City of Gardner

Assessing Review

Division of Local Services/Technical Assistance Section

August 2013

Massachusetts Department of Revenue *Division of Local Services*
Amy A. Pitter, Commissioner *Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs*

August 27, 2013

The Honorable Mark P. Hawke
City Hall
95 Pleasant Street
Gardner, MA 01440

Dear Mayor Hawke:

It is with pleasure that I transmit to you the enclosed Assessing Review completed by the Division of Local Services for the City of Gardner. It this review, we discuss various issues related to the assessing office that were identified by city officials and offer guidance designed to assist the new assessor that the city intends to hire. It is our hope that the information presented in this report will assist the city in addressing these challenges and ease the transition for the new assessor.

As a routine practice, we will forward a copy of the report to the city's state senator and representative.

If you have any questions or comments regarding our findings and recommendations, please feel free to contact Rick Kingsley, Bureau Chief of the DLS Municipal Data Management and Technical Assistance Bureau at 617-626-2376 or at kingsleyf@dor.state.ma.us.

Sincerely,

Robert G. Nunes
Deputy Commissioner &
Director of Municipal Affairs

Cc: Senator Jennifer L. Flanagan
Representative Jonathan D. Zlotnik

Gardner Assessing Review

Introduction

At the request of Gardner Mayor Mark Hawke, the Division of Local Services has reviewed certain office procedures of the Gardner Assessing Department. The position of city assessor, who serves as both department head and chair of the city's three-member board of assessors, is currently vacant. The purpose of this review is to provide guidance to the new permanent city assessor that the city intends to hire. As such, the focus of this report is forward-looking and its purpose is not to evaluate past decisions or second guess the judgment of prior city assessing personnel, but rather to provide the new assessor with direction regarding the future course of this critical city office.

In the course of our review, we interviewed or received information from the mayor, the senior administrative clerk in the assessing office, the interim assessor, the GIS coordinator in the engineering department, the building commissioner and zoning enforcement officer and the tax collector. We reviewed information including property record cards, Form 3ABCs, abatement applications, tax collection records, land schedules, GIS maps and other relevant information.

In the report that follows, we provide recommendations to address various assessing issues identified by city officials and offer additional guidance where needed. Among our primary recommendations for the new city assessor is to review all recent changes in property use or classification code since FY2011 to determine whether they are appropriate. The new assessor should also work cooperatively with other city officials to develop policies establishing when a parcel is considered developable, potentially developable or undevelopable. For example, when a taxpayer takes action to acquire necessary street frontage, receives a special permit from the planning board to construct infill development, subdivides the parcel, receives a special permit from the zoning board of appeals or acquires an adjacent property, there could be reason to recode a previously undevelopable parcel to developable or potentially developable status. To assist in making this determination, the new assessor should make sure that the correct zoning information appears on all property record cards.

We suggest as well that the new assessor review any lot splits that have occurred since FY2011 and develop policies around when to split or combine lots under common ownership. We also advise that the city mail the Form 3ABC to taxpayers that have filed this return in the past with the applicable fiscal year pre-populated on the form. This will avoid unnecessary confusion on the part of city taxpayers and create more reliable internal records for assessing personnel. Finally, in limited instances, we provide guidance

on the options available to seek abatement of taxes in cases where the assessors lack authority to grant abatement relief.

In the sections that follow, we examine the issues that were raised by city officials and offer action plans or recommendations designed to assist the incoming assessor with the transition to Gardner.

1. Exemptions for Veterans' Organizations

We reviewed the history of the application of exemptions granted to the Gardner Post 129 of the American Legion and the Ovila Case Post 905, Veterans of Foreign Wars (VFW). We found that these veterans' organizations had received full exemptions from property taxes in both FY2011 and FY2012. Evidence suggests that these organizations had been considered fully exempt in Gardner for several prior years as well. Examination of the property record cards shows that the property classification codes changed from charitable/fraternal organizations (Code 954) in FY2012 to eating and drinking establishments (Code 326) in FY2013. The resulting FY2013 taxable valuation for these properties was then $474,200 for the American Legion and $231,500 for the VFW.

A charitable or veterans' organization owning property on January 1st for which it claims exemption must file a charitable property return (Form 3ABC) by March 1st for the tax year beginning on the following July 1st. The assessors may extend that deadline if the organization makes a written request and demonstrates a good reason for not filing on time. We evaluated the Form 3ABC filings for these organizations and found that they had timely filed this form for many years prior to FY2012. Beginning in FY2012 and FY2013, we found evidence that these forms had not been timely filed and noticed what appeared to be confusion on the part of the taxpayers as to the appropriate fiscal year to which the return applied. The assessors then extended the deadline for filing Form 3ABC for FY2013 for these organizations from March 1, 2012 to February 1, 2013, an apparent effort to grant an exemption since no exemption is permissible legally without a timely filed Form 3ABC.

With the extended deadline for submitting Form 3ABC granted by the assessors, it appears that the veterans' organizations submitted these returns in time to meet the extended deadline. These organizations then sought abatements for FY2013 taxes. Their applications were timely filed and subsequently granted by the board of assessors in the amount of $200,000 based on MGL c.59, §5, cl.5. Since these were only partial abatements, there remained an unpaid tax balance, plus demand and interest charges of more than $5,000 for the American Legion and more than $600 due from the VFW.

Based on MGL c.59, §5, cl.5, a veterans' organization receives a $200,000 exemption to its real and personal property provided it is used and occupied by such association and any net income is used for charitable purposes. There are three provisions that allow a municipality, at local option, to exempt a greater amount for these organizations. On January 22, 2013, the Gardner City Council adopted MGL c.59, §5, cl.5B, increasing the exemption amount for a veterans' organization from $200,000 to $700,000.

As a general rule, however, local option changes to the application of municipal tax law are considered to be effective prospectively, meaning that the local option exemption would not take effect until July 1, 2013 for FY2014. To the extent a city or town can make a tax change retroactive, here to July 1, 2012 for FY2013, we believe that this intention must be reflected explicitly in the vote and the vote has to take place before the tax rate for that year is set.

Action Plan

1. The assessing office should consider mailing or otherwise transmitting the Charitable Property Return (Form 3ABC) to the organizations (about 42) that have filed the returns in prior years. Though this is not a state requirement, some assessors do this as a courtesy to assist taxpayers. The office should consider pre-populating the form with the correct fiscal year to which it relates to avoid confusion for both taxpayers and assessing office personnel.

2. The qualification date for exempt status for real estate is July 1st which is the beginning of the municipal fiscal year. The city's special legislation regarding the deemed acceptance of MGL c.59, §5, cl.5B need only reference July 1, 2012 to apply this exemption for FY2013; earlier application is not necessary as these organizations were not taxed in those years. Upon passage of this home rule legislation, the assessors will have the authority to abate these taxes in full and all interest and charges will fall.

2. Exemptions for Fraternal or Charitable Organizations

We examined the property tax exemptions granted to a sample of the city's fraternal and charitable organizations including the Gardner Masonic Charity and Educational Society and the Fraternal Order of Eagles, Hillcrest Aerie No. 747. We found that properties for both organizations had been considered fully exempt for both FY2011 and FY2012, and likely had been considered fully exempt in prior years as well. Beginning in FY2013, both properties were reclassified from exempt, charitable fraternal organizations (Code 954) to commercial eating and drinking establishments (Code 326).

The Eagles filed timely Form 3ABCs in both FY2012 and FY2013. According to the Attorney General's Public Charity Division's website, the Eagles organization is not registered as a public charity. The Masonic Society filed a timely Form 3ABC in FY2013, but apparently failed to file this return in FY2012. Though the Masons have historically submitted Form PC annually to the Attorney General's Public Charity Division, they apparently did not submit this required return to the assessors in FY2013. Neither organization filed for an abatement in FY2013.

The stated primary mission or function on the FY2013 Form 3ABC for the Eagles was "provide social activities for its members." Therefore, it appears that the organization's real property is not tax exempt as the property is not occupied for charitable purposes. On the other hand, the Masons stated that their purpose was to "promote charitable and educational needs of the community." The organization is registered as a public charity with the Attorney General's Public Charities Division and may qualify for at least a partial exemption of its property taxes.

Generally, all fraternal organizations, including the Masons, Knights of Columbus, Elks, Moose and the like, operating under the lodge system or primarily for the benefit of members, are exempt from local *personal property* tax under GL c. 59, §5, cl.7. There is no specific real estate tax exemption in the general laws for such organizations per se. Even though such organizations may conduct or support charitable works, their charters usually include sick, accident or other benefits to members or their dependents. In order to qualify for a real estate exemption such an organization must meet the substantive qualifications and follow the procedural requirements for a charitable exemption under GL c. 59, §5, cl. 3.

The organization must demonstrate that (1) it is a corporation or trust organized for charitable purposes, (2) it occupies the property, or a portion thereof, upon which it seeks an exemption for the performance of

its charitable purpose and not, primarily for some social or commercial use and (3) its income and assets on dissolution may not accrue to stockholders, trustees or members or be used for other than charitable purposes. The organization must also timely file the requisite documents each year with the assessors (Form 3ABC and Form PC if applicable). In cases where the taxpayer fails to comply with this procedural requirement, the assessors are precluded from granting an exemption on real property (MGL c.59, §5, cl.3).

In the 1960's the legislature enacted two special acts exempting real estate of the Knights of Columbus (Chapter 95 of the Acts of 1960) and the Elks, Grange and Sons of Italy (Chapter 404 of the Acts of 1966) used for charitable purposes from property tax. There is no similar act for the Masons. Thus, we think a fraternal organization, including the Masons, will have to meet the requirements of Clause Three as a charitable corporation, in order to be exempt from tax on real estate. We believe that all fraternal organizations have to meet the Clause Three substantive requirements, except that those covered by the above special acts do not have to be organized as corporations or held in trust. Though technically these special act organizations may not have to timely file a 3ABC as a condition for exemption, we think they should so that the assessors can determine the use of the property and any changes from year to year.

With regard to fraternal organizations satisfying the occupation for charitable purposes requisite, court cases have underscored that the dominant use of the property must be charitable. When the dominant use of any portion of the property is social or commercial, rather than charitable, that portion of the property will not qualify for exemption. The Supreme Judicial Court (SJC) upheld a partial exemption of real property in Assessors of Worcester v. Knights of Columbus Religious Educational Charitable and Benevolent Association of Worcester, 329 Mass. 532 (1952). In this case, the court ruled that the portion of the property devoted to charitable purposes qualifies for exemption, where the remainder was taxable since it was used for social or commercial purposes.

Action Plan

1. Review all fraternal and charitable organizations to make sure that any exemption for real property is legally justified.

2. If the city wishes to provide relief to the Masons where over $4,000 is owed for FY2013 property taxes, the assessors might apply for authority from the Commissioner of Revenue to abate the taxes under MGL c.58, §8. For the abatement of any tax or charge under c.58, §8, each of three requisites must be

satisfied. First, sufficient evidence must be presented which establishes that the taxpayer was prevented by extraordinary or mitigating circumstances from seeking an abatement through the usual process. Second, the application must show that granting an abatement would correct a substantial inequity, cure a grievous hardship or provide a considerable public benefit. Third, the amount to be abated must be appreciable. If the assessors cannot demonstrate that there were extraordinary or mitigating circumstances around the taxpayer's failure to seek abatement, the city should consider seeking specific abatement authority for this property by adding it to its special act regarding exemptions for the veterans' organizations.

3. Taxation of Property Owned by the Commonwealth

We reviewed the issue of whether property on the main campus of the Mount Wachusett Community College (MWCC), or a portion thereof, is taxable if leased or occupied for business or other than public purposes. MWCC is owned by the Commonwealth of Massachusetts and according to the on-line asset records of Massachusetts Division of Capital Asset Management and Maintenance (DCAMM), all 268 acres of the Gardner campus are owned by the state.

We also reviewed correspondence between the Gardner Assessors and the MWCC General Counsel where the city sought any lease arrangements or management contracts related to two 1.65 Megawatt wind turbines and a fitness center. The college's general counsel stated that MWCC does not possess or maintain any records responsive to the city's request. DCAMM apparently did not have any information on the fitness center either.

The two wind turbines were partially financed through grants provided by the United States Department of Energy and low interest bonds from the Massachusetts Clean Energy Investment program. According to a United States Environmental Protection Agency merit award received by the college, the turbines are expected to produce about 97 percent of the school's energy demand and together with its existing biomass heating and solar energy, MWCC will produce nearly all of its energy on-site. The college has also integrated these energy innovations into its green careers curriculum.

The fitness center is approximately 65,000 square feet and contains a swimming pool, three multi-purpose gymnasiums, two racquet ball courts and weight and cardio training equipment as well as locker room facilities. The center is open to MWCC students and faculty, seniors and other members of the

community on a membership basis. All users pay a membership fee to use the facility, with students paying less than other members of the community. The fitness center is made available free of charge to afflicted Iraq and Afghanistan veterans and their families that participate in the Northeast Veteran Training and Rehabilitation Center (NVTRC) program and attend MWCC. The fitness center is listed in DCAMM records as a state asset, but it is unclear if there is a third party managing or operating the facility.

Based on our discussions with DCAMM, the college apparently leases about 10 or 11 acres of the Gardner property to Veteran Homestead, Inc., an independent, non-profit organization that provides housing and support services to U.S. veterans who are elderly, disabled or diagnosed with a terminal illness. The organization is considered a public charity by the Attorney General's Public Charity Division and annually files Form PC. The organization has constructed housing for veterans on this land and these improvements are not listed as state assets in DCAMM's records. The veterans' housing appears to be owned by Veteran Homestead, Inc., while the facility is referred to as the Northeast Veteran Training and Rehabilitation Center (NVTRC). It consists of an administrative building and about ten two-family homes.

Real and personal property owned by the Commonwealth is ordinarily exempt from taxation (MGL c.59, §5, cl.2). However, if the real estate is leased by the Commonwealth to a private party, the property may be taxable. Specifically, MGL c.59, §2B provides that real estate owned by the Commonwealth if used "in connection with a business conducted for profit or leased or occupied for other than public purposes, shall… be…taxed annually as of January 1st to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee." Since the user, lessee or occupant is treated as the owner, it may qualify for any exemption available to property owners under state law.

It is not a prerequisite that the state file Form 3ABC in order to receive this exemption. However, when a charity such as Veteran Homestead, Inc. leases the property from the Commonwealth, that property may be subject to taxation if the required returns (Form 3ABC and Form PC) are not filed annually with the assessors. Therefore, the assessors need to analyze this situation to determine the exact nature of this relationship. This should not be viewed as a punitive measure toward what is likely a charitable organization; rather it is critical that assessors follow the strict legal procedures around charitable exemptions so that they have clear authority to grant an exemption. It is also important from the perspective of fair and equitable taxation that the Veteran Homestead Inc. be treated in the same manner

as other public charities exempt under MGL c.59, §5, cl.3.

Action Plan

1. We recommend that the new city assessor meet with officials of MWCC to work cooperatively through the above issues. The assessors will need to render a judgment, and the college should supply the requested information, as to whether any of these issues rise to the level of a "business for profit or a facility occupied for other than a public purpose." Where another charity leases the property, the assessors should advise the owner that a Form 3ABC and Form PC will need to be filed annually to be considered for a charitable exemption under MGL c.59, §5, cl.3.

4. Taxation of Personal Property of Manufacturing Corporation

We evaluated a case where a manufacturing corporation, Specialty Wholesale Supply, was issued a significant FY2013 personal property tax bill. As a matter of law, manufacturing corporations, when designated as a manufacturing corporation in the Department of Revenue's Corporations Book, are exempt from taxation on their machinery and equipment (MGL c.59, §5, cl.16). Local assessors must rely on the designations of manufacturing status in the Corporations Book to grant this personal property exemption.

This instance appeared to be the result of a misunderstanding or administrative error regarding the proper corporate name and address. The taxpayer stated on the FY2013 abatement application that they had filled out a form of list for 35 Linus Allain Ave, the location of the manufacturing facility. The list apparently was combined with other personal property owned by the Maki Building Center located at 513 Betty Spring Road. A personal property tax bill was issued to Maki Building Center with a valuation of $841,882 and a bill of $14,699. To date, a little over half of this amount has been paid. Both the Maki Building Center, a retail home supply store, and Specialty Wholesale Supply, the manufacturing portion of the business, are subsidiaries of the Maki Corporation. When the assessors checked the 2012 Corporations Book, neither the Maki Building Center nor the Maki Corporation appeared as manufacturing corporations. However, the property at 35 Allain Ave was owned by Specialty Wholesale Supply not by the Maki Building Center. Specialty Wholesale Supply was a designated manufacturing corporation, and had been for many years, and was therefore entitled to the exemption on their personal property.

When the taxpayer recognized the problem and sought relief, the assessing office apparently admitted that there had been an administrative error. The taxpayer then filed a FY2013 abatement application on April 11, 2013. To be timely filed, applications must be (1) received by the assessors or (2) postmarked by the US Postal Service, on or before the due date. The application was not timely filed by the February 1, 2013 deadline, thus foreclosing the board of assessors' legal authority to act on the application. When an abatement is not timely filed, the Appellate Tax Board does not have jurisdiction to hear an appeal even if a notice of denial is issued by the assessors. Therefore, a taxpayer that misses the filing deadline loses the right to any abatement.

Action Plan:

1. If the city wishes to provide relief to this taxpayer, the assessors might apply for authority from the Commissioner of Revenue to abate the remaining unpaid taxes under MGL c.58, §8 (the taxpayer has paid about half of the tax). For the abatement of any tax or charge under c.58, §8, each of three requisites must be satisfied (see earlier discussion on exemptions for fraternal/charitable organizations). The most critical in this case will be to provide sufficient evidence which establishes that the taxpayer was prevented by extraordinary or mitigating circumstances from seeking an abatement through the usual process. If this cannot be established, or the city wants to abate the entire tax and not just the remaining unpaid amount, the only other recourse for the city to providing relief to this taxpayer is through a special act of the legislature.

2. Review the entries in the annual Corporations Book that are located in Gardner with a particular emphasis on those corporations that have been granted manufacturing status by the commissioner. In particular, the assessing office should seek to confirm that it has the correct address and property owner for the 25 or so corporations that have manufacturing status in Gardner. The manufacturing designation is particularly important since these businesses qualify for a significant personal property exemption on the machinery and equipment used in manufacturing.

5. Topographical Adjustments to Land Values

We analyzed a case where vacant land accessory to a commercial parcel was recoded from Code 392, undevelopable land, to Code 391, potentially developable land. The parcel is 3 acres in size and based on city GIS maps, it appears to be almost entirely swampland or wetlands. The current use of the property is to store equipment and materials on a portion of the parcel that had apparently been filled in the past. The recoding of this parcel from undevelopable to potentially developable resulted in a valuation increase from $6,800 in FY2012 to $56,800 in FY2013. A note on the property record card indicates that the parcel contains a possible two lots if buildable.

We discussed this issue with the city's GIS coordinator and the city's building commissioner and zoning enforcement officer. While not definitive on whether a property is buildable or not, city GIS maps may provide a reasonable indication of water or wetlands on a given property. Given the wet topography of this parcel, any building plans would have to go before the city's conservation commission, a process by which the wetlands would be more precisely marked and the development impact on the wetlands analyzed. Determinations would be made as to whether construction could be supported on the parcel without infringing on the wetlands. Though the building inspector/zoning enforcement officer expressed doubt that the parcel was buildable, he acknowledged that the issue must first come before the conservation commission.

Action Plan

1. The city assessing office should review all vacant commercial and residential land that has had a change in use code since FY2011 to developable (Code 390 or 130) or potentially developable (Code 391 or 131). As part of this review, the assessors should work cooperatively with other city departments to ensure that these decisions, which require significant judgment, are not made in isolation. Where possible, input should be sought from the city engineering department, building inspector and zoning enforcement officer and the conservation agent.

2. When the above process is not enough to make a sound judgment, we recommend that the assessors conduct a field visit to the property. Once parcels of this type are identified, a field visit may be scheduled so that the parcel can be visually inspected and evaluated by the assessors and other necessary city officials.

3. The assessing office should develop uniform policies about when a parcel is considered developable, potentially developable or undevelopable. If the building inspector/zoning enforcement officer does not consider a parcel to be buildable, the assessors should take this into consideration. If the taxpayer takes action to acquire necessary frontage, receives a special permit from the planning board to construct infill development, subdivides the parcel, receives a special permit from the zoning board of appeals or acquires an adjacent property, there could be reason to recode the parcel to developable or potentially developable status.

6. Lot Splits

We reviewed several instances where contiguous lots, under the same ownership and treated as combined parcels for numerous previous years, were split into component lots. In one example, a foreclosure deed was filed in August of 2010 granting ownership to B & B Truck Leasing, Incorporated. The deed describes six different parcels included in the sale. Three of the parcels contain a single warehouse building. For valuation and tax billing purposes, the assessing office treated these parcels as separate rather than as a single site containing the building. We were not able to determine why this was done, other than that the parcels are separately described in a single deed. Using the city's land schedule for commercial land, it appears that taxing these parcels separately yields a higher total land value than would result if the parcels were valued together. This presents potential equity issues with the valuation of other similar commercial land.

In another example, a half-acre parcel with a single family home was split into two parcels in FY2013. The parcel with the single family home is 12,416 square feet in size while the back lot is 9,299 square feet. The parcels are in zoning district R1 according to the property record card. The smaller parcel was then classified as vacant developable land and valued at $44,600. Apparently, this may have been based on the "grandfathering" provision of state zoning law (MGL c.40A, §6) which states that "any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage."

Although the assessors' property record card showed that this lot was in the R1 zoning area where 12,500 square feet and 100 feet of frontage are required to build, the building inspector/zoning enforcement officer confirmed that this zone was incorrect on the property record card. The parcel is really in zone R3 where only 8,000 square feet and 75 feet of frontage are required. In the building inspector/zoning enforcement officer's opinion, however, this parcel lacks the 75 feet of meaningful frontage required to make this lot buildable. The property owner would have to expand and lengthen a paper street (which appears to be a shared driveway now) to reach the necessary 75 feet of frontage.

In another example, a parcel with 8,600 square feet was split into a 7,500 square foot parcel and a 1,100 square foot parcel. The value of the single family home is assigned to the larger parcel, but the parcel split may actually bisect the home. Even though the smaller parcel is coded as undevelopable vacant land, there may be equity issues with valuing the property as two small parcels when compared to a single parcel of a similar total size.

Action Plan

1. Review all lot splits since FY2011 to determine if they are justified. Generally, contiguous parcels under common ownership can be combined for appraisal and tax billing purposes. See the City of Boston's policy on parcel consolidation: http://www.cityofboston.gov/images_documents/FY14%20Consolidation%20Instructions%20%26%20Form%20-%20for%20web_tcm3-35409.pdf. The assessing office should develop policies around when to split or combine lots, including potential actions on the part of the taxpayer that increases the potential that the parcel will be developed. These could include filing plans to subdivide a parcel, acquiring an adjacent parcel that changes the development potential of the parcels when taken together or when plans are filed for the construction of a new access road.

2. Review all parcels that have been re-coded to buildable or potentially buildable with the building inspector/zoning enforcement officer to ensure that these decisions reflect the professional judgment of the city official charged with making these determinations. Property record cards should also be reviewed and corrected when zoning information is inaccurate.

Acknowledgements

This report was prepared by the
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In preparing this review,
DLS staff interviewed and/or received information from the following local officials:

The Honorable Mark P. Hawke, Mayor

Patrick Harring, Interim Assessor

Lisa Targonski, Senior Administrative Assessing Clerk

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