Fighting litigation on the

$7.1m award to contractor has Rockport in turmoil

By John Laidler
GLOBE CORRESPONDENT

ROCKPORT – Selectman Nicola Barletta calls it a "moonscape," a forbidding wasteland of dirt roads, gaping gravel pits and heavy boulders in a wooded area that abuts the Gloucester watershed.

It's the type of place that would ordinarily attract scant notice from local residents. But the 24-acre site, across the railroad tracks off Route 127, has taken center stage recently as the focus of a court judgment that has thrust the town into turmoil.

Following a 6-week trial in an 8-year-old lawsuit, a Lawrence Superior Court jury in February awarded a local contractor $3.6 million in damages against the town for having violated the terms of an agreement allowing him to remove gravel and rocks from the site, which is owned by the town. With interest, the award was increased to $7.1 million.

The size of the judgment obtained by Poole Construction, believed to be one of the highest jury awards in recent memory in Essex County, has stunned residents in this waterfront town of 7,000.

"The judgment is nearly half of our budget," said Selectman Chairman Michael Beaton. "Financially, it's devastating." Rockport's budget for the coming fiscal year is $16 million.

"It's a real big setback for the town financially," agreed Barletta, a 30-year veteran of the board. He said the judgment was particularly painful at a time when the town is facing heavy costs associated with closing its landfill and building an additional water treatment plant. Voters also passed a Proposition 2½ override at last month's election to fund $524,000 in school costs.

"We haven't come up with a strategy of how we're going to handle it," said Barletta of the board, which last week was weighing whether to appeal the verdict or negotiate a possible settlement with Stanley Poole, the Rockport resident who runs Poole Construction.

According to some estimates, if the town were to borrow to pay the $7.1 million judgment, it could add $1 to the tax rate, costing the owner of a $200,000 home $200 a year for the next 20 years, or $4,000.

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Rockport Selectman Michael Beaton at gravel pit near the Gloucester watershed that was focus of an 8-y[illegible] town businessman that lead to a judgment totalling $7.1 million against the town.

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GLOBE STAFF PHOTO / JIM WILSON

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Municipalities, facing barrage of lawsuits, bolster legal aid

By John Laidler
GLOBE CORRESPONDENT

In Beverly, a school nurse sues, alleging sexual harassment. In Salem, the high school football coach sues, charging he was wrongfully dismissed from his job. A former inspectional services chief lodges similar claims in Chelsea. An orthopedic surgeon, meanwhile, brings court action after falling in the Salem parking garage and injuring his shoulder.

A Lynn family sues when their child is scalded by coffee a teacher was making in the classroom. In Peabody, a resident seeks relief when the elevation requirements for building on his property are raised. And in Georgetown, a selectman sues two of his board colleagues for alleged conflict violations.

What these cases, and hundreds of others brought in the North Weekly region in recent years, have in common is that the defendants are either municipalities or their employees or officials.

In an era of explosive growth in the number of civil lawsuits across the country, probably no entity has been harder hit in the stampede of litigation than municipal government.

Over the past 15 years, cities and towns nationwide, including those north of Boston, have faced a veritable barrage of suits of every shape and size, from the small claims of people who slip and fall on sidewalks, to the multimillion-dollar claims of those who allege that they were beaten by police officers or harassed by employers based on their race,

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est. The selectmen are still weighing the offer, as well as the possibility of appealing the verdict.

A severe impact

"I feel it's in everyone's best interest to try and settle this if possible. If we can get this behind us, it's going to make everyone rest more at ease," Poole said in an interview last week at his Rockport office, accompanied by his attorney, Albert T. Farrah of the Boston firm Corwin and Corwin.

While its details are unusual, the Rockport case highlights what municipal observers say is the potentially severe impact even a single lawsuit can have on a community, particulary a small town. Rockport has liability insurance, but the policy at the time the suit was filed did not cover the type of damages involved in the Poole case, according to Town Counsel Brian Cassidy.

"You've got to be extra careful these days," said Barletta, noting the willingness of juries to view towns as having "deep pockets" when it comes to paying damages.

At the heart of the often complex case is a dispute between the developer and Rockport officials over the nature of an agreement struck in 1982, and whether the town was within its rights not to renew the pact five years later.

History of the site

The town has argued that the 1982 agreement was a permit that allowed Poole to remove gravel from the site for a 5-year period, to be renewed automatically in 1987 provided the company met the permit conditions. The permit was simply an extension of a similar arrangement the town had had with another contractor, John McNiff, from 1976-'82, according to Cassidy.

He said McNiff and another contractor gave the town the 24-acre site in 1970. In exchange, the town granted McNiff a 10-year permit to remove gravel. McNiff was granted one-year extensions to the permit in 1980 and 1981, Cassidy said.

Poole agreed to pay the town $1 per cubic yard of earth material he removed from the site, Cassidy said. The Board of Selectmen, following hearings, notified Poole in December 1987 that it was not renewing the permit because the company had not met the permit conditions, including restoring land around the excavated pits, the town counsel said.

But Poole has asserted that his agreement with the selectmen was a contract, not a permit. And he has said the primary purpose of the contract was to build a pond that the town would use for its water supply. Poole says he did comply with the

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terms of the contract and that the selectmen as a result violated the agreement when they failed to renew it.

The damages sought by Poole were to reward him for the revenue he lost by not being able to remove the earth material at the site, including the granite bedrock and gravel, his lawyer said.

"For five years, Poole spent a considerable amount of time in performing under this agreement and readying itself to complete the performance of the next five years," said Farrah. "They spent money acquiring the equipment, maintaining the equipment, preparing the site. ... Had the contract never existed, Poole could have been out doing something else during that five years with his time and money."

But Beaton said, "We don't feel this was a public works contract. We feel it was a permit to remove gravel. The construction of the pond afterwards was incidental to the graveling operation."

And even if Poole was right that selectmen had contracted with him to build a pond, that contract would not be valid, he said, since such a project would have required public bidding and a vote of town meeting.

But Farrah said the jury, responding to questions asked by the court, agreed that the town entered into a contract with Poole "for the purpose of improving the town's water supply and distribution system."

And he said judges on three occasions – twice at the trial and once earlier – refused to dismiss the case on the grounds that the contract had not been a valid one.

The suit, which Poole brought in 1988, went through a series of legal twists and turns before it came to trial in February. First scheduled for trial in the fall of 1992, the case was delayed while a judge heard a motion from the town to dismiss the case.

Cassidy, who inherited the case then, said he had argued for dismissal on the grounds that Poole had had a permit with the town and had not filed his claim within the 60 days required for permit appeals.

Superior Court Judge Peter Brady originally denied the motion. But as the trial was about to begin in April 1993, Brady reversed himself and dismissed the case. Poole appealed the case to the state Appeals Court, which ruled that the agreement might have been at least in part a contract, according to Cassidy, and returned the case to superior court.

Delays boosted judgment

The delays in the case contributed to the ultimate size of the judgment. The jury awarded Poole $3.6 million, but with interest, it rose to $7.1 million.

Beaton, who was recently elected to a second term as selectman and was not on the board when the dispute arose, said townspeople are upset more with the amount of the settlement than the fact Poole prevailed.

Many residents "believe the Pooles deserved something," he said. "But certainly not $7 million."

"I know Stan personally and I have absolutely nothing against him personally, but I think the judgment is unjustified," Beaton said.

Meanwhile even the new board members have been cautious in casting blame on anyone for the problem.

"Hindsight is 20-20," Beaton said. "If we could go back to '87 knowing what we know now, I think we probably could have worked something out with the Pooles rather than outright denying them the permit. At the time, I don't think they quite foresaw the ramifications of what they did," he said of officials.

"I'm not going to point fingers at anyone," Beaton said. "The only thing I can do now is say what is in the best interests of the town."

Barletta, who was on the board at the time, said he believed then, and still does, that selectmen were within their rights in denying an extension of the agreement.

"Obviously, looking back at what happened, even though the town may have done the right thing, you'd have to handle it differently, naturally," Barletta said.

He said in the future he would likely not support having the town enter into any "long-term type of permit. No matter how well it might be managed or thought out, it's just too long," he said.

Though this is only his latest legal scrap with the town – he was awarded $725,000 in an eminent domain case in 1994, and saw a civil rights suit against the town dismissed in federal court in 1990 – Poole says he harbors no ill will and looks forward to quieter times in Rockport.

"I'm raising a 7-year-old boy in town," he said. "It's very important that I stay here and raise him. My family has been here since the late 1600s, and I want him to have the benefit of growing up in a community like this. And I hope he will raise his family here."

GLOBE STAFF PHOTO / JIM WILSON

Contractor Stanley Poole of Rockport, left, with his attorney, Albert L. Farrah. A jury awarded Poole $3.6 million in his dispute with town, but with interest, it rose to $7.1 million.

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