action against the Town seeking judgment in the amount of \$5,395.96 on a trustee summons involving a town employee. A hearing on the plaintiff's motion for summary judgment is scheduled for March 10, 2008.

7. Stephen J. Wilcinski v. Town of Belmont Fire Department  
Civil Service Commission No. 02-07-384  
(02600-0079)  
This is an appeal of the Fire Chief's decision to bypass plaintiff for appointment as a firefighter. A pre-hearing conference was held on December 20, 2007, and a full hearing is scheduled for March 11, 2008.
8. Town of Belmont v. Geller Sport, Inc., et al.  
Middlesex Superior Court, C.A. No. 07-3308  
(02600-0074)  
This is an action by the Town commenced in April 2007 to recover damages resulting from defects in the high school turf field construction project. The Town is currently in the process of responding to Geller Sport's counterclaim.
9. 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, and the parties are currently engaged in discovery.
10. 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 2007**

1. Arbella v. Town of Belmont  
Norfolk Superior Court C.A. No. 05-01501-B  
(02600-0050)  
The plaintiff sought 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 parties reached a settlement and a stipulation of dismissal was filed.
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 was 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. Since there were no further appeals, the matter has been resolved and this case is closed.
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 was 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. Since there were no further appeals, the matter has been resolved and the case is closed.
4. Belmont Housing Trust, Inc. v. Town of Belmont, et al.  
HUD Case No. 01-07-0276-8  
(02600-0069)  
This matter involved a complaint to the U.S. Department of Housing and Urban Development ("HUD") by the Belmont Housing Trust. The complaint alleged that the Town engaged in unlawful discrimination in connection with the approval of the Belmont Uplands comprehensive permit. In June 2007, HUD dismissed the complaint.
5. 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 alleged personal injury, property damage, and damages in nuisance for sewage back-up in the basement of property located at 101 Goden St. The parties reached a settlement and a stipulation of dismissal was filed.
6. In the Matter of McLean Hospital Corporation Sewer Connection  
Division of Administrative Law Appeals, Docket No. DEP-06-486  
(02600-0063)

This was 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. In a final decision rendered by the Division of Administrative Appeals in June 2007, the issuance of the sewer connection permit was upheld.

7. N. Sacca & Sons, Inc. v. Belmont Zoning Board of Appeals

Middlesex Superior Court, C.A. No. MICV2006-04379  
(02600-0066)

This was 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. On June 27, 2007, the plaintiff and the Zoning Board of Appeals filed a notice/stipulation of dismissal of the plaintiff's complaint.

8. U.S. National Bank v. Town of Belmont

Middlesex Superior Court, C.A. No. 06-2511  
(02600-0065)

This was an action commenced in November 2006, in which the plaintiff sought a declaration that there is no municipal lien on property located at 39 Gorham Road. Since the Town had released all liens on the property, the plaintiff filed a motion for final judgment to which the Town did not object.