DLS

DIVISION OF LOCAL SERVICES

MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

"What's New in Municipal Law"

2019

Recent Legislation

FY 2020 State Budget

St. 2019, c. 41, §§ 29, 30, 105 and 107

- **Amends G.L. c. 44B, § 8 of Community Preservation Act**
  - **Increases surcharges on registry of deeds and registered land recording fees from**
    - **$20 to $50 and**
    - **$10 to $25**
  - **Surcharges fund the Massachusetts Community Preservation Trust Fund under c. 44B, § 9 (state matching funds)**
  - **Effective December 31, 2019**

An Act Regulating and Insuring Short-term Rentals

St. 2018, c. 337, as amended by St. 2019, c. 5

- Signed by Governor December 28, 2018
- Effective March 28, 2019
- Amended March 29, 2019
  - March amendments delayed most changes to July 1, 2019
- Amended Room Occupancy Excise
- Authorized Local Option Community Impact Fee
- Created Cape & Islands Water Protection Fund

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Room Occupancy Excise – c. 64G

- **Added "short-term rentals" to state and local room occupancy excise - July 1, 2019**
  - **If city/town has already adopted local room occupancy excise, it will automatically apply to short-term rentals**
    - **City/town cannot "opt out" of application to short-term rentals, but can amend local excise rate or rescind local excise altogether**
- **DOR manages and collects state and local excise – registration, collection, distribution**

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Local Room Occupancy Excise – c. 64G:3A

- If city/town has not already adopted local room occupancy excise, it can do so now
  - Local acceptance - accept and establish rate
    - Cities - majority vote of city council and if have elected mayor, mayor approval
    - Town meeting government - majority vote annual/special town meeting
    - Town council government - majority vote of council
- Amendments and revocation are done in the same manner as acceptance

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Local Room Occupancy Excise – c. 64G:3A

- **Must report acceptance, amendment or revocation to DLS's Data Analytics and Resource Bureau (DARB) within 48 hours**
  - **Effective date of local excise = 1st day of calendar quarter following 30 days after acceptance vote or 1st day of a later calendar quarter if so voted**

Acceptance Vote	Excise Effective
May 31, 2019	July 1, 2019
June 1, 2019	October 1, 2019

- **May amend or revoke once in 12-month period**

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Local Option Community Impact Fee - 64G:3D

- Available only if city/town has adopted local room excise under 64G:3A
- Up to 3% of rent for transfers of certain short-term rentals
- Separate acceptance vote(s) required – same manner of acceptance as for excise
- Must report adoption of local option impact fee to DLS (DARB) within 48 hours
- Same effective date timetable as for local option room occupancy excise

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Local Option Community Impact Fee - 64G:3D

- **Impact fee #1 - applies to "professionally managed unit" - one of two or more short-term rental units in same city/town not located within single- or two- or three-family dwelling that includes operator's primary residence**
- **If adopt impact fee #1, may adopt local option community impact fee #2 - applies to short-term rental units located in a two- or three-family dwelling that includes operator's primary residence**
- **Separate acceptance votes required for each**

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Local Option Community Impact Fee - 64G:3D

- DOR collects local impact fee / distributes to city/town
- 35% of impact fee must be dedicated to "affordable housing or local infrastructure projects" - 64G:3D(c)
- Must establish special revenue fund - receipts reserved for appropriation for "affordable housing or local infrastructure projects"
- Legislative body may vote to dedicate > required 35%
- Impact fee that is not dedicated is general fund revenue

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Cape Cod and Islands Water Protection Fund 64G:3C

- **2.75% additional excise applies**
  - **Barnstable County**
  - **Nantucket and Dukes County, if town is subject to wastewater management plan under s. 208 of federal Clean Water Act or equivalent plan as determined by Dept. of Environmental Protection (DEP)**
- **2.75% excise is paid by operator to DOR for transfer to Cape Cod and Islands Water Protection Fund**

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Local By-law / Ordinance - 64G:14

- Adoption of by-law or ordinance to
  - Regulate "operators" registered with DOR
  - Regulate location of operators and number of days operators may rent out in a year
  - Require licensing, but city/town may accept a certificate of registration with DOR
  - Establish penalties for violations and reasonable fee for administration
- Consult with local counsel

An Act Regulating and Insuring Short-term Rentals *(cont'd.)*

Additional References/Information

- **List of establishments registered with DOR is available through DLS (DARB) on request – contact databank@dor.state.ma.us (City/town should update this information annually)**
- **FAQs and Technical Information Release - DOR website - https://www.mass.gov/orgs/massachusetts-department-of-revenue**
- **Division of Local Services - Local Option Webpage - https://www.mass.gov/service-details/local-options-relating-to-property-taxation-cpa-meals-and-room-occupancy**

Recent Cases

Short-term Rentals

Styller v. Lynnfield Zoning Board of Appeals,
Land Court MISC 16-000757
(September 19, 2018)

- Case arises out of 2016 unsolved murder in Lynnfield
- Alex Styller owned spacious, 5 BR home with 3-car garage, indoor bar, outdoor pool and patio
- Alex rented home whenever he could
  - Bookings through different platforms
  - Alex, wife and family would stay with parents or nearby hotel during rentals
  - Rental rates ranged $1000 - $2740/night
  - Rentals for business conferences, board meetings, photo shoots and family reunions

Styller v. Lynnfield Zoning Board of Appeals (cont'd.)

- **May, 2016 - Alex rented home to "Woody" for Memorial Day weekend**
  - **Rental was for five guests**
  - **$6418 total rent ($2140 /day) paid through Flipkey/TripAdvisor**
  - **Alex had limited knowledge about Woody (None of the website operators at the time made representations about renters using their sites)**
  - **Alex met Woody at the house, gave him the keys, his cellphone #, a lesson how to use the appliances and left Woody for his weekend**

Styller v. Lynnfield Zoning Board of Appeals (cont'd.)

- **Unbeknownst to Alex, Woody's plans included a HUGE party**
  - **Over 100 people showed**
  - **Party-goer shot and killed at 3 a.m.**
- **Town's Response**
  - **Building Inspector issued cease and desist order to Alex prohibiting short-term rentals of premises without special permit**
  - **Town amended zoning by-laws to prohibit short-term rentals (30 days or less) in single family districts**

Styller v. Lynnfield Zoning Board of Appeals (cont'd.)

- **Alex appealed cease and desist order to Zoning Board of Appeals**
- **ZBA upheld order**
- **Alex appealed to the Land Court and claimed**
  - **Short-term rentals were permitted as of right before zoning amendments**
  - **Alex had a "grandfathered" right to continue his short-term rentals**

Styller v. Lynnfield Zoning Board of Appeals (cont'd.)

Land Court decision -

- **Town has power to regulate short-term rentals through zoning by-laws and by-law is valid**
  - **Purpose of zoning - protect the health, safety and general welfare of present and future inhabitants**
  - **Can treat short-term rentals differently than long-term rentals**
    - **Transient tenants have less stake in property they occupy – noise, trash control, traffic**
    - **Short-term rentals reduce neighborhood stability and housing for long-term tenants**

Styller v. Lynnfield Zoning Board of Appeals (cont'd.)

Land Court decision -

- **Alex's short-term rental use not "grandfathered"**
  - **Grandfathering protects uses lawfully in existence / lawfully begun prior to zoning change**
  - **Short-term rentals are not uses that can be grandfathered**
  - **Even if use could be "grandfathered," short-term rental use here not lawful before zoning change**
    - **Use not allowed by by-law, so prohibited**
    - **Short-term rental use not "accessory" to principal use of SF residence**

Airbnb, Inc. v. City of Boston, U.S. District Court, Mass., Order on Motion for Preliminary Injunction (May 2, 2019)

- **June, 2018 - Boston adopted "An Ordinance Allowing Short-Term Residential Rentals in the City of Boston" to be effective January 1, 2019**
  - **Purpose – Provide a framework to allow and regulate short-term rentals in the city through a registration process**
  - **Regulate operators – define eligible properties; restrict number of days / year for rentals; require registration; specify penalties for violations**
  - **Regulate "booking agents"**

Airbnb, Inc. v. City of Boston (cont'd.)

- **November, 2018 - Airbnb filed suit challenging ordinance provisions regulating "booking agents" (Airbnb = booking agent)**
  - **"Penalties Provision" - penalties for accepting a fee for booking ineligible unit ($300/day)**
  - **"Enforcement Provision" - requires enforcement of ordinance by booking agents**
    - **Remove ineligible, unregistered listings**
  - **"Data Provision" - requires data sharing of (1) listing location (2) whether listing = room or whole unit and (3) number of nights occupied**

Airbnb, Inc. v. City of Boston (cont'd.)

- **Airbnb claimed "booking agent" provisions violated**
  - **Communications Decency Act, 47 USC 230**
  - **Stored Communications Act, 18 USC 2701**
  - **US Constitution**
    - **Supremacy Clause and First, Fourth and Fourteenth Amendments**
  - **Mass. Constitution parallel provisions**
- **City agreed to not enforce ordinance against booking agents pending outcome of suit**

Airbnb, Inc. v. City of Boston (cont'd.)

- **Communications Decency Act, 47 USC 230**
  - **No provider of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider**
  - **Congressional intent – to encourage**
    - **Continued development of internet with minimal regulatory interference**
    - **Websites to screen content without fear of liability**

Airbnb, Inc. v. City of Boston (cont'd.)

- **May 3, 2019 – Court issued Order on Airbnb's Motion for Preliminary Injunction**
  - **"Penalties Provision" (penalty for booking agent taking fee) - injunction not issued - unlikely Airbnb will prevail on merits; "Penalties Provision" may be implemented by city**
    - **Does not impose penalty for publishing content**
    - **Previous courts have upheld similar regulations**
      - **HomeAway.com, Inc., v. City of Santa Monica, 918 F. 3d 676 (9th Circ. 2019)**
      - **Airbnb, Inc. v. City of San Francisco, 217 F. Supp. 3d 1066 (N.D. Cal. 2016)**

Airbnb, Inc. v. City of Boston (cont'd.)

- **Order on Motion for Preliminary Injunction (cont'd)**
  - **"Enforcement Provision" (requires booking agents to remove ineligible, unregistered listings from website) - injunction issued - likely Airbnb will prevail on merits; city may not implement**
    - **Airbnb's argument - "Enforcement Provision" requires Airbnb to monitor and remove third-party content**

Airbnb, Inc. v. City of Boston (cont'd.)

- **Order on Motion for Preliminary Injunction (cont'd)**
  - **"Data Provision" challenge (required reporting by booking agents)**
    - **Location of listing & whether listing is room or whole unit is public - Airbnb unlikely to show reasonable expectation of privacy - injunction denied; city may implement**
    - **Usage data / # of nights occupied is non-public data - Airbnb likely to show reasonable expectation of privacy - injunction granted; city may not implement**
  - **Decision has been appealed by Airbnb**

Recent Cases

Property Taxes

NSTAR Electric Co. v. Assessors of Boston,
94 Mass. App. Ct. 1123, Memorandum and Order pursuant to Rule 1:28 (February 22, 2019) FAR denied 482 Mass. 1102 (May 9, 2019)

- **Appeal from ATB decision upholding assessors' valuation of utility personal property using equal weighting of net book value and replacement cost new less depreciation**
- **NSTAR argued that "net book value" was limit on fair cash value, citing cases from the 1980's, unless "special circumstances" shown by assessors**

Value	Net book (NSTAR)	Net book/Reproduction Cost New Less Depreciation (Assessors)
FY 2012	$1.155 billion	$1.586 billion
FY 2013	$1.182 billion	$1.635 billion

NSTAR Electric Co. v. Assessors of Boston (cont'd)

- **"Special circumstances" that could warrant a higher valuation than "net book value" - *Boston Edison Co. v. Assessors of Watertown*, 387 Mass. 298 (1982)**
  - **Utility assets will actually draw a higher rate of return than net book value would support**
  - **Potential for growth in utility business**
  - **Potential for regulatory change making utility property more desirable**
  - **Possibility of finding a non-public utility buyer**

NSTAR Electric Co. v. Assessors of Boston *(cont'd.)*

- **NSTAR's argument against "special circumstances" failed to cut the mustard**
- **Evolution in DPU standards and regulatory changes moved away from mandatory "net book value," making utility property more desirable**
  - ***Stow Municipal Electric Dept. v. DPU,* 426 Mass. 341 (1997) - "net book" is starting point**
  - ***Boston Gas Co. v. Assessors of Boston,* 458 Mass. 715 (2011) – equal weighting of net book and reproduction cost new less depreciation**
  - **Special circumstances exist virtually as a matter of law due to DPU regulatory changes**

NSTAR Electric Co. v. Assessors of Boston (cont'd.)

- **Other "special circumstances"**
  - **NSTAR actually received a higher rate of return than its 10.5 percent approved rate**
  - **NSTAR's potential for growth**
- **Court cited with approval expert opinion that "net book value" was "an accounting entry and not a valuation method"**
- **Once "special circumstances" were shown, assessors' valuation method was upheld and burden shifted to NSTAR to prove overvaluation which it could not**

NSTAR Electric Co. v. Assessors of Boston, (cont'd.)

- **See Division of Local Services Local Finance Opinion – LFO 2019-1, "Assessing Utility Properties," issued March 26, 2019**
- **https://dlsgateway.dor.state.ma.us/gateway/DLSPublic/LfoMaintenance/41**

Veolia Energy Boston, Inc. v. Assessors of Boston, (Veolia #1)
95 Mass. App. Ct. 26 (March 8, 2019), FAR Denied 482 Mass. 1102 (May 9, 2019)

Veolia # 1 - Appeal of FY 15 Personal Property Tax

- **Taxpayer Veolia operated a steam manufacturing and distribution system providing thermal energy to Boston customers and claimed exempt from tax under manufacturing exemption c. 59, § 16(3)**
- **Veolia timely filed an application with assessors for abatement of FY 14 personal property tax of $2m**
  - **FY 14 abatement denied and Veolia timely appealed to ATB**

Veolia Energy Boston, Inc. v. Assessors of Boston (Veolia #1 cont'd.)

- **While FY 14 ATB appeal pending, Veolia assessed personal property tax for FY 15 ($2.2m)**
- **Veolia sent letters to tax collector with each FY 15 payment calling attention to pending FY 14 ATB appeal, but did not file FY 15 abatement application with assessors until May 28, 2015**
  - **Application denied by assessors**
- **Veolia appealed FY 15 denial to ATB - argued letter to collector dated 1/21/15 operated as FY 15 abatement application; filed before deadline and notified assessors that tax was disputed**
  - **Appeal dismissed by ATB**

Veolia Energy Boston, Inc. v. Assessors of Boston *(Veolia #1 cont'd.)*

- **Veolia appealed to Appeals Court and argued**
  - **Statute's requirements should be construed liberally when taxpayer makes a good faith effort to comply**
  - **1/21/15 letter to collector should operate as a timely-filed abatement application**
- **Appeals Court held ATB properly dismissed Veolia's FY 15 abatement appeal**
  - **Abatement remedy is statutory – requirements of c. 59, § 59 must be satisfied**

Veolia Energy Boston, Inc. v. Assessors of Boston *(Veolia #1 cont'd.)*

- **Appeals Court -**
  - **FY 15 abatement application must be on a form approved by the Commissioner and filed with assessors on or before February 6, 2015**
  - **Letters to collector were not applications on a form approved by the Commissioner**
  - **Case law does not recognize a good faith exception to compliance with the mandatory requirements for abatement**
- **Further appeal denied by SJC May 9, 2019**

Veolia Energy Boston, Inc. v. Assessors of Boston
483 Mass. 108 (September 11, 2019) *(Veolia #2)*

Veolia #2 – Appeal of FY 14 Personal Property Tax

- **While Veolia's appeal of its FY 15 tax was making its way through the courts, the ATB processed Veolia's appeal on its FY 14 tax (Note - Veolia had properly filed this appeal)**
  - **ATB granted full abatement of the $2m tax paid**
  - **Findings of Fact and Report under c. 58, § 13 issued on June 5, 2018**
  - **Assessors appealed the ATB decision abating Veolia's FY 14 taxes**

Veolia Energy Boston, Inc. v. Assessors of Boston *(Veolia #2 cont'd.)*

- **SJC granted direct appellate review of Assessors' appeal**
  - **Issue - whether pipes used to produce, store and distribute steam are exempt personal property under 59:5, cl. 16(3)**
  - **Clause 16(3) – all manufacturing corp. property "other than real estate, poles …, wires and pipes" is exempt**

Veolia Energy Boston, Inc. v. Assessors of Boston (Veolia #2 cont'd.)

- **ATB held pipes were part of "single integrated machine" and exempt under *Comm. v. Lowell Gas Light Co*, 12 Allen 75 (1866)**
- **Assessors argued plain language of clause 16(3) requires pipes not exempt**
- **SJC agreed with the ATB and upheld the full $2 million abatement of the FY 14 personal property tax**

Veolia Energy Boston, Inc. v. Assessors of Boston (Veolia #2 cont'd.)

- **SJC reasoning**
  - **Discussed history of taxation of corporate property over the years - local tax, taxation of shareholders and state excise tax - and relevant case law**
    - **Legislature intended to avoid double tax - items subject to corporate excise intended to be exempt from local tax**
    - **Courts have not taken narrow view of what constitutes "machinery" of manufacturing corporations**

Veolia Energy Boston, Inc. v. Assessors of Boston (Veolia #2 cont'd.)

- **SJC conclusion**
  - **"Great integral machine doctrine enjoys continued vitality"**
  - **ATB based its decision on substantial evidence and a correct application of the law**
  - **Veolia's pipes were part of a "great integral machine" and exempt from local tax**
  - **ATB decision to abate FY 14 tax in full affirmed**

Rauseo v. Assessors of Boston,
94 Mass. App. Ct. 517 (November 26, 2018)

- **Appeal concerned taxability of parking easements reserved by condo developer in the condo documents, not appurtenant to any unit and freely saleable**
- **Condo master deed for 80 Broad Street in Boston dated February 15, 2006, created 99 units**
- **Master deed described the "condominium parking area" and "parking easements" expressly reserved to the developer**

Rauseo v. Assessors of Boston (cont'd.)

- **Condominium documents - developer may "sell, lease, or otherwise convey" parking rights, which constituted "easements in gross"**
  - **Purchasers of parking easements were free to sell parking rights, which were not appurtenant to any unit in the condominium and did not correspond to a designated parking space**

Rauseo v. Assessors of Boston (cont'd.)

- **On October 22, 2002, DOR authorized assessors to assess the parking easements separately from condo units as "present interests" in real estate under c. 59, § 11**
  - **Note – Municipal Modernization Act eliminated requirement that DOR commissioner approve present interest assessments starting in FY 18**
- **Assessors assessed parking easements to owner as present interests and city issued tax bill**

Rauseo v. Assessors of Boston (cont'd.)

- **Taxpayer appealed tax to ATB**
- **ATB upheld the tax**
- **Taxpayer appealed to Appeals Court**
- **Appeals Court recognized that a property owner has the right to impose limitations or conditions on an estate conveyed to another and may reserve right to withdraw land from the common area of condominium**

Rauseo v. Assessors of Boston (cont'd.)

- **Retention of reservation was not an impermissible division of the common areas in violation of G.L. c. 183A, § 5(c)**
- ***Rauseo* facts distinguished from *First Main St. Corp. v. Assessors of Acton,* 49 Mass. App. Ct. 25 (2000), which held that reservation of rights to develop condo phases in the future did not constitute a taxable present interest in real estate**
  - **Parking easements were rights reserved by developer and were never part of the condo common area**

United Salvage v. Assessors of Framingham,
Nos. F329077, F332069
ATB Decision w/o Findings (July 23, 2018)

- **ATB held that owner of solar facility not entitled to the c. 59, § 5, Clause 45th exemption, because the solar facility did not supply the energy needs of property taxable under chapter 59**
  - **Facility supplied energy to non-taxable city of Framingham property**
  - **Subsequent to the ATB decision, United Salvage terminated its agreement to supply power to the city of Framingham**
- **Findings and Report due in January of 2019 under G.L. c. 58A, § 13, but remain pending**

United Salvage v. Assessors of Framingham *(cont'd.)*

- **ATB's approach to interpreting Clause 45th began with *Forrestall Enterprises, Inc. v. Assessors of Westborough* and continued with *KTT, Inc. v. Assessors of Swansea***
- ***Forrestall* decision holding solar facility exempt from tax stressed that (1) 100% of the energy supplied by the solar arrays was used for properties leased or owned by the taxpayer or corporations he controlled and (2) all properties were taxable under c. 59**
  - ***Forrestall* decision not appealed**

United Salvage v. Assessors of Framingham *(cont'd.)*

- ***KTT, Inc. v. Assessors of Swansea*** **abandoned emphasis in *Forrestall* on supplying energy needs of property directly or indirectly owned by the taxpayer**
  - **Power sold to grid under net-metering agreement**
  - **Most of the 240 kW sold to power property owned by Fall River Five Cents Savings Bank, in which taxpayer held no ownership stake**
  - **Commercial character of solar-generating activities not relevant to the exemption**

United Salvage v. Assessors of Framingham *(cont'd.)*

- ***KTT, Inc. v. Assessors of Swansea*** **- ATB used three-part eligibility test for clause 45th exemption**
  1. **Personal property must be a solar or wind powered system or device**
  2. **Utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying energy and**
  3. **Utilized for the power needs of taxable property**
- ***KTT*** **decision not appealed**

United Salvage v. Assessors of Framingham (cont'd.)

- **ATB's decisions - any solar facility is exempt under clause 45th, regardless of size or profitability, unless its energy output is used for a non-taxable property**
- **Decision creates disincentive for solar power producers to contract with municipalities or charitable or religious property owners to supply energy for their non-taxable property**
- **Un-appealed ATB decisions make conventional taxation and negotiation of PILOT agreements with solar facilities difficult**

Atlantic Union College v. Lancaster Assessors

ATB 2018-472 (October 12, 2018)

- **Private college lost accreditation from 2011 to 2015 and suspended its degree programs**
- **Assessors taxed college's residential buildings for FY 2014 - 2016 since there were no students**
- **College filed Forms 3ABC and abatement applications which were denied**

Atlantic Union College v. Lancaster Assessors (cont'd.)

- **On appeal, ATB found college still maintained property and provided housing to professors, employees and students**
- **ATB held college continued to occupy subject property for educational purposes and therefore exempt under Clause 3rd**
- **More to come … appeal has been filed**

Animal Rescue League of Boston v. Bourne Assessors

ATB 2018-576 (November 8, 2018)

- **Taxpayer years ago operated a summer camp on 3 parcels where humane treatment of animals, and arts and crafts were taught**
- **No trespassing signs were now posted**
- **Assessors demonstrated the non-use of the parcels and taxed parcels since not actively appropriated for charitable purposes**

Animal Rescue League of Boston v. Bourne Assessors (cont'd.)

- **Assessors rejected claim that undevelopable parcel was exempt as bird sanctuary since no evidence of meaningful conservation or preservation efforts**
- **ATB held taxpayer not eligible for charitable exemption but qualified for overvaluation abatements**
- **More to come … appeal has been filed**

Trimount Foundation, Inc. v. Assessors of Newton

ATB 2019-1 (January 16, 2019)

- **Trimount, a nonprofit corporation, formed for religious and educational purposes owned a Victorian-style house which was leased to Cedar Wood Foundation Inc., another nonprofit corporation**
- **Assessors partially exempted dwelling and Trimount appealed to ATB**

Trimount Foundation, Inc. v. Assessors of Newton (cont'd.)

- **ATB found that people living in house were not tenants and their presence was integral to the mission and purposes of Cedar Wood**
- **Religious, educational and other charitable services provided to public at the dwelling**
- **Parcel totally exempt due to charitable occupancy**

Recent Cases

Collection Issues

Tamiru v. Assessors of Everett

ATB 2019-248 (March 26, 2019)

- **Taxpayer previously received only estimated water bills on two-family house**
- **City replaced meter in March 2018, issued actual water bill for $22,000 and advised taxpayer to fix leak**
- **Taxpayer refused to pay bill, filed abatement application and then, dissatisfied by amount of partial abatement, appealed to ATB**

Tamiru v. Assessors of Everett (cont'd)

- **City documented that water usage sharply declined after taxpayer who had been advised of leak had made repairs**
- **ATB held taxpayer did not prove water bill inaccurate**

Cichocki v. Rehoboth, 481 Mass. 1002 (November 15, 2018)

- In 2009, Land Court approved Rehoboth's foreclosure of Cichocki's right of redemption on a tax taking
- Owner appealed and Appeals Court upheld Land Court decision
- Owner appealed and SJC denied further review
- Owner "appealed" to Federal Court - unsuccessful
- Owner refused to vacate the property in question, so town sought injunction in superior court to require owner to leave property
  - Injunction granted, in part, because home unfit for habitation

Cichocki v. Rehoboth (cont'd.)

- **Owner filed petition for mandamus in superior court**
  - **"Mandamus" = command ordering a person to perform a duty**
  - **Argued town committed a wrong and no adequate or effective remedies available elsewhere**
- **Mandamus denied and owner appealed (again)**
- **SJC upheld denial of mandamus**
  - **Adequate remedy at law was provided – the appellate review of the foreclosure process**
  - **Relief via writ of mandamus is extraordinary and only exercised sparingly…not as a substitute for normal appellate process**

Cichocki v. Rehoboth (cont'd.)

- **Takeaway - If Town obtains land court approval of foreclosure of owner's right of redemption in a tax taking and the appeal process is exhausted, mandamus relief from the judgment is generally not available to owners as a second bite at the apple**
- **Takeaway - Just because an owner may not be happy with the results of the appellate process, it does not mean the legal remedy was inadequate**

Tallage Lincoln, LLC v. Williams

27 LCR 188 (April 17, 2019)

- **Under c. 60 §§ 2C, 52, a city/town can assign (sell) its interest in a tax taking**
- **City/town can immediately recover what was owed and avoid other costly, time-consuming collection methods (LOLV/ Land Court)**
- **Per their website, Tallage Lincoln, LLC regularly purchases "past due obligations of municipalities and takes over all of the risks as well as the legal and administrative costs and obligations required in the attempt to recoup monies previously owed to the municipality."**

Tallage Lincoln, LLC v. Williams (cont'd.)

- **Facts**
  - **Property owner Williams didn't pay 2011 real estate taxes (or 2012 - 2015 taxes)**
  - **New Bedford performed tax taking**
  - **2016, city sold property tax debt to Tallage ($22,901.97)**
  - **6 months later- Tallage filed land court tax title foreclosure action**
  - **Tallage paid subsequent years unpaid taxes (2016 - 2018) ($10,701.22)**

Tallage Lincoln, LLC v. Williams (cont'd.)

- **Owner Williams sought to redeem property**
- **Issue for Land Court**
  - **Does the redemption amount include subsequent year taxes paid by Tallage to protect its investment, plus 16% interest (statutory interest rate charged on subsequent year unpaid tax amounts certified by cities and towns to municipal tax title accounts)?**

Tallage Lincoln, LLC v. Williams (cont'd.)

- **Tallage's Argument:**
  - **C. 60, § 52 puts the assignee on the same footing as a "purchaser, other than the town" who paid subsequent taxes and so assignees are entitled to add those amounts to the redemption amount**
    - **Court rejected this argument as "purchaser, other than the town" only applies "except as hereinafter otherwise provided" and the calculation of the redemption amount for assignees is otherwise provided for in § 62**

Tallage Lincoln, LLC v. Williams (cont'd.)

- **Tallage's Argument continued:**
  - **Assignees must pay subsequent year taxes or risk their assigned tax title and, as a matter of policy, there must be a way for them to recoup the payment of subsequent year taxes, with interest**
    - **Court agreed if a property owner fails to pay subsequent year taxes the city/town can take for unpaid taxes a second time and assignee is at risk of having the assigned tax title (it paid for) wiped out by the second taking**
    - **However, court stated under c. 60 § 60, assignee could pay subsequent year tax and, in the manner provided in § 60, record a lien**

Tallage Lincoln, LLC v. Williams (cont'd.)

- **Land Court Decision - Tallage (assignee) cannot add its post-assignment tax year payments with 16% interest to the redemption amount**
  - **Case law instructs the court against declaring rights for assignees that are not explicitly mentioned in c. 60**
  - **Tax taking assignment is not an assignable common-law contract; it is "a creature of statute" - only rights assignee gets are those explicitly described in c. 60**
  - **G.L. c. 60 § 52 governs assignee's rights and duties upon assignment**

Tallage Lincoln, LLC v. Williams (cont'd.)

- **Land Court Decision continued:**
  - **C. 60 doesn't specifically address a § 52 assignee paying subsequent year taxes or the right to recover (with interest) subsequent year paid taxes by adding them to the redemption amount**
  - **C. 60 §§ 50, 61 provisions permitting addition of subsequent year taxes to tax title accounts apply to cities and towns only**
    - **And must be strictly read as such**
  - **History of tax titles suggests the general court (legislature) so intended**

Tallage Lincoln, LLC v. Williams (cont'd.)

- **Takeaways:**
  - **An assignee of a tax title cannot add its post-taking tax payments (with interest) to the redemption amount**
  - **However, under c. 60 § 60 an assignee could pay subsequent year taxes and, in the manner provided by § 60, record a lien**
  - **More to come … Tallage has appealed**

Ithaca Finance, LLC v. Leger

27 LCR 224 (May 10, 2019)

- **2006 – City of Lawrence prepared invitation to bid for assignment and servicing of delinquent tax liens and receivables under c. 60 § 2C**
- **Plymouth Park, the successful bidder, included in its bid an extensive communication plan with taxpayers**
- **Sale included delinquent taxes pertaining to 116 Bunkerhill Street owned by Felicia Hilario**
  - **Property not in tax title when sold to Plymouth Park, lien was part of the receivables assigned by Lawrence**

Ithaca Finance, LLC v. Leger (cont'd.)

- **Plymouth Park recorded instrument of taking in 2010 for unpaid FY 08 and 09 taxes**
- **On July 31, 2012, Francisca Leger purchased the property from Felicia Hilario. Leger's attorney did not obtain a municipal lien certificate prior to the sale (which would have disclosed unpaid taxes)**
- **May 24, 2013, city recorded 2nd taking for additional unpaid taxes owed by Hilario for FY12; instrument named Hilario as owner**
- **Since the purchase, Leger remained current on all mortgage and tax obligations**

Ithaca Finance, LLC v. Leger (cont'd.)

- **March 21, 2014, Plymouth Park assigned its rights to Ithaca Finance for $6,478.42 (then-balance on the tax title account)**
- **March 31, 2014 - Ithaca mailed a letter addressed to Hilario and Leger at the property to notify of the assignment of the tax lien. At that time, Hilario still lived at the property**
- **May 20, 2014 - Ithaca filed an action in Land Court to foreclose the right of redemption, but named Hilario instead of Leger as respondent**
- **Land Court required foreclosure action be amended to name Leger as defendant**

Ithaca Finance, LLC v. Leger (cont'd.)

- **Foreclosure action was amended and service made upon Leger and her mortgage-holder Citizens Bank**
- **No answers filed**
- **May 31, 2016 - Judgment by default issued on foreclosure**
- **May 31, 2017 - Time expired for Leger to file petition to vacate foreclosure**
- **June 16, 2017 - Ithaca sent letter to Leger asking when she planned on leaving**
- **Leger filed a motion for relief from judgment**

Ithaca Finance, LLC v. Leger (cont'd.)

- **Land Court – Even though Motion for Relief was filed outside statutory one year limitation of c. 60 § 69A, motion can proceed because**
  - **Ithaca failed to comply with statutory requirement under c. 60 § 2C to communicate with the taxpayer – Court found notice of assignment was not received by Leger; and**
  - **Failure to comply with the communication promises of bidder/predecessor Plymouth Park violated Leger's rights to due process**

Ithaca Finance, LLC v. Leger (cont'd.)

- **Ithaca argued Plymouth Park not obligated to communicate to the extent described in its bid documents and, regardless, such obligations were not binding upon Ithaca**
- **Court disagreed**
  - **C. 60 § 2C(c)(1) requires bidder include "plan for communicating with the taxpayers" and plan is what's included in accepted bid documents**
  - **C. 60 § 2C(g)(3) - "tax receivables may be assigned and transferred successively under the same terms and in the same manner as originally assigned…"**

Ithaca Finance, LLC v. Leger (cont'd.)

- **Land Court's Findings**
  - **Plymouth Park and Ithaca failed to meet their obligations to communicate**
  - **Plymouth Park did not communicate with original owner, Hilario, until she sold the property to Leger or communicate with Leger until they sold their rights to Ithaca**
  - **Ithaca made no attempt to communicate with Leger until one year right to petition to vacate the foreclosure expired (one exception was the notice of assignment which Court found Leger never received)**

Ithaca Finance, LLC v. Leger (cont'd.)

- **Court's Findings continued**
  - **Ithaca failed to notify Lawrence of the assignment of tax receivables to it with 12 business days of the transfer and failed to provide city with a copy of the recorded instrument (60:2C(c)(9); 60:2C(g)(4))**
  - **Ithaca failed to notify taxpayer of assignment as required by c. 60 § 2C(c)(9)**
- **Decision - Ithaca's failure to satisfy statutory requirements and terms of Plymouth Park's bid deprived Leger of due process rights - Leger's motion for relief from the tax foreclosure judgment granted**
- **More to come … Ithaca has appealed.**

Recent Cases

Finance Issues

Cuticchia v. Andover

95 Mass. App. Ct. 121 (April 3, 2019)

- **2011 - town paying 65% to 86% of retiree health insurance premiums**
- **Relevant law**
  - **City/town may, but not required to, provide health insurance for employees and retirees**
  - **32B, § 9 - retirees to pay full cost of health insurance; but, if city/town accepts 32B, §§ 9A or 9E, city/town can pay 50% or more of retiree premiums**
  - **City/town can unilaterally reduce % contribution to retiree premiums without collective bargaining – *Somerville*, 470 Mass. 563 (2015)**

Cuticchia v. Andover (cont'd.)

- **Chapter 69 of the Acts of 2011**
  - **City/town can opt into program to redesign their health insurance plans (change premiums, copays, deductibles, etc.)**
  - **Streamlined process where changes negotiated or, if no agreement, determined by "municipal health insurance review panel"**
  - **If this alternative process is used, the city/town is temporarily prohibited from using its existing ability to unilaterally increase retiree contributions until 2018 (originally 2014 and later 2016)**

Cuticchia v. Andover (cont'd.)

- **2012 – Select Board voted to use c. 69 to restructure health insurance benefits for employees and retirees**
- **Town followed c. 69 procedures and implemented new plan effective 7/1/2012 – higher copays and deductibles**
- **2016 - additional changes including decrease in town contribution to retiree premiums (increase in retirees' share)**
  - **At that time, c. 69 moratorium on unilateral increases extended to 7/1/18**

Cuticchia v. Andover (cont'd.)

- **Three retired employees filed suit claiming the town was prohibited from implementing increases prior to July 1, 2018**
  - **In retirees' suit, they argued that once the alternate process under c. 69 is used by the town, the moratorium kicks in and no unilateral changes can be made by the town until 2018**
- **Superior Court ruled in favor of town – disagreed with retirees' interpretation of moratorium**
- **Retirees appealed to Appeals Court**

Cuticchia v. Andover (cont'd.)

- **Appeals Court**
  - **On interpreting legislation -**
    - **If statute plain and unambiguous, interpret it according to its ordinary meaning**
    - **However, must look to entire statute, not a single sentence and attempt to interpret all "harmoniously to effectuate the intent of the legislature"**
  - **Here – What is meaning of "The first time a public authority implements plan design changes … the public authority shall not increase before July 1, 2018, the percentage contributed by retirees . …"**

Cuticchia v. Andover (cont'd.)

- **Town's position - "first time" does not mean "second" or "third" time; therefore, the moratorium does not apply to the town's second set of health insurance changes where it raised retirees' premiums**
- **Court's response**
  - **Adopting town's interpretation would mean that**
    - **If town makes one set of innocuous changes to health insurance - moratorium applies**
    - **But if town makes second set of substantial monetary changes to health insurance – moratorium does not apply**

Cuticchia v. Andover (cont'd.)

- **Court's response (cont'd.)**
  - **Town's interpretation is not consistent with text of the statute and not harmonious with related provisions of c. 32B**
  - **If legislature intended moratorium to expire at the earlier of (a) 2018 or (b) when the municipality implements a 2nd set of plan changes, it would have said so**
  - **Retiree's interpretation is supported by legislative history**
  - **Decision for Retirees**

Recent Cases

Employment Issues

Pittsfield v. Local 447, IBPO
480 Mass. 634 (2018)

- City fired police officer based upon events incident to an arrest of alleged shoplifter
- Police officer had taken arrestee out of police vehicle to allow store security to photograph the accused, based upon agreement with security
- Police officer falsely claimed in arrest report that he had removed accused from vehicle "for her safety," as she was thrashing her body around
- After investigation, city fired officer, claiming conduct unbecoming an officer, untruthfulness, and falsifying records, based on reason for removal of the suspect, i.e., "for her safety"

Pittsfield v. Local 447, IBPO (cont'd.)

- **Officer filed for arbitration, per CBA**
- **After hearing, the arbitrator ruled for officer, holding words "for her safety" "were untrue, intentionally misleading, and cause for discipline, but not intentionally false."**
- **City appealed arbitrator's holding on public policy grounds; Superior Court judge upheld arbitrator**
- **City appealed further**

Pittsfield v. Local 447, IBPO (cont'd.)

- **On appeal, SJC ruled that facts did not warrant overturning arbitrator's decision**
  - **Officer's actions did not lead to wrongful arrest or prosecution, or result in a deprivation of liberty or denial of civil rights**
  - **Officer's false statement not made with intent to impede, obstruct or otherwise interfere with criminal investigation or proceeding**

Desmond v. West Bridgewater

94 Mass. App. Ct. 1122, Rule 1:28 Unpublished (February 19, 2019)

- **Town fired a police officer for conduct related to relationship with woman he had assisted, citing false statements under oath, conduct unbecoming and harassment**
  - **Officer helped woman obtain an emergency restraining order against her spouse; he later gave false testimony in court on extension**
  - **Officer also conducted criminal history search of woman, with no legitimate purpose for doing so**
  - **Officer later assisted woman w/ filing of another emergency order, including testifying falsely**

Desmond v. West Bridgewater (cont'd.)

- **Upon town's investigation of officer's actions, officer denied assisting woman, denied testimony**
- **While on administrative leave, officer found near woman's home, lied to investigating officer**
- **Officer claimed he was being treated differently from two other members of police department in similar circumstances**
- **Civil Service Commission upheld officer's termination and found officer's harassment claim not proven**
- **Officer appealed**

Desmond v. West Bridgewater (cont'd.)

- **On appeal, Appeals Court struck down officer's claim that other officers had acted similarly and that he was treated disparately**
  - **Even if claim was true, it would be absurd for town to refrain from any discipline**
- **Appeals Court ultimately held that Civil Service Commission's decision upholding termination based on "lying under oath" was legally tenable, supported by substantial evidence, and that the bad conduct proven was serious**

Essex Reg. Retirement Board v. Swallow; State Board of Retirement v. O'Hare

481 Mass. 241 (2019)

- **Appeal to Supreme Judicial Court of two Appeals Court decisions upholding public pension forfeiture cases under c. 32, § 15(4) resulting from actions of police officers**
  - **Sergeant John Swallow - Pension forfeiture where officer, while on administrative leave, committed domestic violence and weapons offenses using personal firearm**
  - **Officer Brian O'Hare - Pension forfeiture for State Police sergeant convicted of federal crime of using the Internet to lure a minor – used personal computer while off-duty**

Essex Reg. Retirement Board v. Swallow, et al (cont'd.)

- **G.L. c. 32, § 15(4) provides for forfeiture of pension for conviction of crimes "…involving violation of laws applicable to [their] … position"**
- **Issue on Appeal – Was there a "direct link" between the criminal offense and the employee's office or position, either "factual" or "legal"**
- **SJC - pension forfeiture not warranted**
  - **Neither officer's off-duty conduct was legally or factually connected to positions as police officers; convictions did not apply to their jobs**
  - **Status as police officers did not create a 24-hour duty obligation**

Reid v. City of Boston
95 Mass. App. Ct. 591 (2019)

- City of Boston police officers responded to a 911 call about a potentially violent individual - Cummings
- When police arrived, Cummings calmly talking with others, including plaintiff Reid
- Without warning the other officers, one officer approached Cummings from behind and attempted to frisk him for weapons
- Before officer could perform weapon search, Cummings removed gun from his waist and shot at officers, whereupon officers returned fire and shot Cummings and Cummings shot Reid

Reid v. City of Boston (cont'd.)

- **Reid sued city under Massachusetts Tort Claims Act, G.L. c. 258, for gunshot injuries she received**
- **City claimed G.L. c. 258, § 10(h) defenses, which bars counts based upon failure to provide police protection, and G.L. c. 258, § 10(j) defenses, stating that a third party caused Reid's injuries**
- **Trial Court reasoned that the city's G.L. c. 258's defenses did not apply and jury awarded Reid damages**
- **City appealed**

Reid v. City of Boston (cont'd.)

- **Appeals Court agreed with lower court, stating statutory construction of G.L. c. 258 does not immunize all negligent acts of police in providing protection**
  - **City's third party causation defense did not apply, where the City's officers' actions caused Reid's harm**
  - **Evidence proved that Reid was not injured because police officers failed to protect her from a threat; rather, the officers' conduct created a danger that did not previously exist and harmed Reid**
- **More to come … further appellate review filed**

Recent Cases

Land Use

Valley Green Grow, Inc. v. Charlton #1

Land Court MISC 18-000483 (March 7, 2019)

Order on Plaintiff's Motion for Summary Judgment

- **Town of Charlton voted "YES" to Q. 4 – authorizing legalization of recreational marijuana**
- **VGG entered into agreement to purchase farm with plan to construct 1,000,000 SF indoor marijuana growing and processing facility (860,000 SF greenhouses, 130,000 SF post-harvest processing + 10,000 SF cogeneration facility)**
- **Spring 2018, VGG filed preliminary subdivision plan with Planning Board to trigger a zoning freeze for the property before town vote on zoning changes**

Valley Green Grow, Inc. v. Charlton #1 (cont'd.)

- **Town's selectboard voted to approve a Development Agreement with VGG, as well as a host community agreement**
- **May 2018 ATM approved zoning by-law to allow certain recreational marijuana uses in certain areas of town (including agricultural zone) by special permit**
- **August 2018 STM included two warrant articles**
  - **To rescind previously approved zoning by-law allowing marijuana uses – article failed to obtain 2/3 vote**
  - **To approve general by-law to ban non-medical cannabis uses in town – article approved**

Valley Green Grow, Inc. v. Charlton #1 (cont'd.)

- **VGG sued over validity of general by-law, where zoning amendment allowed marijuana uses by SP**
- **Land Court decision –**
  - **Zoning by-laws have different, stricter requirements for enactment than general by-laws**
  - **Having permitted marijuana uses in certain zones through its zoning by-laws, town could only change it through amending the zoning by-law**
  - **General by-law is invalid**

Valley Green Grow, Inc. v. Charlton #2
Land Court MISC 18-000483 & 19-000226 (August 14, 2019)
Order on Motions for Summary Judgment

- **Land Court decision on unresolved claims**
  - **Second part of Cross Motions for Summary Judgment in 18 MISC 000483 –**
    - **Issue - Is VGG's proposal a greenhouse use or light manufacturing use under the zoning by-law and are the proposed processing activities accessory uses?**
  - **Planning Board's Motion for summary judgment on VGG's appeal of Planning Board's denial of site plan on the grounds that project not an allowed use (19 MISC 000226)**

Valley Green Grow, Inc. v. Charlton #2 (cont'd.)

- **Land Court decision continued**
  - **Proposed cultivation of marijuana in greenhouses is properly classified as indoor commercial horticultural/floricultural establishment within meaning of the zoning by-law**
  - **Proposed post-harvesting processing and cogeneration activities are accessory uses to the principal use of the site for marijuana cultivation**

Valley Green Grow, Inc. v. Charlton #2 (cont'd.)

- **Land Court decision continued**
  - **VGG's Motion for Summary Judgment allowed; Judgment entered for VGG (18 MISC 000483)**
  - **Planning Board's Motion for Summary Judgment denied (19 MISC 000226) – case status scheduled**
  - **More to come?**

Recent Cases

Other Issues

Chelsea Housing Authority v. McLaughlin, 482 Mass. 579 (2019)

- **Housing Authority filed claim against its outside accounting firm to recover losses for negligence in failing to detect fraudulent conduct of former authority officers**
- **Former director had conspired with finance director to misappropriate substantial funds to pay director an illegal, excessive salary**
- **SJC struck down trial court's holding that accounting firm was entitled to use of common law "in pari delicto" doctrine that shielded accountants/auditors from liability for fraud committed by client's senior staff, officers**

Chelsea Housing Authority v. McLaughlin, (cont'd.)

- **SJC held that the Legislature pre-empted the "in pari delicto" defense by its 2003 enactment of G.L. c. 112, § 87A ¾, which instituted proportional liability for cases involving accountants' negligent failure to detect client fraud**
- **Case will be remanded to superior court for a determination of the percentage of the fault attributed to the accounting firm**
- **Potential impacts of decision –**
  - **Smaller accounting firms may not do audits because of increased liability potential**
  - **Costs of audits may increase**

Vigorito v. Chelsea
95 Mass. App. Ct. 272 (May 9, 2019)

- **Dispute arose from the city's demolition of abandoned and deteriorating former gas station**
- **G.L. c. 143, § 6 requires local building inspectors to inspect any unsafe structure reported to them or of which they become aware and to notify property owners of steps they must take to make the structure safe or remove it**
  - **If owner fails to timely respond, city is authorized to demolish the structure**

Vigorito v. Chelsea (cont'd.)

- **September 17, 2015 - Chelsea sent notices to seven "Owner(s)/Potential Interested Parties" of its order to make safe or demolish the gas station**
  - **An estate was the then-owner**
- **June, 2016 - Estate entered into P&S to sell property to Rocco Vigorito**
- **Vigorito bought gas station - deed recorded on August 8th**
- **Same day - Estate filed suit vs. city to stop the demolition; Vigorito not a party to estate's suit**
- **August 15th – Estate's action dismissed**

Vigorito v. Chelsea (cont'd.)

- **Three days later - Chelsea served Vigorito with copy of 2015 demolition notice**
- **Following week - Vigorito filed lawsuit to stop the demolition**
- **Court refused to stop the demolition and gas station demolished**
- **11 months later - Chelsea moved to dismiss Vigorito's suit arguing building demolition rendered lawsuit moot**
- **Three days later – Vigorito filed motion to add new claim for money damages**

Vigorito v. Chelsea (cont'd.)

- **Superior Court - Denied Vigorito's motion to add claim for damages; allowed city's motion to dismiss**
- **Appeals Court holding -**
  - **The owner (estate) did not commence a civil action in superior court as required within 3 days after service of demolition order. Lawsuits filed by estate and Vigorito were past the deadline**
  - **Chelsea not required to re-serve subsequent property owners with order of demolition**
  - **Vigorito's suit to stop demolition was moot because the gas station had already been demolished**

Chief of Police of Taunton v. Caras
95 Mass. App. Ct. 182 (April 9, 2019)

- **Paul Caras, 76 years old, held license to carry a firearm since 1967**
- **Never an incident until Mr. Caras offered to drive his adult grandson to a mall in Providence**
  - **Caras' Sig Sauer Model 232 in the unlocked glove compartment**
- **Mr. Caras left his grandson alone in the car for a moment**
  - **Caras knew grandson suffered from a substance abuse disorder**

Chief of Police of Taunton v. Caras (cont'd.)

- **After dropping off grandson in Providence, Mr. Caras realized his handgun was missing**
- **Caras searched for his grandson but could not find him**
- **Nervous his grandson would pawn the handgun for drugs, Caras notified the Providence and Taunton Police**
  - **Grandson found with the gun and arrested without incident**
- **The following day, the Taunton police chief revoked Caras' license to carry a firearm**

Chief of Police of Taunton v. Caras (cont'd.)

- **Mr. Caras appealed his license revocation to the district court**
- **The district court and, on appeal, superior court determined that revoking Caras' license based on a single incident was not reasonable and they reinstated license**
  - **District and superior court judges relied on letters from friends and neighbors vouching for Caras' character and integrity**

Chief of Police of Taunton v. Caras (cont'd.)

- **Appeals Court holding –**
  - **License may be revoked/suspended if holder no longer suitable person to possess such a license**
    - **Unsuitability determined by:**
      - **Reliable and credible information that applicant/licensee engaged in behavior that suggests, if issued a license, applicant/licenses may create risk to public safety; or**
      - **Existing factors suggest, if issued a license, applicant/licensee may create a risk to public safety**

Chief of Police of Taunton v. Caras (cont'd.)

- **Appeals Court holding (continued) –**
  - **To reverse the chief's decision, decision must be arbitrary, capricious or an abuse of discretion**
    - **Examples where license revocation *reversed***
      - **Behavior of the licensee, while perhaps unusual or disturbing, did not implicate public safety concerns**
      - **Licensee gave false name when seeking medical treatment (*Simkin*, 488 Mass at 182)**

Chief of Police of Taunton v. Caras *(cont'd.)*

- **Appeals Court holding (continued) –**
  - **Examples where license revocation *upheld***
    - **Licensee had assaulted and beaten his wife (*Holden*, 470 Mass, at 856)**
    - **Licensee had 15-year history of prescription drug addiction (*Nichols*, 94 Mass. App. Ct. at 739-740)**

Chief of Police of Taunton v. Caras (cont'd.)

- **Appeals Court holding (continued) –**
  - **Judge may not second guess chief's decision to take one reasonable action over another – chief's decision not arbitrary – license revocation upheld**
    - **Failure to secure handgun in glove compartment enabled grandson to steal it**
    - **Three police departments mobilized to apprehend grandson**
    - **Risk to public safety with grandson having possession of gun as well as risk of gun falling into more dangerous hands**