

# City and Town

Navjeet K. Bal, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



A Publication of the Massachusetts Department of Revenue's Division of Local Services

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## Storming out of 2010 and into State Budget Season

As Massachusetts stormed out of 2010 – drawing immediate attention to snow and ice budgets—a new year, a new decade, a second term for [the Patrick-Murray Administration](#), and the annual murmur of state budgets has quietly begun calendar year 2011.

[Secretary of Administration and Finance Jay Gonzalez](#) will join [Department of Revenue Commissioner Navjeet K. Bal](#) and me, for DLS' annual afternoon workshop at the [Massachusetts Municipal Association's Meeting and Trade Show](#) on Friday, Jan. 21. Less than a week before Gov. Deval Patrick releases his proposed budget for FY12, the Secretary will outline the state's budget picture for any of you in attendance. Speaking alongside Secretary Gonzalez, Commissioner Bal will review the state's current revenue perspective and its emerging FY12 forecast. I hope you'll join us for the workshop and visit DLS' booth on the tradeshow floor.

If there is a bright spot on the fiscal horizon, it is the growth in FY11 revenues, which as of Dec. 31, were running \$755 million ahead of benchmark. In Commissioner Bal's words, "These are signs of an economic recovery that continues to grow." At DLS, we hope that you are seeing reflections of this in your own communities.

On a different note, 23 years in, City and Town has now completed its first year as an e-newsletter. The City and Town Editorial Board appreciates your patience as we have worked over the past year to make the transition from an emailed PDF to an updated e-newsletter format with an on-line base. Please let us know if there are issues you would like to see explored in City and Town, and your comments are always appreciated.

Robert G. Nunes

[Deputy Commissioner & Director of Municipal Affairs](#)

Click [here](#) to read more ...

# Tidal Flats Case Leaves Appellants High and Dry

James Crowley, Esq., [Bureau of Municipal Finance Law](#)

The owners of waterfront property, Richard and Christine Spillane, did not appreciate seeing two boats moored on the tidal flats near their house in [Manchester-by-the Sea](#). Exercising self-help, they removed the moorings from the boats. The Spillanes then filed suit in [Land Court](#) seeking a declaration they owned the tidal flats and were entitled to the exclusive control of the flats to the low water mark. They named as defendants the boat owners and the Town itself. The boat owners, Samuel Adams and James Welch, disputed the Spillanes' ownership rights in the flats. Adams also filed a counterclaim seeking to have his mooring replaced. The Land Court ruled against the Spillanes who then appealed to the [Appeals Court](#). The case, [Spillane v. Adams, 76 Mass. App. 378 \(2010\)](#), establishes a definitive standard for determining tidal marks for property ownership purposes.

The Spillanes claimed their ownership of the flats by virtue of a 2003 deed. They also traced their chain of title back to 1902. The Town countered by presenting even older documents to rebut the Spillanes' ownership claims. The Town offered into evidence a 1640 grant of land from the [City of Salem](#), which established the Town, which was then a settlement named Jeffryes Creek, and is now known as Manchester-by-the-Sea. The Town also presented the [Colonial Ordinances](#), enacted in 1641 to 1647 by the [Massachusetts Bay Colony](#). The purpose of the Colonial Ordinances was to encourage productive use of waterfront property through the building of piers and wharves. For this reason the Colonial Ordinances had assigned rights in the tidal flats to the owners of the uplands. The Ordinances extended the Town's interest in shore-front property to the tidal flats up to the low water mark or 100 rods below high water, whichever was higher.

Since there was no evidence that the tidal flats were transferred by Salem before the 1640 land grant and because there was no proof that Manchester-by-the Sea sold or lost title to the flats before the 1902 deed, which was in the plaintiffs' chain of title, the Appeals Court reasoned there was a presumption that title to the flats continued in the Town. The Court also took into consideration a 1919 Land Court title examiner's report that had been prepared for a registration case originally intended to quiet title to land including the subject parcel. For some unexplained reason, the land in dispute in Spillane had been subsequently severed from the 1919 registration case. Nevertheless, the Appeals Court believed that this 1919 Land Court report strengthened the Town's claim of ownership to the tidal flats. Consequently, the Appeals Court held that the Spillanes did not establish title to the tidal flats and that title resided in the Town.

Having established that the Town owned the flats, the Appeals Court then addressed the issue of the boundaries of the tidelands. Specifically, the Appeals Court believed it was appropriate to define what was meant by the low water mark. For centuries the term "[low water mark](#)" had been an imprecise phrase. The Appeals Court observed that this dispute would serve as a good opportunity to establish a definitive standard for tidal marks. At trial in the Land Court, the Spillanes had suggested that the judge rely on the usual causes and conditions and use a measurement of the low water mark taken at one moment in time. The Land Court judge rejected this method and determined that the mean low water mark should be more precisely defined. The Land Court judge held that the low water mark should be "mean low water" as established by the [National Geodetic Vertical Datum \(NGVD\)](#). The Appeals Court agreed with the Land Court and applied the NGVD standards (which are the same standards employed by federal surveyors) to locate the two moorings of the boats owned by the defendants. Employing this standard, the Appeals Court found that the two moorings were seaward of the low water mark and, consequently, outside the control of the owner of the tidelands.

In conclusion, the Appeals Court held that the Town owned the flats; the moorings were seaward of the flats and the Spillanes had improperly removed Adams' mooring from the water. For this reason, the Court held that the Spillanes were liable to Adams for damages in the amount of \$145 for the mooring. The Spillanes decided to appeal, but the [Supreme Judicial Court](#) denied further appellate review. 456 Mass. 1108 (2010).

The ownership of tidelands has been the subject of several inquiries we have received from local assessors over the years. See, for example, [Opinion 2006-353](#). In this case, the Appeals Court, provided a definitive standard for determining tideland boundaries.

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## DLS Alert: FY2012 Local Aid Proposals

The FY2012 local aid estimates based on Governor Deval Patrick's budget proposal have been posted to the Division of Local Services' website at the link below:

<http://www.mass.gov/?pageID=dorsubtopic&L=5&L0=Home&L1=Local+Officials&L2=Municipal+Data+and+Financial+Management&L3=Cherry+Sheets&L4=FY2012+Cherry+Sheets&sid=Ador>

The Governor's budget proposal recommends funding FY2012 Chapter 70 at \$3.990 billion or \$139.3 million higher than FY2011. The Governor's budget also recommends reducing Unrestricted General Government Aid by \$65 million to \$834.0 million in FY2012. Most other cherry sheet accounts are funded at the FY2011 level.

Please be advised that these estimates are based on the appropriation levels appearing in the Governor's FY2012 budget proposal (House 1) and may change as the legislative process unfolds and proposed appropriation levels change.

Please note that Charter School and School Choice assessments may change significantly when updated to reflect spring enrollment data and final tuition rates.

The Department of Elementary and Secondary Education (ESE) has published the Chapter 70 aid calculations, minimum contributions and net school spending requirements on the Office of School Finance website at: [http://finance1.doe.mass.edu/chapter70/chapter\\_12p.html](http://finance1.doe.mass.edu/chapter70/chapter_12p.html)

To review additional information about how the estimates were determined and what may cause them to change in the future, click on the link at the bottom for an index of the FY2012 programs and links to individual explanations.

If you have questions about these estimates please call Lisa Juskiewicz at (617) 626-2386 or Jared Curtis at (617) 626-2320.

*Originally published as an individual DLS Alert on January 26, 2011.*

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## Farmland Values Holding Steady

Acting upon advice from its technical subcommittee the Farmland Valuation Advisory Commission (FVAC) recommended that the FY2012 [values](#) remain the same as last year. Because of a drop of 31 percent in net income, as reported by the [United States Department of Agriculture](#), Massachusetts values would have fallen into the negative realm. However, the FVAC voted to hold them at the prior year's positive levels.

The FVAC is made up of representatives from the [Departments of Revenue](#), [Conservation and Recreation](#), [Agricultural Resources](#), [Housing and Community Development](#), the [University of Massachusetts College of Natural Sciences](#) and a member of a local board of assessors.

Click [here](#) to read the previously published [City and Town](#) article, "Farmland Valuation in Massachusetts under Chapter 61A: An Economists View – Determining Agricultural Land Values" by [Daniel Lass](#), [Department of Resource Economics, University of Massachusetts Amherst](#).

## Municipal Calendar

**January 31: DESE Notify Communities/Districts of Estimated Net School Spending Requirements for the Next Year** As soon as the Governor releases the ensuing year's budget, ESE notifies communities/districts of the estimated NSS requirements. These figures are subject to change based on the final approved state budget. According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 3<sup>rd</sup> Quarter actual tax payment without interest, unless the actual tax bills were mailed after December 31. If mailed after December 31, the actual tax is due as a single installment on May 1, or 30 days after the bills were mailed, whichever is later.

**February 1: Taxpayer Deadline for Payment of 3rd Quarterly Tax Bill Without Interest**

**February 1: Taxpayer Quarterly Tax Bills — Application Deadline for Property Tax Abatement** According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on Feb. 1 unless actual tax bills were mailed after December 31. In that case they are due May 1, or 30 days after mailing, whichever is later.

**February 15: Treasurer 2nd Quarter Reconciliation of Cash**

**February 28: Finance Committee Continue Budget Review and Develop Recommendations** This date will vary depending on dates of town meeting.

**March 1: DOR/MDM-TAB Notification of Cherry Sheet Estimates for the Following Year** (pending action taken by the Legislature) The Cherry Sheet is an estimate of: 1) Receipts — local reimbursement and assistance programs as authorized by law and appropriated by the General Court; and 2) Assessments — state and county assessments and charges to local governments. All amounts listed on the Cherry Sheet are estimates. Actual receipts and charges are determined based on detailed formulas or guidelines for each program. Cherry Sheets are posted on the DLS website and updated at each juncture of the state budget process.

**March 1: Personal Property Owner Submit Form of List** This is a listing of all personal property filed by the owner with the Assessors each year for the purpose of determining taxes in the next fiscal year.

**March 1: Non-Profit Organization Final Filing Date for 3-ABC Forms** These must be filed on or before March 1 (this deadline may be extended by the Assessors). In no event may the extension granted be later than 30 days after the tax bill is mailed.

**March 1: DOR/BLA Filing Deadline for Telecommunications Forms of List**

**March 31: State Treasurer Notification of Quarterly Local Aid Payment on or Before March 3**

**April 1: Taxpayer Deadline for Payment of Semi-Annual Bill Without Interest** According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the actual tax payment in communities using the annual preliminary tax billing system on a semi-annual basis, unless the bills were mailed after December 31. If mailed after December 31, payment is due May 1, or 30 days after the bills were mailed, whichever is later.

**April 1: Collector Mail 2nd Half Semi-Annual Tax Bills** In communities using a regular semi-annual payment system, the 2nd half actual tax bill, or the actual tax if an optional preliminary bill was issued, should be mailed by this date.

## Mark Your Calendar

### **MMA Annual Meeting: State and Local Economic and Budget Outlook Workshop**

Presented by the Division of Local Services, Friday January 22, 2010, first session, 2:00 - 3:30 p.m., Room 210, 2nd floor, Hynes Convention Center: This workshop will cover important issues in municipal finance and administration. The outlook for the state economy and its impact on cities and towns will be discussed, as will the need for accurate forecasting and capital budgeting in today's uncertain economy.

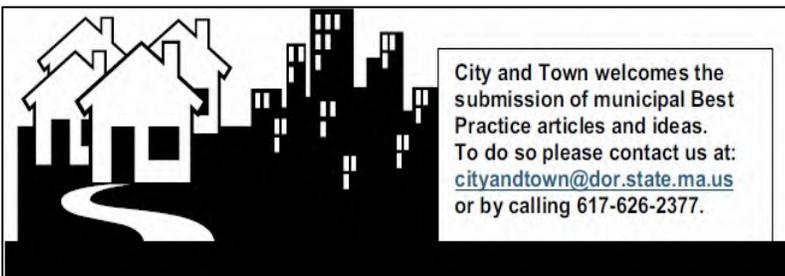
PANELISTS: Jay Gonzalez, secretary of the Executive Office for Administration and Finance & Navjeet Bal, commissioner of the Department of Revenue. MODERATOR: Robert Nunes, deputy revenue commissioner for the Division of Local Services.

The 32nd MMA Annual Meeting and Trade Show takes place January 21 and 22, 2011 at the Hynes Convention Center and Sheraton Boston Hotel. Click [here](#) for more information.

**Course 101 Spring 2011** will be held as an early evening course in Natick from April 7<sup>th</sup> through May 12<sup>th</sup>. Classes will run from 4 PM to 7 PM and participants must attend a minimum of 5 out of the 6 evenings in order to qualify to take the exam at the end of the course. The basic assessor training course is mandatory for all newly elected or appointed assessors. Registration will open in late February. For more information regarding this training opportunity please contact Donna Quinn, Training Coordinator at 617-626-3838 or [dlswebcontacts@dor.state.ma.us](mailto:dlswebcontacts@dor.state.ma.us).



**Please remember to update the online Local Officials Directory so that both municipal and state officials have accurate contact information.**



### City & Town

City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

S.J. Port, Editor

Marilyn Browne, Editor Emeritus

Editorial Board: **Robert Nunes, Robert Bilss, Zachary Blake and Amy Januskiewicz**

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- website: [www.mass.gov/dls](http://www.mass.gov/dls)
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- telephone: 617-626-2377
- mail: PO Box 9569, Boston, MA 02114-9569