

# City and Town

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



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## **Mother Nature Not Fooling Around**

Cities and towns received some good fiscal news when the Governor signed a supplemental budget on Friday that delivered \$65 million in Unrestricted General Government Account funds on Monday. The funding met a promise made last summer to restore a \$65 million reduction in the account made in the original FY12 budget.

The supplemental budget also included \$10 million to assist cities and towns in paying for damages not reimbursed by FEMA in the aftermath of the June 1st tornado in Western and Central Massachusetts; \$6.2 million to communities for reimbursement of expenses incurred cleaning up after the December 2008 ice storm; and \$2.78 million to communities hit hard by flooding in March 2010.

Receipt of the supplemental budget funds may prove extremely helpful to communities wrestling with costs for cleaning up after Tropical Storm Irene and, most recently, the October 30 early season snow storm that toppled trees and knocked down power lines over much of Massachusetts.

There is no disputing that weather is wreaking havoc not only on infrastructure, including washed out roads and power outages, but on city and town budgets already stretched to meet everyday expenses, let alone storm emergencies.

Since June 1 of this year, DOR has received 50 requests from cities and towns for emergency spending under the terms of Chapter 44 Section 31, with 40 of those coming in the wake of Tropical Storm Irene, eight from the tornado, one from a summer microburst, and so far, one from the Halloween eve snowstorm, with more such requests anticipated. While we have no statistical data on this, it is safe to say that the frequency of these requests is unmatched in recent memory.

It's probably as good a time as any, with snow covering much of the state, to remind local officials that municipal finance law allows for deficit spending on snow and ice removal, under Chapter 44, Section 31(d). The spending is included in the following year's tax levy if not paid for by the end of the current fiscal year. Such spending must be approved by the local executive authority, and the snow and ice account must be funded to at least the amount budgeted in the previous fiscal year.

Aside from snow and ice removal, extraordinary cleanup costs in the wake of floods, tornados, ice storms and the like are candidates for emergency borrowing under Chapter 44, Section 31.

Robert G. Nunes  
Deputy Commissioner & Director of Municipal Affairs

## **This Land is Your Land? Eminent Domain and Taxes**

**James Crowley, Esq., Bureau of Municipal Finance Law**

*Richardson v. Blackstone*, 27 Mass. L. Rep. (2010), is a Superior Court decision which illustrates many important principles of property tax law.

In December 2003, the Town of Blackstone acquired by eminent domain a 15 acre parcel on Bellingham Road. As you are probably aware, eminent domain involves the taking of private property for a public purpose with payment of just compensation to the owner. David Richardson and other plaintiffs filed a petition in Superior Court pursuant to M.G.L. Ch. 79 Sec. 14 seeking an award of damages for the taking. Parties in eminent domain case, however, have a burden of proving they hold title to the subject parcel at the time of the taking. If the court determines that a claimant held ownership at the time of the taking, the court must then establish the measure of damages to be awarded.

In the case at hand, the subject parcel had been assessed to Owner Unknown. The plaintiffs, therefore, researched records in the Registry of Deeds and the Registry of Probate and went back 200 years to establish their claim of ownership. At a non-jury trial the judge relied on an affidavit of an administrator of an estate to establish that a mortgage dated 1866 had been foreclosed and a 50% interest in the land had been conveyed by auction to the plaintiffs' predecessors in title. The defendant Town of Blackstone objected since the deed mentioned in the affidavit was apparently never recorded. Whether the deed was "missing" or unrecorded, the trial judge believed that sufficient evidence had been presented to show a mortgage foreclosure and an auction had occurred. The failure to find a recorded deed was not fatal since the judge observed that in Massachusetts an unrecorded instrument can pass good title. The judge ruled that that the plaintiffs in this case had established a collective 50% interest in the land.

The trial judge then turned to the issue of co-ownership. A title search had established that a certain James Pain had acquired a one-half interest in the 15 acre parcel in the year 1825. There was no evidence that Pain had conveyed his interest in the land. Furthermore, Pain's title could not be lost by abandonment. The trial judge held that both Pain and the plaintiffs were entitled to a measure of damages for the taking. The town and the plaintiffs agreed that the subject property had a value of \$248,000 at the time of the taking. According to the court, the plaintiffs were entitled to \$124,000 in compensation. The town then sought to offset the award by the amount of unpaid real estate taxes.

For fiscal year 1984 up to the December 2003 eminent domain taking, the parcel had been assessed to Owner Unknown. The total outstanding tax balance for the parcel was over \$127,000 which consisted approximately of \$51,000 in taxes and \$76,000 in accrued interest. The plaintiffs objected to the Owner Unknown assessment and to the inclusion of interest. In their view, the taxes alone should be due. The trial judge, however, held that the assessors were not required to review over 200 years of records. As you might know, under M.G.L. Ch. 59 Sec. 11, the Commissioner of Revenue can authorize assessors to assess property to Owners Unknown if the assessors by a diligent search of records in the Registry of Deeds and Registry of Probate for the county are unable to determine record ownership of a parcel. Under the facts presented, the judge ruled that the Owner Unknown assessment was valid and cited the Supreme Judicial Court decision of Hardy v. Jaeckle, 371 Mass. 573 (1976). Due to a statutory amendment in 1971, permission from the Commissioner is now required for an Owner Unknown assessment. The Hardy case predates the legislative amendment to M.G.L. Ch. 59 Sec. 11. Under common law, John Doe assessments were valid if the actual owner could not be determined after a diligent search of county records. In Hardy, the Supreme Judicial Court upheld the John Doe assessment since the land in question was owned by 19 persons and their heirs as tenants in common under an instrument recorded in 1821.

In the Richardson case, the judge did not spend too much time discussing the reassessment provisions of M.G.L. Ch. 59 Sec. 77. The trial judge merely ruled that a valid assessment meant that the town was entitled to the tax and all accrued interest. The judge cited M.G.L. Ch. 79 Sec. 44A for the authority to offset the tax lien against the damage award since the tax lien was extinguished by the eminent domain taking.

On fairness grounds, the plaintiffs then argued that only one half of the tax obligation should be offset against their share of the eminent domain award. In their view, the remaining 50% of the tax lien should be charged against the award belonging to the heirs of James Pain. The plaintiffs urged the judge to take this equitable approach since Pain and his heirs could not be located and Pain's share of the award would merely escheat to the State.

The trial judge, however, declined to take this approach. In his view, each co-owner was jointly and severally liable for the taxes. The town could legally offset the full amount of the tax liability against the plaintiff's award in accordance with M.G.L. Ch. 60 Sec. 56. In the event of such action by the town, the plaintiffs could file a separate lawsuit seeking a right of contribution from the heirs of Pain and pursue funds held by the State Treasurer on behalf of Pain's heirs.

In his decision, the judge ruled that the town could offset the plaintiffs' \$124,000 damage award by the full amount of the \$127,000 tax lien. Consequently, the plaintiffs did not receive any money from the eminent domain taking.

## Governor Approves \$65M Supplemental Budget

Governor Deval Patrick has signed Chapter 142 of the Acts of 2011, which appropriated \$65M in a supplemental budget for cities and towns of the Commonwealth. The Division of Local Services has posted the full local aid distribution list on its website of Massachusetts. Please click the link below to review the full bulletin and to access the local aid amounts listings.

*Bulletin 2011-15B* can be found by clicking [here](#).

## November Municipal Calendar

### November 1: Taxpayer

Semi-Annual Tax Bill — Deadline for First Payment - According to M.G.L. Ch. 59, Sec. 57, this is the deadline for receipt of the first half semi-annual tax bills or the optional preliminary tax bills without interest, unless bills were mailed after October 1, in which case they are due 30 days after mailing.

### November 1: Taxpayer

Semi-Annual Tax Bills — Application Deadline for Property Tax Abatement  
According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on the same date as the first actual tax installment for the year.

### November 1: Taxpayer

Quarterly Tax Bills — Deadline for Paying 2nd Quarterly Tax Bill Without Interest

### November 1: Treasurer

Deadline for Payment of First Half of County Tax

### November 15: Treasurer

Submit First Quarter Reconciliation of Cash

### November 15: DESE

Notify Communities/Districts of Any Prior Year School Spending Deficiencies - By this date, or within 30 days of a complete End of Year Report (see September 30), DESE notifies communities/districts in writing of any additional school spending requirements.

### November 30: Selectmen/Mayor

Review Budgets Submitted by Department Heads. (This date will vary depending on dates of town meeting.)

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