

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)





Part 2A - Property Tax Issues

Part 2A Property Tax Issues



Beacon Oread v. Assessors of Worcester, ATB 2020-258 (5/14/20)

**Beacon Oread LP v.
Assessors of Worcester
Appellate Tax Board 2020-258
May 14, 2020**





Beacon Oread v. Assessors of Worcester, ATB 2020-258 (5/14/20)

Valuation appeal by taxpayer to abate FY14 and FY16 taxes on affordable housing development

- **Multiple non-contiguous parcels**
- **Subject properties linked by common financing, financial incentives and restrictions on per-unit rents**
- **Incentives and restrictions applied to whole development and curtailed ability to sell any parcel separately**





Beacon Oread v. Assessors of Worcester, ATB 2020-258 (5/14/20)

- **ATB rejected assessors' comparable sales approach to value because individual sales of some units not feasible given the common financing scheme linking the subject properties**
- **Income-capitalization was correct approach to value the subject properties**
 - **ATB agreed with assessors that taxpayer's capitalization (cap) rate too high – it must consider both benefits and restrictions applicable to low cost housing**



Beacon Oread v. Assessors of Worcester, ATB 2020-258 (5/14/20)

- **ATB also determined that taxpayer did not meet its burden challenging assessors' value of the parking lot, rejecting the claim the parking lot had no value**
- **Conclusion**
 - **ATB's lowered "cap rate" reduced abatements owed taxpayer**
 - **Taxpayer entitled to abatement, but less than what taxpayer claimed**



Brooks v. Assessors of Worthington, ATB 2019-497 (10/31/19)

**Brooks v.
Assessors of Worthington
Appellate Tax Board 2019-497
October 31, 2019**



Brooks v. Assessors of Worthington, ATB 2019-497 (10/31/19)

Challenge to ATB jurisdiction on appeal

- **Taxpayer Brooks owned 2 parcels in Worthington**
- **Parcel #1 - paid FY16 tax bills (\$3642) late, incurred interest**
- **Parcel #2 - paid FY16 tax bills (\$838) timely**
- **Brooks filed timely abatement applications with assessors for both parcels**
- **Upon denial by assessors, taxpayer appealed to the Appellate Tax Board**





Brooks v. Assessors of Worthington, ATB 2019-497 (10/31/19)

- **Under G.L. c. 59, s. 64, timely payment of taxes over \$3,000 or amount at least equal to average tax for three preceding years without incurring interest is required for pursuit of abatement**
 - **Note - Under the Municipal Modernization Act, effective November 2016, statutory amount increased to \$5,000 (not applicable to this appeal)**





Brooks v. Assessors of Worthington, ATB 2019-497 (10/31/19)

- **Parcel #1 - ATB dismissed case - held it had no jurisdiction on appeal as there was no timely payment of taxes over \$3000 or amount of average tax for preceding three years**
- **Parcel #2 - ATB held it had jurisdiction over appeal because taxes timely paid. But – taxpayer failed to appear at the ATB hearing and ATB dismissed for lack of prosecution under ATB rules**





NHP Properties v. Assessors of E. Longmeadow, ATB 2020-366 (6/8/20)

**NHP Properties v.
Assessors of East Longmeadow
Appellate Tax Board 2020-366
June 8, 2020**





NHP Properties v. Assessors of E. Longmeadow, ATB 2020-366 (6/8/20)

Two issues - challenge to ATB jurisdiction on appeal and overvaluation claim

- **Taxpayer timely paid tax and timely filed abatement application on Jan 30th with assessors**
- **Assessors issued notice of denial incorrectly stating abatement application deemed denied on May 1st and that taxpayer could appeal to ATB within three months of May 1st**





NHP Properties v. Assessors of E. Longmeadow, ATB 2020-366 (6/8/20)

- **Under G.L. c. 59, s. 64, assessors have 3 months to act on an abatement application or it is deemed denied.**
- **G.L. c. 59, s. 63 requires notice to the taxpayer within 10 days of assessors' decision on abatement application or date application is deemed denied**
- **Here – abatement application filed Jan 31st**
- **ATB determined three months later for application “deemed denied” was April 30**
- **Assessors' notice had wrong date - May 1**





NHP Properties v. Assessors of E. Longmeadow, ATB 2020-366 (6/8/20)

- **Because assessors' notice had incorrect date, ATB determined notice was defective and, under G.L. c. 59, s. 65C, taxpayer had two additional months to file petition with ATB under late appeal provision**
- **ATB allowed petition and appeal filed on August 1**
- **ATB found it had jurisdiction to hear overvaluation abatement appeal**





NHP Properties v. Assessors of E. Longmeadow, ATB 2020-366 (6/8/20)

- **Assessors based valuation of taxpayer's nursing home property on replacement cost with allowance for depreciation plus land value**
- **Taxpayer offered information related to income approach to value; however, no expert testimony to support a value lower than assessed value**
- **Income approach requires expert testimony to develop vacancy estimates and a cap rate**
- **Decision for the assessors for failure of proof**





United Salvage v. Assessors of Framingham, ATB 2020-320 (5/29/20)

**United Salvage v.
Assessors of Framingham
Appellate Tax Board 2020-320
May 29, 2020**





United Salvage v. Assessors of Framingham, ATB 2020-320 (5/29/20)

Clause 45th tax exemption

- **Solar facility supplying energy to non-taxable city of Framingham property applied for clause 45th exemption and exemption denied**
- **Taxpayer appealed to ATB**
- **Leading ATB cases on clause 45th**
 - ***Forrestall Enterprises, Inc. v. Assessors of Westborough, ATB 2014-1025***
 - ***KTT, LLC v. Assessors of Swansea, ATB 2016-426***





United Salvage v. Assessors of Framingham, ATB 2020-320 (5/29/20)

- ***KTT case – ATB determined a three-part eligibility test for the 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 energy needs of property taxable under c. 59**





United Salvage v. Assessors of Framingham, ATB 2020-320 (5/29/20)

- **In this case, solar facility supplied the energy needs of city of Framingham property, which property is not taxable under chapter 59**
 - **ATB held taxpayer not entitled to clause 45th exemption**
- **After the ATB decision, United Salvage terminated its agreement to supply power for the City of Framingham**





Pelleverde Capital v. Assessors of W. Bridgewater, ATB 2020-330 (5/29/20)

**Pelleverde Capital v.
Assessors of West Bridgewater
Appellate Tax Board
May 29, 2020**





Pelleverde Capital v. Assessors of W. Bridgewater, ATB 2020-330 (5/29/20)

Clause 45th tax exemption

- **Taxpayer was owner of a solar PV system sited on a parcel in W. Bridgewater**
- **Taxpayer entered into a power purchase agreement with the town of W. Bridgewater where town agreed to buy 100% of the electricity/net metering credits generated**
- **Electricity/credits applied to eight municipal properties – police, highway, water, town hall, highway, council on aging, library and school**
 - **None of these properties assessed taxes**





Pelleverde Capital v. Assessors of W. Bridgewater, ATB 2020-330 (5/29/20)

- Taxpayer was issued a personal property tax bill for its solar array
 - Taxpayer filed for abatement claiming exemption under clause 45th
- ATB three-part test for exemption (*KTT case*)
 1. Solar or wind powered system or device
 2. Primary or auxiliary power system for heating or otherwise supplying energy needs
 3. Of taxable property
- *United Salvage case* – not exempt if supply energy to exempt municipal properties





Pelleverde Capital v. Assessors of W. Bridgewater, ATB 2020-330 (5/29/20)

- Taxpayer claimed that because municipal properties are exempt from tax due to judicial decision (common law) and not by statute, the clause 45th exemption is available to taxpayer
- ATB did not agree and denied exemption – it does not matter how the property is exempt; powering taxable property is a requirement for the clause 45th exemption
- Note – Courts have not reviewed ATB decisions regarding clause 45th exemption





RCN Becocom LLC v. Commissioner of Revenue, ATB 2020-29 (1/30/20)

**RCN Becocom LLC v.
Commissioner of Revenue
Appellate Tax Board 2020-29
January 30, 2020**





RCN Becocom LLC v. Commissioner of Revenue, ATB 2020-29 (1/30/20)

Central Valuation – Telephone Property

- **G.L. c. 59, s. 39 provides for central valuation by Commissioner of Revenue**
- **Taxpayer and/or municipalities can appeal Commissioner's valuations to ATB**
- **Taxpayer RCN filed appeals with ATB for FY12, FY13 and FY14, claiming Commissioner's valuation of its telephone personal property (machinery, poles, wires and underground conduits, wires and pipes) was substantially too high**





RCN Becocom LLC v. Commissioner of Revenue, ATB 2020-29 (1/30/20)

- **G.L. c. 59, s. 41 requires taxpayer to file a return of its property (form of list) with Commissioner by each March 1 (Form 5941)**
- **Commissioner informed RCN that its filings were insufficient**
 - **RCN reported price of assets acquired in non-arms-length 2010 bulk sale transaction**
 - **Form requires original cost figures**





RCN Becocom LLC v. Commissioner of Revenue, ATB 2020-29 (1/30/20)

- **RCN claimed “original cost” of its centrally valued telephone personal property was the original cost to it and not when property became part of the Commonwealth’s telecommunications system**
- **Where there is a bulk sale of assets, as in this case, RCN argued the original cost should be the purchase price attributed to the personal property which is centrally valued**





RCN Becocom LLC v. Commissioner of Revenue, ATB 2020-29 (1/30/20)

- **Commissioner disagreed - original cost is cost at time of installation**
- **Commissioner established values based on the best available data and information furnished in FY11 by RCN's predecessor**

Commissioner's Valuation		
FY12	FY13	FY14
\$154,828,900	\$162,785,400	\$182,184,500

- **RCN appealed**





RCN Becocom LLC v. Commissioner of Revenue, ATB 2020-29 (1/30/20)

- **On appeal - Commissioner claimed ATB lacked jurisdiction because RCN's required returns were insufficient**
- **ATB found RCN forms filed in good faith and ATB had jurisdiction on appeal**
- **On the merits, ATB rejected RCN's approach to value and held it failed to show value of its property was "substantially lower" than Commissioner's valuation**





RCN Becocom LLC v. Commissioner of Revenue, ATB 2020-29 (1/30/20)

- **ATB held Commissioner properly valued property using a trended reproduction cost new less depreciation methodology**
- **Commissioner's valuation starts all companies at a common point – original cost new at time of installation**
 - **Standardized valuation system is objective, transparent and consistent**





Roman Catholic Bishop of Springfield v. Assessors of Easthampton

ATB 2020-126 (1/31/20)

**Roman Catholic Bishop of
Springfield v.
Assessors of the City of
Easthampton
Appellate Tax Board 2020-126
January 31, 2020**





Roman Catholic Bishop of Springfield v. Assessors of Easthampton
ATB 2020-126 (1/31/20)

Religious and Charitable Exemptions

- **Due to restructuring, 3 parishes in the Springfield Diocese were merged**
- **Subject parcel, former parish church in Easthampton, now used to store religious objects**
- **FY 2015-2018, Easthampton assessors taxed former church as it was not directly used for religious worship**
- **Diocese claimed property exempt under clause 3rd and clause 11th**





Roman Catholic Bishop of Springfield v. Assessors of Easthampton
ATB 2020-126 (1/31/20)

- **G.L. c. 59, s. 5, cl. 3 contains the charitable property tax exemption**
- **G.L. c. 59, s. 5, cl. 11 contains the house of worship religious tax exemption**
- **Diocese relied on Our Lady of La Salette, Inc. v. Assessors of Attleboro, 476 Mass. 690 (2017) decided by the Supreme Judicial Court**
 - **Test in that case = whether dominant use of property is connected with religious worship**





- **Diocese timely filed abatement applications each year**
- **Diocese also timely filed Form of List (Form 3ABC), required for charitable exemptions**
- **ATB ruled it lacked jurisdiction for FY 2015 and FY 2018 due to late payment by Diocese of the tax**
- **ATB held it had jurisdiction for FY 2016 and FY 2017**





Roman Catholic Bishop of Springfield v. Assessors of Easthampton ATB 2020-126 (1/31/20)

- **ATB held parcel exempt under clause 3rd because it was actively devoted by a charitable corporation to its charitable purposes**
- **ATB held parcel also exempt under clause 11th, relying on the La Salette case - dominant use of the parcel was connected with religious worship**
- **ATB held the parcel was exempt under both Clause 11 and Clause 3**





Springfield Rescue Mission v. Assessors of Springfield

ATB 2019-426 (9/25/19)

**Springfield Rescue Mission v.
Assessors of Springfield
Appellate Tax Board 2019-426
September 25, 2019**





Springfield Rescue Mission v. Assessors of Springfield
ATB 2019-426 (9/25/19)

Religious Exemption / Ownership Date

- **Springfield Rescue Mission, Inc., a charitable corporation formed in 1954 for religious purposes, had operated in Springfield since 1892, having never been taxed on its property due to clause 11th religious exemption**
- **City approved plan for MGM Casino which included the Rescue Mission's property**
 - **Mission agreed to swap its parcel for another parcel to be acquired by casino and renovated for Mission's occupancy**





Springfield Rescue Mission v. Assessors of Springfield

ATB 2019-426 (9/25/19)

- **Agreement included provision to sign and escrow deeds with 3rd party until parcel ready for occupancy by Mission at which time, escrow agent would record deeds**
- **Deeds executed and delivered to escrow agent in December 2014**
- **Renovation completed**
- **Deeds for both parcels were recorded in October 2015**





Springfield Rescue Mission v. Assessors of Springfield
ATB 2019-426 (9/25/19)

- **Springfield assessors taxed the new Mission property for FY16 because Mission was not record owner on the July 1, 2015 eligibility date for the exemption**
- **Mission abatement application denied by assessors; Mission appealed to the ATB**
- **ATB relied upon Band v. Davis, 325 Mass. 18 (1949) to decide that Mission held title on July 1; said Band was precedent that date of delivery of deed to escrow agent was date of delivery of deed to Mission**





Springfield Rescue Mission v. Assessors of Springfield
ATB 2019-426 (9/25/19)

- **On the merits of the appeal, ATB relied on the La Salette case and its dominant purpose test and held the entire parcel (classrooms, learning center, kitchen etc.) was exempt under Clause 11**
- **ATB ordered an abatement and refund of \$213,000 to the Mission**
- **Springfield assessors have appealed to the Appeals Court**





Western Mass. Elec. Co. v. Assessors of Springfield
ATB 2020-235 (5/12/20)

**Western Mass. Elec. Co. v.
Assessors of Springfield
Appellate Tax Board 2020-235
May 12, 2020**





Utility Valuation

- Latest in line of utility cases overturning sole reliance on “net book” value as a measure of property value
- Net book value was formerly presumptive valuation method due to utility properties being highly regulated





- **But times and circumstances changed**
- ***NSTAR Elec. Co. v. Assessors of Boston*, 94 Mass. App. Ct. 1123 (2019) upheld blended valuation methodology combining net book value with replacement value new less accumulated depreciation (“RVNLAD”)**
- **When “special circumstances” are shown by assessors that indicate “net book” not proper measure of value, burden shifts to utility to show overvaluation**





- **Special circumstances are those that may induce a buyer of utility property to pay more than net book value**
 - **Changes in DPU regulation - carry-over rate basis rule no longer controlled due to regulatory changes**
 - **Return actually earned by utility may exceed return approved in allowed rate**
 - **Potential for growth in utility's business**





Following *NSTAR Elec. Co.* reasoning, ATB

- Upheld assessors' blended assessment methodology which combined net book value with replacement value new less accumulated depreciation (RVNLAD)
 - Net book value not probative of fair cash value as a stand-alone measure
 - Declined to hold that replacement value new less accumulated depreciation (RVNLAD) should be the sole method of valuation as assessors' expert opined

