

Commonwealth of Massachusetts



Supporting a Commonwealth of Communities

What's New in Municipal Law 2020 – Part Two

Recent Court and

Appellate Tax Board Decisions

Division of Local Services

Bureau of Municipal Finance Law





Part Two - Court and Appellate Tax Board Decisions

Part 2A - Property Tax (9 cases)

Part 2B – Tax Collection and Public Employment (6 cases)

 **Part 2C – Finance and Land Use Law (6 cases)**

Part 2D – Other Municipal Decisions (8 cases)



Finance Issues

Finance Issues



Boss v. Town of Leverett, 484 Mass. 553 (4/23/20)

Boss v. Town of Leverett
484 Mass. 553
April 23, 2020



Boss v. Town of Leverett, 484 Mass. 553 (4/23/20)

Retiree Health Insurance / Town Meeting Warrants

- **Boss, retired public school teacher, filed suit claiming Town obligated to pay 50% of cost of health insurance premiums for retired town employees and dependent spouses**
- **Two issues on appeal**
 - **Does G.L. c. 32B, s. 9A obligate town to pay 50% retiree and dependent costs**
 - **If s. 9A is interpreted to include dependent premiums, was s. 9A effectively adopted by town meeting in 2004**



Boss v. Town of Leverett, 484 Mass. 553 (4/23/20)

Retiree Health Insurance

- **G.L. c. 32B s. 9A states “[town] may provide that it will pay one-half of the amount of the premium to be paid by a retired employee under the first sentence of s. 9”**
- **S. 9A focus is on the retiree payment**
- **Boss’ payment based on group plan that included her husband – plan in effect before her retirement**
- **Conclusion – s. 9A requires town to cover 50% of premium that Boss pays, not 50% of what it costs to cover her individually**



Boss v. Town of Leverett, 484 Mass. 553 (4/23/20)

Town Meeting April 2004

Warrant and Vote

- **Town argued warrant was defective and misleading and votes to adopt s. 9A were invalid**
- **Case law – subjects to be acted on at town meeting “must be sufficiently stated in the warrant to apprise voters of the nature of the matters with which the meeting is authorized to deal.”**





Boss v. Town of Leverett, 484 Mass. 553 (4/23/20)

- **Vote invalid if language in the warrant is misleading, if language included or excluded in the warrant substantially alters the article's meaning, or if the warrant fails to sufficiently state the nature of the matter**
- **Conclusion – town meeting vote in this case was valid**
- **Once s. 9A was adopted by town, c. 32B does not permit its rescission or revocation**
- **Town obligated to pay 50% of Boss' premium that included dependent spouse**



Land Use/Property Rights

Land Use/Property Rights



Gentili v. Sturbridge, 484 Mass. 1010 (2/24/20)

Gentili v. Sturbridge
484 Mass. 1010
February 24, 2020





Gentili v. Sturbridge, 484 Mass. 1010 (2/24/20)

Adverse Possession /Prescriptive Easement

- **Earlier suit by trust over town's discharge of water onto its property resulted in declaration that town had obtained a prescriptive easement to discharge storm water over trust's land**
 - **Town acquired easement by adverse possession by discharging stormwater uninterrupted for more than 20 years**
 - **Trust did not appeal the judgment**





Gentili v. Sturbridge, 484 Mass. 1010 (2/24/20)

- **Instead, trust filed new action seeking damages under G.L. c. 79, s. 10 - the easement was a taking for which town must pay compensation**
- **Too late – damage claim is prevented by trust’s failure to assert any rights against the town prior to town’s obtaining prescriptive easement**
 - **Prescriptive easement now allows town to discharge without paying compensation**





Marchese v. Boston Redevelopment Auth., 483 Mass. 149 (9/13/19)

**Marchese v. Boston
Redevelopment Authority
483 Mass. 149
September 13, 2019**





Marchese v. Boston Redevelopment Auth., 483 Mass. 149 (9/13/19)

Eminent Domain

- **In 2003, the Boston Redevelopment Authority (BRA) used its eminent domain powers to acquire a 10-year easement over a portion of Yawkey Way (now named Jersey Street)**
- **Ten years later, BRA acquired permanent easement through eminent domain and sold the easement to the Red Sox for as long as Major League Baseball games are played at Fenway**





Marchese v. Boston Redevelopment Auth., 483 Mass. 149 (9/13/19)

- **Marchese challenged BRA's actions**
 - **Area no longer blighted, so BRA eminent domain use not proper**
 - **Easement rights should have gone out to public bid before sale giving Marchese an opportunity to bid**
- **Court held that case properly dismissed**
 - **Marchese had no standing to sue - did not own Yawkey Way easement, not adjoining property owner and did not have a business on Yawkey Way**
 - **No obligation to put easement out to bid**





Maroney v. Planning Board of Haverhill, 97 Mass. App. Ct. 678 (2020)

**Maroney v.
Planning Board of Haverhill
97 Mass. App. Ct. 678
June 15, 2020**





Maroney v. Planning Board of Haverhill, 97 Mass. App. Ct. 678 (2020)

Due Process Claim - Fines

- **Maroney was developer of 50-lot subdivision**
- **Under terms of special permit he had to install water pressure booster station**
- **Station was never built and construction began on some of the lots**
- **Water Department did not approve additional construction**
- **Building Inspector refused to issue permits**





Maroney v. Planning Board of Haverhill, 97 Mass. App. Ct. 678 (2020)

- **Maroney filed suit in Superior Court to obtain the building permits**
- **Building Inspector issued cease and desist order when Maroney continued to build without permits**
- **Superior Court judge denied Maroney's request for permits and awarded \$970,000 to City**





Maroney v. Planning Board of Haverhill, 97 Mass. App. Ct. 678 (2020)

- **Appeals Court found as Maroney no longer owner, not entitled to building permits**
- **The Building Inspector had imposed \$1,300 in fines per day on each lot for illegal construction which violated local zoning bylaw and State Building Code**
- **Appeals Court denied City's counterclaim for civil penalties – not proper route for penalties under a local zoning bylaw**





Maroney v. Planning Board of Haverhill, 97 Mass. App. Ct. 678 (2020)

- **City should have followed G.L. c. 40, s. 21D to pursue local fines and G.L. c. 148A, s. 2 to pursue State Building Code fines**
- **City's actions deprived Maroney of due process - notice and opportunity to be heard – when it failed to follow procedures set forth in general laws**
- **Judgment awarding \$970,000 to City overturned by Appeals Court**





Brice Estates, Inc. v. Town of Rutland, 26 LCR 329 (6/8/20)

**Brice Estates, Inc. v.
Town of Rutland
26 Land Court Reporter 329
June 8, 2020**





Brice Estates, Inc. v. Town of Rutland, 26 LCR 329 (6/8/20)

- **Developer challenged Rutland bylaw which restricted town-wide residential building permits**
- **Developer claimed bylaw unconstitutional and violated the Zoning Act (G.L. c. 40A)**
- **Bylaw enacted in May 2019 allowed no more than 36 permits for dwelling units in calendar year**
- **Under bylaw, no more than 25% of permits to one applicant**
- **Bylaw exempted ANR lots from its provisions**





Brice Estates, Inc. v. Town of Rutland, 26 LCR 329 (6/8/20)

- **Developer alleged potential ten-year duration of bylaw was illegal**
- **Under prior court decisions, bylaw restricting growth for indefinite duration was unconstitutional**
- **Land Court held bylaw was not indefinite, but temporary and constitutional**
- **Under Home Rule Amendment municipalities can adopt bylaws provided no constitutional or statutory conflict**





Brice Estates, Inc. v. Town of Rutland, 26 LCR 329 (6/8/20)

- **However, the 25% limit on building permits and the exemption provision for ANR lots violated the uniformity requirement in the Zoning Act (G.L. c. 40A, s. 4)**
- **Apart from those two exceptions, Land Court upheld bylaw**

