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City and Town

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Foreclosure Cases in the Land Court

One of the most effective tax collection tools available to a municipality is its ability to foreclose upon a delinquent taxpayer's interest in a parcel of real estate property. This article offers an overview of the Land Court procedures involved in foreclosure.

Before commencing an action in the Land Court for foreclosure of a tax taking or collector's deed, the treasurer should determine whether or not any of the recent changes in the provisions of M.G.L. Ch. 60 are applicable. The following changes in the statute make it easier for the municipality to acquire title to tax delinquent property:

(1) if land subject to the lien qualifies for treatment as low value land, then the need for a judicial foreclosure is entirely eliminated;

(2) the waiting period of six months between taking or sale and the filing of the case is no longer mandatory when the property can be certified as abandoned or worth less than the tax liability. Such certification also reduces to 90 days (from the standard one year) the period after foreclosure when a party adverse to the municipality can seek to have the judgment vacated;

(3) consent of the property owner also permits immediate filing of the case; and

(4) cities and towns may now acquire absolute title to tax delinquent property by deed in lieu of foreclosure from the owners provided there are no encumbrances.

Treasurers should confirm that their information is accurate once it has been determined that foreclosure is the appropriate method of pursuing collection. In particular, a brief title rundown should be performed at the registry of deeds to be certain that the defendants whom the treasurer plans to list on the complaint are still the owners of record of the subject property. Only the most current address should be provided for the equity owners.

To begin the case, the treasurer or the attorney engaged for this work should submit a completed complaint form and one copy along with a check to cover the initial deposit in each case (at present \$410).

After the case is filed, the court sends a reference to a Land Court Examiner to prepare a mini-abstract of title that should cover a period of 20 years be-

by John R. Harrington, Land Court Staff Attorney

fore the taking. This report must be completed within 60 days, a strictly enforced deadline.

Once a title report is filed, a staff attorney at the court will review it. If additional information is needed, the attorney will send a request to the plaintiff. After the attorney concludes this review, he or she will issue a citation to all parties who appear as defendants in the complaint, or have an interest in the property, according to the title report. In the event the postal service returns an envelope as undeliverable or unclaimed, it will be sent to the plaintiff for a better address. If the plaintiff determines that a party refuses to accept certified mail, a recommendation should be made to the court for a citation to be served by deputy sheriff.

There are certain circumstances where the Land Court requires publication of a citation in a local newspaper:

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Notice: State-Owned Land Online

The Bureau of Local Assessment has posted its state-owned land database to the Internet at www.mass.gov/dls/bla/sol/sol.htm.

These are the properties that are valued once every five years pursuant to M.G.L. Ch. 58 Secs. 13-17. Should this statute change, the Bureau will notify you and make the appropriate adjustments. ■



**From the Acting
Deputy Commissioner**

M.G.L. Ch. 44 Sections 54 and 55, governs the investment and deposit of municipal funds.

Section 54 permits the investment of trust funds, including cemetery perpetual care funds and the stabilization fund, in interest bearing accounts in banks or trust companies, the Massachusetts Municipal Depository Trust (MMDT), or bonds or notes, which are legal investments for savings banks under the laws of the Commonwealth. Communities with trust funds in excess of \$250,000 are authorized to invest in securities, except mortgages and collateral loans, which are legal for the investment of funds of savings banks. A list of such legal investments, commonly referred to the "Legal List," is available on the Commissioner of Banks' website at www.mass.gov/dob/law_reg.htm.

In accordance with Section 55, a city, town, district or regional school district may deposit general fund monies in certificates of deposit, U.S. Treasury bills, money market deposit accounts, the MMDT and U.S. Government Agency Obligations. This section also places limitations on deposits to any one bank.

As mentioned above, communities may invest either trust funds or general fund monies in the MMDT, which is referred to in Chapter 44 as a "combined investment fund." For more information on the MMDT, please refer to State Treasurer Timothy P. Cahill's article on page seven, which provides an overview of this "stable investment option" for local governments.

Gerard D. Perry
Acting Deputy Commissioner

Legal

in Our Opinion

Questions & Answers

by James Crowley

Q: *What is the assessment date for real property? Can one community differ from another on this issue?*

A: Real estate taxes are assessed as of January 1. For example, a parcel is assessed as of January 1, 2002, for FY03, which begins on July 1, 2002, and concludes on June 30, 2003. Generally, a house built after January 1, 2002 would not be taxed for fiscal year 2003 even if the owner receives certain services from the community. Only land would be assessed for FY03.

There is an exception to the general rule if the community has adopted Chapter 653 Section 40 of the Acts of 1989 (amending Chapter 59 Section 2A of the General Laws). Under this local option "new growth" provision, any improvements to the property between January 2 and June 30 are assessed as though they existed on January 1 for the upcoming fiscal year. Refer to the Focus article that appeared in the April 2003 issue of *City & Town* for more information on Chapter 653.

There is another exception to the general rule if the community has adopted Chapter 59 Section 2D of the General Laws. This statute allows communities to make pro rata tax assessments on the value of certain improvements to real estate made after the January 1 assessment date. The assessment of new construction would be made only if an occupancy permit were issued during the fiscal year and if the improvement increased the parcel's value by more than 50 percent.

For more information on these two statutes please visit the DLS website at www.mass.gov/dls. Information Guide-line Releases (IGRs) are located in the "Publications and Forms" section. IGR 90-406 discusses the new growth

statute and IGR 99-206 pertains to Chapter 59 Section 2D.

Q: *The tax collector learned that the owner of tax delinquent property will be receiving \$3,000 from an insurance company for property damage. Can the community apply the insurance payment to the tax liabilities?*

A: Under the provisions of Chapter 175 Section 97A of the General Laws, an insurance company must require a claimant to submit to the company a municipal lien certificate from the collector in the municipality where the subject property is located, prior to payment of a claim in excess of \$5,000 for loss or damage to real property from any hazard. If the municipal lien certificate discloses outstanding amounts owed the municipality, the insurance company must first make payment to the community up to the amount of loss payable under the insurance policy. By this statute, the insurance company is required to send notice of such payment to the insured and any mortgagees named on the policy. This statute is not applicable to owner-occupied one-, two-, three- and four-family dwellings.

In the case at hand, Chapter 175 Section 97A would not apply to this property owner since the claim is not in excess of \$5,000.

Q: *What are the procedures for the sale of town-owned surplus property and the disposition of any proceeds from such sale?*

A: The surplus property can be either real or personal property. In order to dispose of surplus personal property the town department must be acting in accordance with a bylaw or ordinance (M.G.L. Ch. 40 Sec. 21 Cl. 11). M.G.L. Ch. 30B, which is within the jurisdiction of the Inspector General, governs pro-

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Focus

on Municipal Finance

Free Cash: Sources and Trends

by Dennis Mountain

"Free cash" is a term that refers to the amount of funds in a community that are unrestricted and available for appropriation, in accordance with M.G.L. Ch. 59 Sec. 23, after certification.

Free cash is "free" and is definitely "cash." Typically, communities budget to collect revenues in order to pay for services. If the funds collected are more than the expenditures, liabilities, and encumbrances combined, extra funds are generated. These extra funds are rightfully called "free cash," since they are free of liabilities and designations of fund balance, and all funds received are deposited with a financial institution, which equates to cash.

Free cash is the cumulative results of operations. A community accumulates free cash when actual revenues collected are in excess of budget estimates and when expenditures and encumbrances are less than appropriations, or both. Year after year, this cycle occurs and the results are compiled into a balance sheet.

The Director of Accounts certifies free cash based on the community's balance sheet for the fiscal year ended June 30. The balance sheet consisting of assets, liabilities, and fund balances is prepared by the town accountant or city auditor with a target date for submission of September 15. A combined balance sheet with backup documentation is required from each city and town. Backup documentation includes the following:

- combining statements for each fund;
- completed year-end checklist;

- statement of indebtedness;
- quarterly reconciliation of cash;
- schedule of outstanding accounts receivable;
- detailed analysis of undesignated fund balance;
- cash reconciliation form; and
- any other information needed to make a fair determination of a community's free cash position.

Once all of the documents are submitted, the Bureau of Accounts (BOA) field representative begins the review process. Undesignated fund balance is the starting point for the calculation of free cash. The basic free cash formula is:

- undesignated fund balance
- *less* accounts receivable, deficits not authorized by law
- *plus* deferred revenue
- *equals* free cash

This is a basic formula. All funds must be analyzed to determine deficits that may impact free cash. Certain deficits such as snow and ice, M.G.L. Ch. 44 Sec. 31D, and overlay, M.G.L. Ch. 59 Sec. 23, are legal overdrafts and are not a reduction, but others could be, such as ordinary operating appropriations, certain capital project expenditures, and expenditure driven grants.

Interfund Borrowings

Cities, towns, and districts that have authorized debt or had a federal or state grant approved can spend for those purposes from available unrestricted funds in anticipation of the borrowing or receipt of grant funds. This interfund borrowing is typically from the general fund and used for cash flow purposes in the fund to which it is trans-

ferred. Treasurers, with approval, may make the transfer.

The "Report of Advance of Funds in Lieu of Borrowing" must be filled out and submitted to the debt section, Bureau of Accounts, within 48 hours of the approval. Advance sources and limitations can be found in Informational Guideline Release (IGR) 92-105.

On or about the first of June each year, the treasurer and accountant must review all outstanding interfund advances. If payment of expenditure-driven grants is not expected by the end of the fiscal year the treasurer should issue grant anticipation notes prior to June 30 to avoid possible free cash reduction. M.G.L. Ch. 44 Sec. 20A requires that all advances be reimbursed during the fiscal year in which the advance was made. The following scenarios illustrate the effect that long- or short-term borrowing can have on free cash.

Example 1: Town meeting/city council authorizes borrowing \$20,000,000 for a new school and \$500,000 for a new fire truck. If the town spends \$10,000,000 on school construction and also \$500,000 for a new fire truck, and the treasurer borrowed \$12,000,000 for the school construction, but nothing for the fire truck, the new school expenditure would be funded, but the fire truck expenditure would result in an unfunded deficit. This deficit would result in a reduction of free cash. Each capital project must stand on its own. A borrowing for a new school cannot be applied to the purchase of a new fire truck.

Example 2: The premise behind expenditure-driven grants is that the community must first spend from available funds, create a deficit, submit bills to the granting agency and await payment. If payments are not received by June 30,

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Free Cash, FY00 to FY02

	FY00	FY01	FY02	FY01 to FY02 variance	FY01 to FY02, pct. change		FY00	FY01	FY02	FY01 to FY02 variance	FY01 to FY02, pct. change		FY00	FY01	FY02	FY01 to FY02 variance	FY01 to FY02, pct. change
Acton	2,246,788	3,602,506	3,358,663	-243,843	-6.77%	Clarksburg	386,454	242,722	326,285	83,563	34.43%	Hardwick	563,287	367,869	243,283	-124,586	-33.87%
Acushnet	428,192	880,051	981,321	101,270	11.51%	Clinton	645,474	656,688	594,395	-62,293	-9.49%	Harvard	170,669	545,572	191,096	-354,476	-64.97%
Adams	2,233,660	2,642,884	2,733,294	90,410	3.42%	Cohasset	829,848	1,574,628	1,106,473	-468,155	-29.73%	Harwich	3,129,151	2,551,024	3,913,104	1,362,080	53.39%
Alford	175,975	190,913	196,250	5,337	2.80%	Colrain	256,459	364,225	119,650	-244,575	-67.15%	Haverhill	2,786,827	-103,066	-467,138	-364,072	-353.24%
Amherst	3,829,322	4,660,432	4,136,081	-524,351	-11.25%	Concord	3,837,770	4,066,404	3,874,645	-191,759	-4.72%	Hawley	154,206	99,495	80,377	-19,118	-19.22%
Andover	3,829,325	3,767,004	3,340,240	-426,764	-11.33%	Conway	407,763	636,782	361,737	-275,045	-43.19%	Heath	69,551	39,430	99,701	60,271	152.86%
Arlington	5,000,147	4,934,569	3,548,683	-1,385,886	-28.09%	Cummington	193,593	157,241	57,000	-100,241	-63.75%	Hingham	4,496,543	4,958,507	5,546,136	587,629	11.85%
Ashburnham	125,728	321,768	353,838	32,070	9.97%	Dalton	1,508,466	1,795,074	1,414,046	-381,028	-21.23%	Hinsdale	173,749	222,378	210,329	-12,049	-5.42%
Ashby	500,819	712,039	356,978	-355,061	-49.87%	Danvers	5,431,503	6,156,825	7,084,445	927,620	15.07%	Holbrook	750,164	563,435	-232,572	-796,007	-141.28%
Ashfield	213,809	221,543	292,617	71,074	32.08%	Dartmouth	1,968,694	2,218,363	3,197,882	979,519	44.16%	Holden	1,403,102	763,467	850,626	87,159	11.42%
Ashland	2,036,387	1,766,470	1,145,493	-620,977	-35.15%	Dedham	776,263	783,816	3,210,302	2,426,486	309.57%	Holland	416,976	100,950	229,572	128,622	127.41%
Athol	954,447	820,904	582,571	-262,333	-68.50%	Deerfield	1,752,967	1,390,853	730,501	-660,352	-47.48%	Holliston	2,000,000	1,962,411	574,474	-1,387,937	-70.73%
Attleboro	2,071,395	2,190,078	1,357,406	-832,672	-38.02%	Dennis	3,323,628	2,862,478	2,636,873	-225,605	-7.88%	Holyoke	7,083,364	7,011,346	8,774,546	1,763,200	25.15%
Auburn	1,610,190	636,766	189,847	-446,919	-70.19%	Dighton	322,119	149,512	353,783	204,271	136.63%	Hopedale	653,262	551,063	463,642	-87,421	-15.86%
Avon	272,160	487,084	349,442	-137,642	-28.26%	Dover	1,936,994	2,529,670	2,819,763	290,093	11.47%	Hopkinton	2,124,368	3,546,820	163,706	-3,383,114	-95.38%
Ayer	412,225	850,625	211,068	-639,557	-75.19%	Dracut	1,215,879	3,703,662	2,292,936	-1,410,726	-38.09%	Hubbardston	169,406	294,330	336,555	42,225	14.35%
Barnstable	8,796,786	7,390,500	6,034,960	-1,355,540	-18.34%	Dudley	728,789	1,332,460	614,271	-718,189	-53.90%	Hudson	3,575,549	3,050,765	3,767,493	716,728	23.49%
Barre	734,184	651,571	594,848	-56,723	-8.71%	Dunstable	578,242	634,476	502,126	-132,350	-20.86%	Hull	2,342,743	2,718,481	3,260,038	541,557	19.92%
Becket	2,260	72,375	124,627	52,252	72.20%	Duxbury	2,035,285	1,965,103	2,322,167	357,064	18.17%	Huntington	547,559	326,678	352,778	26,100	7.98%
Bedford	3,803,468	3,891,661	3,478,720	-412,941	-10.61%	E. Bridgewater	1,274,681	1,543,977	1,314,555	-229,422	-14.86%	Ipswich	1,398,508	986,270	897,954	-88,316	-8.95%
Belchertown	1,067,493	1,024,276	1,761,254	736,978	71.95%	E. Brookfield	28,738	426,137	172,151	-253,986	-59.60%	Kingston	1,757,755	1,803,699	2,215,678	411,979	22.84%
Bellingham	2,525,968	3,708,612	1,797,507	-1,911,105	-51.53%	E. Longmeadow	2,863,257	2,910,348	1,978,802	85,992	2.95%	Lakeville	368,141	322,927	533,971	211,044	65.35%
Belmont	1,188,762	723,387	183,081	-540,306	-74.69%	Eastham	989,713	826,284	1,129,307	303,023	36.67%	Lancaster	180,298	699,572	289,788	-409,784	-58.58%
Berlin	768,468	585,455	495,639	-89,816	-15.34%	Easthampton	1,145,763	1,401,928	689,900	-712,028	-50.79%	Lanesborough	522,823	593,374	405,691	-187,683	-31.63%
Bernardston	279,743	379,218	241,509	-137,709	-36.31%	Easton	1,042,845	741,162	1,155,436	414,274	55.90%	Lee	857,277	1,163,600	1,247,884	84,284	7.24%
Billerica	4,907,720	6,746,228	2,360,088	-4,386,140	-65.02%	Edgartown	1,667,852	1,146,620	1,372,812	226,192	19.73%	Leicester	598,937	852,506	618,202	-234,304	-27.48%
Blandford	175,697	195,268	172,918	-22,350	-11.45%	Egremont	147,831	241,093	141,445	-99,648	-41.33%	Lenox	2,936,428	2,541,391	1,333,906	-1,207,485	-47.51%
Bolton	684,237	2,491,272	1,533,910	-957,362	-38.43%	Erving	263,650	356,610	667,612	311,002	87.21%	Leominster	4,546,842	3,637,889	3,822,764	184,875	5.08%
Bourne	2,712,229	3,178,707	2,580,217	-598,490	-18.83%	Essex	130,215	261,214	278,362	17,148	6.56%	Leverett	548,654	219,323	493,250	273,927	124.90%
Boxford	1,194,661	1,928,549	1,980,605	52,056	2.70%	Everett	2,114,044	2,731,514	1,035,714	-1,695,800	-62.08%	Lexington	3,528,323	5,439,004	2,135,507	-3,303,497	-60.74%
Boylston	528,888	1,023,948	828,819	-195,129	-19.06%	Fairhaven	1,806,187	2,240,655	2,279,714	39,059	1.74%	Lincoln	1,624,810	1,181,283	1,179,244	-2,039	-0.17%
Braintree	3,180,475	2,866,300	2,330,286	-536,014	-18.70%	Falmouth	7,248,508	7,093,633	7,028,385	-65,248	-0.92%	Littleton	317,064	525,447	161,168	-515,120	-98.03%
Brewster	2,978,141	2,923,356	2,193,605	-729,751	-24.96%	Fitchburg	2,618,858	2,512,032	3,160,670	648,638	25.82%	Longmeadow	1,383,707	1,876,131	1,094,438	-781,693	-41.67%
Bridgewater	964,712	1,835,581	268,738	-1,566,843	-85.36%	Florida	383,241	149,901	372,796	222,895	148.69%	Lowell	4,143,877	11,969,520	17,037,765	5,068,245	42.34%
Brimfield	359,790	180,840	331,933	151,093	83.55%	Foxborough	1,860,024	2,319,989	1,784,447	-535,542	-23.08%	Lynn	(1,438,524)	3,784,722	3,272,831	-511,891	-13.53%
Brookline	12,157,308	6,225,673	6,317,277	91,604	1.47%	Framingham	1,976,110	3,233,152	3,457,398	224,246	6.94%	Lynnfield	1,678,588	997,828	1,725,712	727,884	72.95%
Buckland	172,173	82,829	184,557	101,728	122.82%	Franklin	7,315,684	3,802,432	3,882,685	80,253	2.11%	Malden	899,328	296,014	1,905,695	1,609,681	543.79%
Burlington	4,813,651	4,434,303	3,571,133	-863,170	-19.47%	Freetown	673,720	1,046,755	476,925	-569,830	-54.44%	Manchester	1,276,637	818,791	490,823	-327,968	-40.06%
Cambridge	26,166,059	24,995,755	28,706,934	3,711,179	14.85%	Gardner	728,994	640,110	214,377	-425,733	-66.51%	Mansfield	762,657	1,188,570	1,070,521	-118,049	-9.93%
Canton	2,581,342	5,489,742	6,371,924	882,182	16.07%	Grafton	2,754,708	1,980,153	2,881,509	901,356	45.52%	Marblehead	2,104,530	3,232,276	2,140,934	-1,091,342	-33.76%
Carlisle	910,920	459,838	274,174	-185,664	-40.38%	Granville	657,990	666,563	508,227	-158,336	-23.75%	Marion	1,497,102	446,750	863,326	416,576	93.25%
Carver	1,007,626	1,190,312	623,269	-567,043	-47.64%	Grt. Barrington	2,102,812	2,116,975	1,955,972	-161,003	-7.61%	Marshfield	5,803,026	5,229,698	3,731,753	-1,497,945	-28.64%
Charlestown	188,182	370,493	450,542	80,049	21.61%	Greenfield	375,598	1,178,286	12,032	-1,166,254	-98.98%	Mashpee	1,754,118	2,081,199	612,440	-1,468,759	-70.57%
Charlton	755,574	457,491	1,053,746	596,255	130.33%	Groton	410,499	1,170,783	789,142	-381,641	-32.60%	Mattapoisett	764,845	534,149	1,062,485	528,336	98.91%
Chatham	2,137,605	2,866,802	1,976,315	-890,487	-31.06%	Groveland	147,904	-78,003	202,651	280,654	359.80%	Maynard	746,998	-64,645	949,520	1,014,165	1568.82%
Chelmsford	1,969,979	1,969,661	1,907,125	-62,536	-3.17%	Hadley	412,621	388,123	25,636	-362,487	-93.39%	Medfield	2,188,756	2,474,925	1,673,319	-801,606	-32.39%
Chelsea	7,183,389	10,730,269	6,302,968	-4,427,301	-41.26%	Hamilton	494,639	1,656,432	889,322	-767,110	-46.31%	Medford	1,473,404	1,549,488	518,975	-1,030,513	-66.51%
Chesterfield	269,407	339,423	414,544	75,121	22.13%	Hampden	324,676	255,845	100,413	-155,432	-60.75%	Medway	487,299	-73,307	1,111,626	1,184,933	1616.40%
Chicopee	2,115,205	2,030,243	4,751,820	2,721,577	134.05%	Hanover	1,355,389	1,215,402	1,474,982	259,580	21.36%	Melrose	1,855,319	1,521,230	1,279,931	-241,299	-15.86%
Chilmark	465,518	580,097	282,251	-297,846	-51.34%	Hanson	693,254	779,440	587,522	-191,918	-24.62%	Mendon	177,018	201,526	158,963	-42,563	-21.12%

	FY00	FY01	FY02	FY01 to FY02 variance	FY01 to FY02, pct. change		FY00	FY01	FY02	FY01 to FY02 variance	FY01 to FY02, pct. change		FY00	FY01	FY02	FY01 to FY02 variance	FY01 to FY02, pct. change
Merrimac	545,991	278,109	119,187	-158,922	-57.14%	Plympton	262,090	502,280	307,894	-194,386	-38.70%	Tyringham	208,510	132,885	138,270	5,385	4.05%
Methuen	3,335,409	2,781,145	1,541,642	-1,239,503	-44.57%	Princeton	85,499	281,961	169,771	-112,190	-39.79%	Upton	534,916	149,131	334,458	185,327	124.27%
Middleborough	1,865,733	2,055,695	2,177,755	122,060	5.94%	Randolph	1,961,534	2,161,310	1,459,032	-702,278	-32.49%	Uxbridge	548,193	734,866	630,601	-104,265	-14.19%
Middleton	1,811,945	1,542,252	2,085,494	543,242	35.22%	Raynham	1,142,669	1,276,262	600,689	-675,573	-52.93%	Wakefield	1,400,878	2,813,273	1,575,118	-1,238,155	-44.01%
Milford	2,423,598	2,901,654	2,053,213	-848,441	-29.24%	Reading	1,464,025	985,699	1,288,269	302,570	30.70%	Walpole	1,291,071	1,438,433	1,856,092	417,659	29.04%
Millbury	2,654,105	2,625,760	2,478,770	-146,990	-5.60%	Rehoboth	529,956	542,772	844,964	302,192	55.68%	Waltham	11,085,656	12,776,015	12,923,676	147,661	1.16%
Millis	93,391	1,172,362	705,730	-466,632	-39.80%	Revere	868,752	603,793	97,882	-646,808	-107.12%	Ware	1,132,073	1,112,683	1,511,626	398,943	35.85%
Millville	450,414	394,297	330,662	-63,635	-16.14%	Richmond	305,536	190,553	171,123	-19,430	-10.20%	Wareham	334,470	1,446,018	1,430,105	-15,913	-1.10%
Milton	570,981	968,227	779,251	-188,976	-19.52%	Rochester	762,710	1,112,958	777,833	-335,125	-30.11%	Warren	258,416	393,214	431,064	37,850	9.63%
Monroe	100,758	129,084	120,516	-8,568	-6.64%	Rockport	1,223,437	865,587	331,070	-534,517	-61.75%	Warwick	235,024	185,294	337,817	152,523	82.31%
Monson	806,446	895,296	980,309	85,013	9.50%	Rowe	472,378	573,153	524,365	-48,788	-8.51%	Washington	75,397	63,675	54,010	-9,665	-15.18%
Montague	1,081,375	830,026	497,415	-332,611	-40.07%	Rowley	669,313	983,906	473,547	-510,359	-51.87%	Wayland	4,696,787	4,317,209	3,789,072	-528,137	-12.23%
Monterey	224,214	176,846	31,041	-145,805	-82.45%	Russell	539,912	483,657	535,698	52,041	10.76%	Wellesley	2,581,879	2,148,241	932,185	-1,216,056	-56.61%
Mt. Washington	159,273	131,167	138,443	7,276	5.55%	Rutland	718,514	694,270	921,872	227,602	32.78%	Wellfleet	268,702	362,228	509,317	147,089	40.61%
Nahant	184,183	193,285	16,211	-177,074	-91.61%	Salem	4,425,158	4,965,894	4,010,382	-955,512	-19.24%	Wenham	996,102	691,247	687,915	-3,332	-0.48%
Natick	3,913,775	3,584,494	4,337,157	752,663	21.00%	Sandisfield	521,992	281,965	420,473	138,508	49.12%	W. Bridgewater	41,412	301,317	274,017	-27,300	-9.06%
Needham	3,749,945	3,226,740	2,473,452	-246,712	-7.65%	Sandwich	2,161,888	2,259,156	1,604,257	-654,899	-28.99%	W. Brookfield	543,866	673,239	588,488	-84,751	-12.59%
New Braintree	130,161	98,658	55,405	-43,253	-43.84%	Saugus	1,712,759	1,706,979	1,579,413	-127,566	-7.47%	W. Newbury	1,288,179	1,388,634	1,770,157	381,523	27.47%
New Marlborough	494,247	448,497	248,683	-199,814	-44.55%	Savoy	79,575	221,077	150,112	-70,965	-32.10%	W. Springfield	4,332,024	2,538,085	2,546,180	8,095	0.32%
New Salem	126,397	162,217	150,138	-12,079	-7.45%	Scituate	1,236,316	972,405	824,415	-147,990	-15.22%	W. Stockbridge	500,836	405,833	381,026	-24,807	-6.11%
Newbury	236,334	476,406	310,738	-165,668	-34.77%	Seekonk	649,459	1,082,810	1,594,366	511,556	47.24%	W. Tisbury	451,627	270,271	263,584	-6,687	-2.47%
Newburyport	1,967,083	2,258,675	3,367,274	1,108,599	49.08%	Sharon	1,702,072	1,125,311	992,118	-133,193	-11.84%	Westborough	2,299,577	2,595,198	2,176,731	-418,467	-16.12%
Newton	5,266,862	5,480,582	5,601,675	121,093	2.21%	Sheffield	853,055	871,749	973,235	101,486	11.64%	Westford	2,143,625	3,559,851	4,274,926	715,075	20.09%
Norfolk	358,538	285,082	818,920	533,838	187.26%	Shelburne	278,521	245,107	169,326	-75,781	-30.92%	Westhampton	163,579	133,520	147,216	13,696	10.26%
N. Adams	2,896,559	3,189,533	2,414,083	-775,450	-24.31%	Sherborn	827,959	1,220,305	866,123	-354,182	-29.02%	Westminster	397,852	995,024	1,394,163	399,139	40.11%
N. Andover	310,731	1,024,106	317,137	-706,969	-69.03%	Shrewsbury	2,884,606	4,087,506	6,958,805	2,871,299	70.25%	Weston	1,427,227	2,161,718	1,676,247	-485,471	-22.46%
N. Attleborough	1,421,190	1,156,512	741,742	-414,770	-35.86%	Shutesbury	425,209	323,509	410,342	86,833	26.84%	Westport	575,147	606,572	-284,329	-890,901	-146.87%
N. Brookfield	312,264	210,047	664,272	454,225	216.25%	Somerset	3,623,670	5,776,790	3,104,707	-2,672,083	-46.26%	Westwood	1,591,553	1,158,195	700,938	-457,257	-39.48%
Northampton	1,569,383	2,889,919	2,942,850	52,931	1.83%	Somerville	5,842,250	4,300,000	5,509,383	1,209,383	28.13%	Weymouth	2,615,061	2,294,804	765,519	-1,529,285	-66.64%
Northborough	2,701,879	2,419,915	2,404,281	-15,634	-0.65%	S. Hadley	1,059,020	1,067,102	1,548,768	481,666	45.14%	Whately	641,362	341,908	248,260	-93,648	-27.39%
Northbridge	1,457,878	1,877,123	2,228,790	351,667	18.73%	Southampton	390,547	262,836	254,387	-8,449	-3.21%	Whitman	974,196	1,004,929	970,724	-34,205	-3.40%
Northfield	613,711	542,366	420,753	-121,613	-22.42%	Southbridge	2,898,624	2,328,641	650,000	-1,678,641	-72.09%	Wilbraham	602,650	240,183	261,211	21,028	8.75%
Norton	1,368,834	-796,108	-551,313	244,795	30.75%	Spencer	230,357	511,170	423,903	-87,267	-17.07%	Williamsburg	393,265	391,042	115,546	-275,496	-70.45%
Norwell	1,587,543	1,798,916	1,662,674	-136,242	-7.57%	Stockbridge	1,932,887	1,729,280	1,876,097	146,817	8.49%	Williamstown	785,808	820,931	477,842	-343,089	-41.79%
Norwood	4,615,889	5,275,277	2,986,860	-2,288,417	-43.38%	Stoneham	1,274,417	1,628,810	870,044	-758,766	-46.58%	Wilmington	5,875,478	8,524,933	9,217,469	692,536	8.12%
Oakham	165,517	236,554	175,082	-61,472	-25.99%	Stoughton	1,801,245	1,258,449	1,420,683	162,234	12.89%	Winchendon	757,073	1,040,459	960,273	-80,186	-7.71%
Orange	688,680	887,942	729,363	-158,579	-17.86%	Stow	537,221	751,362	290,647	-460,715	-61.32%	Windsor	311,869	261,096	262,464	1,368	0.52%
Orleans	1,598,656	2,508,500	2,568,430	59,930	2.39%	Sturbridge	1,095,624	1,439,372	1,325,596	-113,776	-7.90%	Worcester	3,158,751	7,996,823	3,120,700	-4,876,123	-60.98%
Otis	369,006	379,894	628,249	248,355	65.37%	Sudbury	2,036,997	1,182,077	944,818	-237,259	-20.07%	Wrentham	1,437,145	1,075,230	875,756	-199,474	-18.55%
Oxford	1,706,030	1,139,068	102,503	-1,036,565	-91.00%	Sunderland	1,021,914	517,117	309,606	-207,511	-40.13%	Yarmouth	3,282,601	4,734,135	3,496,076	-1,238,059	-26.15%
Palmer	1,230,863	1,308,939	998,953	-309,986	-23.68%	Sutton	1,202,456	408,357	771,933	363,576	89.03%	State totals (in millions)					
Paxton	513,231	256,494	185,946	-70,548	-27.50%	Swampscott	816,689	1,814,919	848,258	-966,661	-53.26%	Positive free cash	485	515	461		
Peabody	7,669,591	2,234,109	1,017,344	-1,216,765	-54.46%	Swansea	395,680	120,026	-217,317	-337,343	-281.06%	Negative free cash	-1	-1	-4		
Pelham	235,778	288,009	247,038	-40,971	-14.23%	Taunton	4,279,661	2,501,311	-1,910,099	-4,411,410	-176.36%	Total free cash	484	514	457		
Pembroke	785,660	1,109,024	1,110,864	1,840	0.17%	Tewksbury	3,120,500	2,819,935	1,616,574	-1,203,361	-42.67%						
Pepperell	1,633,123	1,502,369	1,864,903	362,534	24.13%	Tisbury	1,065,283	1,182,694	1,818,684	635,990	53.77%	Note: This table contains only the communities that had free cash certified in each of the fiscal years from FY00 through FY02 at the time this article was written.					
Petersham	186,498	165,323	147,801	-17,522	-10.60%	Tolland	78,264	84,089	49,574	-34,515	-41.05%						
Plainfield	43,349	137,165	91,423	-45,742	-33.35%	Topsfield	1,591,201	1,288,083	1,155,568	-132,515	-10.29%						
Plainville	724,105	576,297	679,291	102,994	17.87%	Townsend	764,183	1,144,895	897,375	-247,520	-21.62%						
Plymouth	5,111,060	6,960,097	4,887,962	-2,072,135	-29.77%	Tyngsborough	2,567,168	1,857,173	1,759,368	-97,805	-5.27%						

Table 1

Legal Q&A

cedures for the sale or auction of surplus personal property. The town accountant would credit any revenues derived from the sale to estimated receipts.

Sale of surplus real property is a more complicated issue. M.G.L. Ch. 60 Sec. 77B generally governs the sale of tax possession property by the tax possession custodian. Notice and auction requirements are set forth in this statute. Proceeds from the sale of tax possession parcels are treated as general revenue and are computed in the determination of free cash as set forth in M.G.L. Ch. 59 Sec. 23. Sale of surplus land, other than tax possession, must be made in accordance with the Uniform Procurement Act (M.G.L. Ch. 30B). Proceeds from the sale of surplus land, other than tax possessions, must be deposited to the sale of real estate fund, as provided in M.G.L. Ch. 44 Sec. 63. These funds must be expended in accordance with the restricted range of purposes enumerated in M.G.L. Ch. 44 Sec. 63.

Q: For what purposes can proceeds from the sale of municipal real estate (other than tax title foreclosure land) be used?

A: M.G.L. Ch. 44 Sec. 63 provides that the proceeds in excess of \$500 must first be applied to any indebtedness remaining from the acquisition of the real property. The balance can be used for those purposes for which a municipality could borrow for a term of five or more years. In addition, the proceeds could be used to pay for any outstanding debt issued for any of the following purposes as set forth in M.G.L. Ch. 44 Sec. 7 Cl. 3: acquiring land or interests in land, or for constructing buildings or additions that increase the floor space, including the cost of original equipment and furnishings.

Any proceeds in excess of \$500 that were derived from the sale of park land can only be used for park purposes or for capital improvements to park land.

Q: A town is conducting a revaluation. Can the assessors demand access to a house whose owner has steadfastly refused to admit any town official?

A: No. Assessors do not have express statutory authority to inspect property, without the permission of the owner, for purposes of real estate tax assessment. The assessors may request the owner or lessee to provide information on the physical characteristics and condition

of the property by a written return in the pre-assessment stage (M.G.L. Ch. 59 Secs. 38D & 38F). However, if the owner files an abatement application, the assessors may request an inspection of the premises pursuant to M.G.L. Ch. 59 Sec. 61A. If an inspection is refused on a request under Sec. 61A, the landowner may lose his abatement appeal rights. ■

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Free Cash

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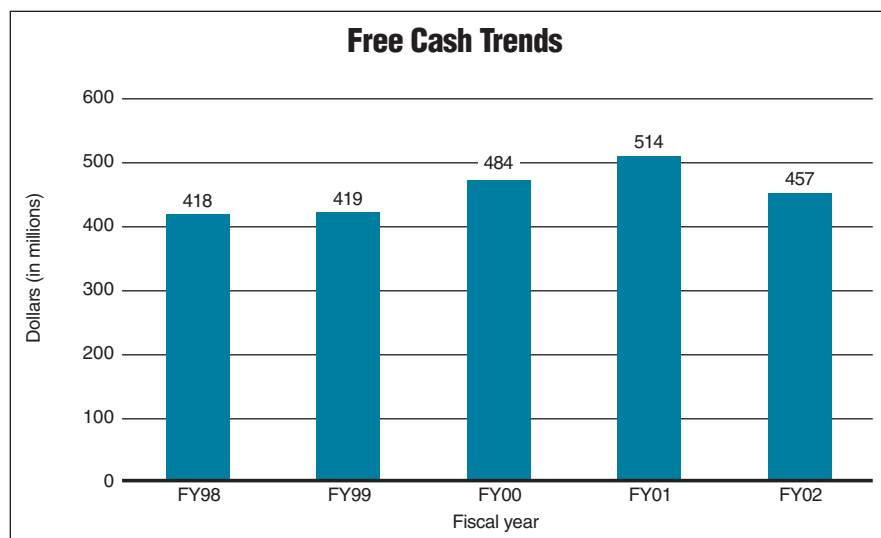


Figure 1

the grant expenditures show as a deficit on the balance sheet, resulting in a reduction of free cash. The reduction of free cash can be avoided by receiving reimbursement prior to September 30, or borrowing a state aid anticipation note (M.G.L. Ch. 44 Sec. 6A).

Free Cash Trends

The amount of free cash that is certified for a community is a good indicator of the community's financial well-being. Historically, when the economy is thriving, free cash increases, and vice versa when the economy slows. In the

late 1990s through FY01, free cash increased dramatically. Comparing free cash from FY01 to FY02, the amount has declined (Figure 1).

Out of the 290 communities compared, 181 (62 percent) had less free cash in FY02 than in FY01. The trend could continue for the next few years if state aid declines or becomes stagnant. Tighter budgets that require more reliance on local receipts and reserves would diminish the two main sources that increase free cash. ■

An Overview of the MMDT

by Timothy P. Cahill, Treasurer and Receiver General, Commonwealth of Massachusetts

The Massachusetts Municipal Depository Trust (MMDT or Trust) was established in 1977 as an alternative investment vehicle for local governments. It allows the State Treasurer to offer participation units in a combined investment fund to agencies, authorities, commissions, boards, cities, towns and other public entities within the Commonwealth. For over 25 years, the Commonwealth and Fidelity Investments have collaborated to bring participants of the Trust a stable investment option with consistent and competitive yields and low cost. The MMDT also offers participants the benefit of convenient liquidity and professional management with extensive credit research and experience.

The Trust's success is illustrated by the growth of the MMDT over the past 25 years. At the end of its first year, the Trust was serving 124 participants with \$65.6 million in assets. At the end of fiscal year 2002, 610 participants invested over \$6 billion in public funds in the MMDT.

One of the MMDT's strengths is its flexibility and ease of use. Investments may be made in any amount for any period of time and dividends are accrued daily, including weekends and holidays. Withdrawals may be made at any time, with no penalties or added charges, by wire or by writing a check against MMDT balances. In addition, withdrawals and purchases may be made, and account information may be obtained through MMDTNet, the MMDT's Internet-based account management system.

The MMDT is committed to providing high quality products and services to help ensure that participants receive exceptional customer service. Feel free to contact the MMDT's Investment Advisor with any questions at 800-392-6095. ■

Foreclosure Cases

continued from page one

- (1) an interested party has died without an *adjudicated* Massachusetts probate;
- (2) an interested party is a defunct entity;
- (3) an interested party is a resigned trustee without a co-trustee or successor; and
- (4) an interested party cannot be found after adequate diligent search. Newspaper publication is a last resort after other efforts to serve have failed.

In order to request such publication, the plaintiff must add \$200 to the deposit in the case, to cover the cost of publication, and submit a letter of diligent search. Due process requires that the search for a missing party consist of a review of relevant public records including those of the registries of deeds, motor vehicles, and probate, and where possible, contact with family members. The Internet should be used for the sake of efficiency and completeness.

In each case, plaintiffs are provided with a copy of all citations issued. This makes it easy to keep track of any case. However, there is no substitute for review by the plaintiff once the notice requirements appear to have been fulfilled. At this stage, the plaintiff should review the file to determine whether or not all interested parties have been served and also whether or not any answers have been filed. If all parties have been served and no answer filed, a military affidavit and a motion for general default should be filed, after the return date of the last citation issued. The court will then review the particular case for the entry of a final judgment. If service is incomplete, the plaintiff must advise the court of what steps it will take to overcome this defect.

An answer in a case mandates that the plaintiff request the court hold a hearing. At the hearing, the plaintiff should present evidence of how much is owed on the tax title account through the date of the hearing. If a defendant disagrees with the town's calculations, he or she must present contrary evidence. Based on the hearing, the court will typically enter a finding as to the amount due. The finding also requires the defendant to pay all arrears and associated charges by a certain date. Should such a defendant fail to comply with the finding, the plaintiff must follow up by asking for a second hearing to present a motion for judgment. Unless payment has been made in full, the court usually allows the motion. At this juncture, it is important for the plaintiff to file a military affidavit and motion for general default. These are the pleadings that prompt the court to review a case for the entry of a final judgment. Any defendant who fails to appear at a scheduled hearing may be defaulted.

If an interested party redeems tax title property involved in a Land Court foreclosure, it is imperative that the plaintiff submit, as soon as possible, a motion to withdraw. This will close the case and permit the court staff to focus on cases that remain unresolved.

The most important point that can be made about handling tax lien foreclosure cases is that the responsibility for actively prosecuting these matters lies with the plaintiffs. The more effort plaintiffs devote to these cases, the faster they will move either to judgment or, as is true for upwards of 80 percent of all tax lien proceedings commenced, to redemption. ■

DLS Update

Final 2002 EQVs

The Biennial Report of the finalized 2002 Equalized Valuations (EQV) was accepted by the Legislature in April 2003. These numbers represent the full and fair cash value of all taxable property for each municipality as of January 1, 2002.

The EQVs will be used in the allocation of local aid distributed through the lottery formula, aid to public libraries, reimbursement of school construction projects and in the calculation of Chapter 70 funding. Certain Cherry Sheet charges also use EQV: County Tax, Boston Metropolitan Transit District, Mosquito Control Projects and Air Pollution Control Districts. In addition, EQV is used in calculating a community's debt limit (M.G.L. Ch.44 Sec. 10).

The Division is analyzing the results of the program and plans to publish its findings in the July/August issue of *City & Town*. In the interim, the full report submitted to the Legislature containing each municipality's final EQV, proportion of county tax, and assessment ratios for the five major classes of property can be found on the DLS website at www.mass.gov/dls/mdmstuf/PropertyTax/EQV02.xls.

Snow Removal Assistance

The Massachusetts Emergency Management Agency (MEMA) has advised municipal executive and public works officials of potential reimbursements by the Federal Emergency Management Agency (FEMA) for certain costs incurred in the snowstorms of February

17–19 of this year, under grant program FEMA-3175-EM. Local officials may have attended briefing sessions at the MEMA facility in Framingham, and received explanatory materials and application forms.

Reimbursement claims were due at MEMA by April 30. If all details are in order, FEMA expects to pay MEMA a sum for all Massachusetts claims by June 13 and MEMA expects the Treasury to wire payments to cities and towns by June 30. Payments for claims that required further documentation or research will likely be delayed.

In a recent Bulletin (2003-10B), James R. Johnson, Director of Accounts, advised that the Bureau will allow application of such federal/state funds to deficits in snow and ice removal accounts pursuant to provisions of M.G.L. Ch. 44 Sec. 53A, without appropriation. Remaining deficits in such accounts may be provided in the FY04 tax rate recapitulation pursuant to provisions of M.G.L. Chapter 44 Sec. 31D, unless otherwise provided by appropriation or transfer.

If such funds are not received by June 30, the Bureau will recognize receipt of such funds by September 30 in calculation of "free cash." ■

CPA Implementation Dates

The Division of Local Services (DLS) strongly recommends that communities presenting a Community Preservation Act (CPA) acceptance referendum to voters during 2003 expressly state

the fiscal year the surcharge will first be assessed in the underlying acceptance proposal presented to the legislative body (or contained in an initiative petition). This will avoid issues that have arisen in a few communities about the intended year and will enable local officials to properly plan for CPA implementation.

Where voters consider a CPA referendum at a spring annual election, it is expected that the surcharge will be assessed in FY04. If the town intends otherwise, it needs to include a FY05 implementation date in its underlying acceptance proposal. A city that presents a CPA referendum to voters at a fall election, on the other hand, has the option of assessing the surcharge in either FY04 or FY05 and, therefore, should clearly identify the intended implementation date. The CPA contemplates that the surcharge will be assessed along with the real estate tax for a fiscal year. Therefore, if the city wants to implement the CPA in FY04, the referendum has to take place before the FY04 tax rate is set with the expectation of implementing the surcharge in the actual tax bills issued thereafter.

This recommendation, along with guidance for identifying the source of CPA funds for proposals that will be presented to local legislative bodies in the upcoming fiscal year, are contained in Bulletin 2003-04B (Community Preservation Fund). This Bulletin is available on the DLS website (www.mass.gov/dls) in the Quick Links box under "Bulletins." ■

DLS Update

E-Mail Disposition Update

Knowing the requirements for the proper management and disposal of public records — including e-mail — is an important responsibility for state as well as public officials. According to Alan N. Cote, Supervisor of Public Records, "The growth of both the popularity of e-mail and the importance of the messages it carries make it imperative that government offices take steps to effectively manage and control this medium."

All government offices should refer to Supervisor of Public Records (SPR) Bulletin No. 1-99 (February 16, 1999) for information and requirements for the management and disposition of electronic mail sent and received by public officials. This bulletin is available online at www.mass.gov/sec/arc/arcrmu/rmubul/bul199.htm.

A new Statewide Records Disposition Schedule 03-03 was adopted by the Records Conservation Board during its February 2003 board meeting. This new schedule is aimed at state agencies only and applies to all types of records, regardless of media or format, including those found in electronic form, audio-tape, and hardcopy. Local municipalities should still rely upon the Records-In-Common Schedule promulgated by the Public Records Division. A new Records-In-Common Schedule is currently being created, which will mirror the new Schedule 03-03 and should be available soon. Municipal records managers may look at 03-03 for guidance until the revision is available.

The official state policy as dictated by the Secretary of the Commonwealth requires all employees to determine the "content" of the e-mail in order to determine its retention period. Once the appropriate retention period has been assigned to the record, they are subject to

the same records management principles as all other public records, as directed by the schedules.

Pursuant to SPR Bulletin 1-99, any records that are electronically created in the first instance and have a retention period of 10 years or less may be stored exclusively electronically. Any record with a retention period of 11 years or more, regardless of how it was created, must be retained in paper form.

Any agency or municipality that wishes to begin a "scanning" program in order to reduce its paper storage may do so on its own initiative. However, no paper may be destroyed until the Supervisor and the Records Management Unit approves of the equipment and software being used to electronically capture the record.

For all e-mails, all associated transmission data, such as who sent the message, the time sent, the address of the sender, who was cc'd or copied, and to whom the message was forwarded should be captured and should accompany the captured message in its paper form.

Copies of Schedule 03-03 can be obtained by contacting the Records Conservation Board in the Secretary of State's Office at (617) 727-7030.

Civil Service Exam Applications Online

Each year, the Massachusetts Human Resources Division (HRD) holds at least six open competitive or promotional examinations for state and municipal service, primarily for public safety (police and fire) positions. Between 20,000 and 25,000 individuals take these examinations each year. In the past, applicants for these exams were required to fill out paper forms, which could be

picked up at local police or fire departments, city halls, HRD offices in Boston, or mailed to them by HRD.

In the spring of 2002, HRD worked closely with the State Police to administer an open competitive State Police Trooper Examination. For the first time, applicants using a credit card were able to apply for an exam on the Internet at their convenience.

The online system has transformed the way HRD processes applications. Since applications and payments are received electronically, HRD spends less time processing paper and more time responding to customer questions received by telephone or by e-mail.

HRD has also redesigned its website to provide additional civil service information. Please visit the HRD website at www.mass.gov/hrd.

Form DA-91 Online

The Massachusetts Department of Environmental Protection (DEP) has converted Form DA-91, Analysis of Homeowner Septic Repair Special Revenue Account, to an electronic format. Form DA-91 can be used by communities participating in the Community Septic Management Program (CSMP) Title 5 betterment loans, for their quarterly reporting requirements. It should be filed by the 15th of the month following the end of the quarter with the Massachusetts Water Pollution Abatement Trust, the Division of Local Services and DEP.

Converting this paper form into an "e-form" is in accordance with the state's current mandate to offer more opportunities to obtain forms online and also reduce paper and postage costs.

Form DA-91 is available on the DEP website at www.mass.gov/dep/brp/mf/msforms.htm. ■

DLS Profile: Boston Staff

Joseph Boudreau and **Deborah Wagner** are two Bureau of Accounts (BOA) field staff who work in the Division of Local Services' (DLS) Springfield regional office.

Joe works with communities located in northwestern Massachusetts. Many of these rural communities have only part-time local officials who do their municipal work in the evenings.

Joe's experience as a town official attracted him to a job at DLS 14 years ago. Before joining DLS, Joe served in Peru as a selectman, finance committee member, town moderator, treasurer and accounting officer. He is a graduate of Berkshire Community College and holds an associate's degree in business administration. Currently, he is a finance committee member in Worthington.

Town officials recognize the municipal experience Joe has brought to his position. In a letter to James R. Johnson, Director of Accounts, the Colrain Board of Selectmen commended Joe for his "willing[ness] to answer questions, no matter how insignificant." They also said that "he is truly an asset and we are glad to have him as our representative from the Division."

Most of the communities Debbie works with are located in Worcester County. She began working for the Division in 1998 as an education auditor and joined the Bureau of Accounts in 2002. A lifelong resident of Chicopee, Debbie holds a bachelor's degree from Our Lady of Elms College in business management and accounting. Last December, she became the mother of a baby boy.

In her short tenure in the BOA, Debbie has already made a positive impression. Madeline Witaszek, a relatively new town accountant in Warren, said that Debbie has been "a great deal of help" to her. "She really helped me with the Schedule A and was willing to take the time to come out here." ■



Joseph Boudreau and Deborah Wagner

Finance Forum Reminder

The Division of Local Services (DLS) is presenting a seminar for recently elected officials on Friday, June 6 at the Ramada Inn in Auburn. Selectmen, mayors, city/town council members, accountants, auditors, assessors, collectors, treasurers, clerks, finance directors, city/town managers and finance committee members and their staffs are invited to participate. New officials will gain a basic understanding of Proposition 2½, budgeting, setting the tax rate, free cash and reserve and debt policies.

A registration bulletin containing further information is available on our website (www.mass.gov/dls) under "Training and Seminars." ■

City & Town

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Joan E. Gourke, Editor

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