

# City Solicitor

## Annual Report-Fiscal Year 2014 (July 1, 2013 – June 30, 2014)

I herewith make the following report for fiscal year 2014:

1. **Personnel** – The personnel in the department during the reported period were as follows:  
City Solicitor: Ellen Callahan Doucette  
Secretary: Dianne Mearls
2. **Litigation Matters Concluded** – The following cases to which the City, or one or more of its officials or Boards was a party, were concluded in fiscal year 2013:
  - (a) Trade Center Park LLC v. Planning Board of Woburn (Middlesex Superior Court No.2012 MICV 0067) Appeal of Planning Board denial of modifications to site plan approval. The parties successfully negotiated an agreement for judgment and the matter has been dismissed.
  - (b) The Woburn Armory LLC. v. Paul J. Denaro, et al (Middlesex Superior Court No. 2012 MICV 1528) – appeal of order for demolition. The plaintiff has obtained a special permit for redevelopment of the property. In order to resolve the litigation matter, the City Council withdrew the demolition order and the matter was dismissed.
  - (c) Federico Construction Co. v. J. Fletcher Creamer v. City of Woburn (Middlesex Superior Court No. 2011MICV3497) – complaint by Federico to reach and apply monies held by the City of Woburn and due on its contract with Fletcher Creamer for the water pipe relining project. Settlement discussions between Federico and Fletcher Creamer were not successful however, they agreed that the City could pay the monies retained to J. Fletcher Creamer, and executed a Stipulation of Dismissal as to the City. Federico and J. Fletcher Creamer will proceed to trial.
  - (d) New Boston Street v. City Council and Pacific Packaging (Middlesex Superior Court No. 2011MICV1776) – abutter appeal of special permit grant. This office was monitoring but not actively defending the appeal. The parties have settled the matter and the appeal was dismissed.
  - (e) Melanson Development Group v. Conservation Commission, et al, (Middlesex Superior Court No. 2012 MICV 04439) – appeal of grant of Order of Conditions with conditions. The parties came to a settlement regarding the Order of Conditions and the appeal was dismissed.
  - (f) Woburn Properties, LLP v. City of Woburn (Middlesex Superior Court, No. 2012 MICV 0067) – challenge to the City’s I&I Mitigation payment and sewer connection charge. In partial reliance on the settlement regarding Trade Center Park, LLC, the matter was dismissed.

- (g) Ambassador Manor Condominium v. Mahoney v. City of Woburn, et al (Woburn District Court No. 201353CV0503) – this is a complaint to establish the priority of liens filed by a condominium association for unpaid fees. The City’s answer is simply to safeguard the priority of the City’s tax lien, if applicable. The matter has already been resolved and was dismissed.
3. **Pending Litigation** – The following cases, to which the City, or one or more of its officials or Boards was a party, were pending as of June 30, 2014:
- (a) Peter Spinazola, Tr. v. City of Woburn, et al (Land Court Misc. No. 477288) – this is a complaint to remove a cloud on title and certify ownership to (and the elimination of) various paper streets in North Woburn.
- (b) OCLen Realty, LLC v. City of Woburn, et al (Middlesex Superior Court No. 2014-8759) this is a complaint to remove a cloud on title and certify ownership to (and the elimination of) various paper streets (Baldwin) in North Woburn.
- (c) Robert Brady v. City of Woburn, et al (Land Court Misc. No. 488159) – this is a complaint to remove a cloud on title and certify ownership to (and the elimination of) various paper streets off Orange Street.
- (d) City of Woburn v. Paris (Middlesex Superior Court No. 2014 MICV 04824) – this is a complaint for trespass and the recovery of land against Paul Paris who is operating a farm stand and conducting agricultural activities on land owned by the City off Locust Street.
- (e) City of Woburn v. 1095R Main Street, et al (Middlesex Superior Court No. 2013 MICV 005511) – this is an action to enjoin the operation of a scrap metal facility that is operating in violation of the WZO.
- (f) Crescent Park Condominium v. Rogozian v. City of Woburn, et al (Middlesex Superior Court No. 2013 MICV 05134) – this is a complaint to establish the priority of liens filed by a condominium association for unpaid fees. The City’s answer is simply to safeguard the priority of the City’s tax lien, if applicable.
- (g) Woburn 38 Development v. Board of Appeals (HAC No. 2001-22) – this is an appeal of the Board of Appeals’ decision to deny a modification of a comprehensive permit. The appeal was heard by Chairman Lohe, post-hearing briefs have been filed, and we are awaiting a decision. This matter is being handled by Attorney Daniel Hill.
- (h) Woburn Police Patrol Union v. City of Woburn (Middlesex Superior Court No. 2014 MICV 06611) – this is an appeal from an arbitrator’s decision affirming the Mayor’s decision terminating a police officer. Cross motions for judgment on the pleadings have been filed, and we are waiting for the court to schedule oral argument on the motion.
4. **Labor/Personnel Issues** – The Law Department is responsible for all labor and personnel matters, eliminating the need for outside legal representation. In the past year, I have handled labor/personnel issues involving the City’s labor unions including disciplinary matters, and have been assisting the Mayor with the negotiation of successor collective bargaining agreements for all of the city’s labor unions.

I have also handled a number of unemployment claims filed by former employees.

5. **General Duties** – The Law Department is responsible for a wide variety of other duties including the provision of written legal opinions in response to requests for advice made by various departments or city officials. In addition, we have continued the frequent practice of rendering informal advice, both written and verbal, when consulted and/or requested by said departments or city officials. When requested, the undersigned has also personally appeared at various and sundry meetings of the City Council and other Boards and Commissions of the City in order to further address particular questions or render advice.

The Law Department is responsible for drafting and/or reviewing all contracts and other legal instruments to which the City is a party and/or signatory. The department continues to represent the city's interest in a variety of quasi-judicial administrative forums, including the Division of Labor Relations and the Appellate Tax Board. Claims and lawsuits against the city are also channeled through the Law Department, with most being forwarded to the City's insurance carrier (MIIA), for investigation, processing, and defense. The department continues to monitor the same through appropriate and periodic contact with MIIA.

This office will continue to keep departments and city officials informed as to relevant statutory and case-law changes.

6. **Legal Assistance** - The department utilizes outside counsel where necessary. Outside counsel used in fiscal year 2014 were as follows:
  - (a) D'Ambrosio Brown, LLC was retained to for tax title matters and works directly with the Treasurer/Collector;
  - (b) William Solomon, Esq. for one cable TV matter;
  - (c) Daniel Hill, Esq. was retained to represent the Board of Appeals regarding the appeal filed by Woburn 38 Development, LLC from the Board's denial of an application to modify the comprehensive permit issued initially issued in 2002;
  - (d) Philip Collins, Esq. of Collins, Loughran & Peloquin, P.C. has been retained to assist the Mayor in collective bargaining negotiations with the City's public safety unions.

As always, it is a pleasure and a privilege to serve as legal counsel to the City of Woburn and its various boards, committees and commissions.

Respectfully submitted,  
Ellen Callahan Doucette, City Solicitor

# **Conservation Commission**

**Annual Report  
July 1, 2013 - June 30, 2014**

## **Introduction**

This report is submitted as required by Massachusetts General Laws and by the City of Woburn Charter.

## **Organization**

The Conservation Commission is comprised of a minimum of four to a maximum of seven members. The Mayor is the appointing authority for the position of membership on the Conservation Commission.

## **Membership as of June 30, 2014**

Chairman: Duane Cleak  
Vice Chairman: John Tancredi  
Member: James Juliano  
Member: Gerald Lohnes  
Member: Stephen Malone  
Member: Kevin Meaney  
Member: Pauline Scalley

Field Officer: Len Cadran  
Administrator: Theresa Murphy

## **Purpose**

The Conservation Commission's primary purpose is to administer the Massachusetts Wetlands Protection Act (MGL Chapter 131, section 40), the Massachusetts Wetlands Regulations (310 CMR 10.00), the City of Woburn Wetlands Ordinance (Title VII) and the Woburn Wetlands Regulations. The Wetlands laws and regulations were created to preserve and protect wetlands.

The Conservation Commission has the authority to regulate activities in wetlands, land subject to flooding, and riverfront (land within 200 feet of a river). It also has jurisdiction in the "buffer zone" of upland that is within 150 feet of bank or of bordering vegetated wetland.

For activities within the jurisdiction of the Conservation Commission, a formal filing may be required. The Commission holds a Public Hearing when: a Request for a Determination of Applicability, Notice of Resource Area Delineation, Notice of Intent and/or an Application for a Woburn Wetlands Permit is filed. The Commission takes in all pertinent information during the Public Hearing process and issues its Determination or Permit within 21 days of the close of the Public Hearing.

Under Massachusetts state law, the Commission issues Determinations of Applicability, Orders of Resource Area Delineation, Orders of Conditions, Extension Permits, Certificates of Compliance and Enforcement Orders. Under the City Ordinance, the Commission issues Woburn Wetlands Permits (which may be combined with an Order of Conditions).

The Commission encourages the acquisition and protection of properties for the purpose of preservation of open space and protection of wildlife habitat. The Commission encourages the appreciation of our natural resources, and where appropriate, the management of Conservation Areas to allow Public access for passive recreation and safe enjoyment.

**Administration of M.G.L. Chapter 131 section 40 (Massachusetts Wetlands Protection Act) and Title Vii (Woburn Wetlands Ordinance)**

**Regulations and Forms**

Copies of the Massachusetts Wetlands Protection Act, Regulations under the Act and state forms are available from the Department of Environmental Protection, the State Bookstore. An unofficial copy of the Massachusetts Wetlands Protection Act and Regulations under the Act are available online at:

<http://www.mass.gov/eea/agencies/massdep/water/regulations> or an official copy can be purchased through the Massachusetts State Bookstore at: <http://www.sec.state.ma.us/spr/sprcat/catidx.htm>. State Wetland Protection Act Forms are available online at:

<http://www.mass.gov/eea/agencies/massdep/water/approvals/wetlands-and-waterways-forms.html#4>

Copies of the Woburn Wetlands Ordinance, and Regulations, local and state forms are available from the Conservation Commission office in City Hall, or online at:

<http://www.cityofwoburn.com/index.aspx?NID=940>

The filing deadline is noon, 10 business days prior to the next available meeting date.

**Meetings**

The Conservation Commission held twenty-three (23) Public Meetings in City Hall, during the period from July 1, 2013 through June 30, 2014.

During Fiscal Year 2014:

The Conservation Commission reviewed many applications and issued the following **Determinations of Applicability** of the Wetlands Protection Act and Woburn Wetlands Ordinance.

<u>Petitioner</u>	<u>Location</u>
Friends of Woburn Veterans	Arlington Road
Wheeling Avenue Realty Trust	16 Wheeling Avenue
Daniel Whitney	163 Cambridge Road
Seaver Construction	300 Cambridge Road
Joe Zink	205 Wildwood Avenue
Melanson Development Group	Wyman Farms Estates, Lot 4
Melanson Development Group	Wyman Farms Estates, Lot 7
City of Woburn	Wood Street & Montvale Avenue

John Winne	30 Van Norden Road
Melanson Development Group	Wyman Farms Estates, Lot 20
Melanson Development Group	Wyman Farms Estates, Lot 5
Melanson Development Group	Wyman Farms Estates, Lot 6
Melanson Development Group	Wyman Farms Estates, Lot 21
William & Deborah Looby	7 Strawberry Lane
Massachusetts DOT	Route 38 (Main Street)
City of Woburn	Sturgis Street
21 Orange Street, LLC	21 Orange Street
Melanson Development Group	17 Carlson Way (Wyman Farms Est.)
Melanson Development Group	3 Carlson Way (Wyman Farms Est.)
Melanson Development Group	16 Carlson Way (Wyman Farms Est.)
Melanson Development Group	8 Carlson Way (Wyman Farms Est.)
Melanson Development Group	10 Carlson Way (Wyman Farms Est.)
Melanson Development Group	12 Carlson Way (Wyman Farms Est.)
Massachusetts DOT	I-93
Melanson Development Group	5 Carlson Way (Wyman Farms Est.)
Melanson Development Group	14 Carlson Way (Wyman Farms Est.)

The Conservation Commission issued **Orders of Conditions (or Orders of Resource Area Delineation)** for the following projects:

<u>Petitioner</u>	<u>DEP file #</u>	<u>Location</u>
Janis Research Company, LLC	348-717	225 Wildwood Avenue
G. W. Gately Co.	348-712	89 Wyman Street
MassDOT	348-719	Route 128
Rosematwo	348-716	7 State Street
Javed Sharwani	348-720	33 Milan Avenue
Donald F. Gatta	348-723	5-7 Donna Road
Lesley Santini-Ryan	348-724	35 Fairway Drive
Melanson Development Group	348-728	Wyman Farms Est, Lot 10
Melanson Development Group	348-727	Wyman Farms Est, Lot 11
Melanson Development Group	348-726	Wyman Farms Est, Lot 12
George W. Gately	348-722	30 Wyman Street
R.F.L. Realty LLC	348-721	331A New Boston Street
William Estabrook	348-731	18 Roman Road

The Conservation Commission amended **Orders of Conditions** for the following projects:

<u>Petitioner</u>	<u>DEP file #</u>	<u>Location</u>
Seaver Construction, Inc.	348-709	859 Main Street
Seaver Construction, Inc.	348-709	859 Main Street



## **Community Gardens**

The Conservation Commission sponsored Community Gardens in the Horn Pond Conservation Area for the thirty-third consecutive year. This program would not be possible were it not for the continued support of the Mayor, the City Council, Volunteer Garden Coordinator Michael Benenate, Kathy Leland, the Department of Public Works, the Parks Department, Conservation Commission Field Officer, Len Cadran, and members and supporters of the Conservation Commission.

The City budget set aside \$2,000 for the program and gardeners were charged a \$25.00 fee for a 27-foot by 27-foot plot, with roto-tilling and water provided. The garden area was expanded to meet the high demand for garden plots. A section of the garden area reserved for organic gardening.

## **Tree Program**

The Conservation Commission was pleased to be able to run its tree program again during FY 2014. Residents purchased red maples, red oaks, kousa dogwoods, callery pears, and tree lilacs, through the program.

Residents who placed orders came to pick up their trees on May 17, 2014, at Spence Farm, 41 Wyman Street. Commission members helped residents load their purchased trees into their vehicles. Residents expressed their support for the program, and hoped that it would continue in the future.

## **Scout Projects**

The Boy Scouts have enjoyed a busy and productive season in their use of the Conservation Areas throughout the City. The Scouts have made significant contributions to the Conservation Commission and the City of Woburn with various Eagle Scout projects. Several Scout troops enjoyed the experience of camping in the Horn Pond area through different seasons. In return for the use of these areas, the troops clean up the areas they use, perform service projects and participate in Conservation Day activities.

## **Conservation Day**

The 42<sup>nd</sup> Annual Conservation Day was held on Saturday, May 3, 2014. Much was accomplished thanks to the combined efforts of the Conservation Commission Members and supporters, Woburn Residents' Environmental Network (WREN), local businesses, local clubs, and individual volunteers. Participants should be proud of what they have accomplished. Working together we can keep our City clean and beautiful.

Respectfully Submitted,  
Woburn Conservation Commission