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Deputy Commissioner

City and Town

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Income and Expense Requests, etc. and ATB Dismissals

by Attorney Ellen M. Hutchinson

Will the Appellate Tax Board dismiss the case of a taxpayer who fails to respond to an information request issued by the board of assessors pursuant to M.G.L. Ch. 59 Sec. 61A?

Yes, if assessors follow the proper steps in issuing the information request, and, subsequently, in filing the motion to dismiss the case.

M.G.L. Ch. 59 Sec. 61A allows assessors to issue to taxpayers seeking an abatement, a request for information about that property. Specifically, the law allows assessors to request from a taxpayer "such written information as may be reasonably required by the board of assessors to determine the fair cash valuation of the property." This information may include, but need not be limited to, rent, income and expenses associated with the property.

The law further provides that a taxpayer's failure to respond to the information request within 30 days after the request was made, "shall bar him from any statutory appeal" unless the taxpayer's failure to comply was for reasons beyond his control or unless he attempted to comply in good faith.

Taxpayers do not always respond to assessors' information requests. To prepare for that possibility and to insure that the assessors retain the right to seek a dismissal of the Appellate Tax Board, assessors should note the following:

1. An information request promulgated under M.G.L. Ch. 59 Sec. 61A can only be sent during the abatement period — the three-month period that the assessors have to consider the abatement application filed by the taxpayer.

2. Since the taxpayer must be given 30 days to respond, the assessors should issue the information request within the first few weeks after receiving the abatement application.

3. A dated cover letter should accompany the information request and should contain the following information:

a. That the information request is being sent pursuant to M.G.L. Ch. 59 Sec. 61A.

b. That the information is used by the assessors to determine if the subject property may be overvalued or misclassified;

c. That the taxpayer has 30 days to respond;

d. That M.G.L. Ch. 59 Sec. 61A provides that if a taxpayer does not respond in 30

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Income and Expense Requests

by James Crowley

While M.G.L. Ch. 59 Sec. 61A permits assessors to obtain needed information upon the filing of an abatement application, M.G.L. Ch. 59 Sec. 38D permits assessors to obtain information from owners or lessees of real property in the pre-assessment stage. The assessors may request any information reasonably required by them to determine a parcel's fair cash value. Assessors use this discovery procedure primarily to obtain income/expense data in order to use the income approach to value. Assessors, however, sometimes request information on the physical characteristics and condition of the property, as well.

Under the terms of M.G.L. Ch. 59 Sec. 38D, failure to comply with an information request within 60 days after it has been made, bars any further appeal to the Appellate Tax Board or the courts, unless the failure to respond was beyond the owner or lessee's control. In addition to these sanctions, the assessors can impose a $50 penalty that would be added to the property tax bill for the ensuing fiscal year. By this statute, knowingly submitting false statements can also lead to loss of abatement rights.

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Inside This Issue

From the Deputy Commissioner

The Division of Local Services (DLS) will offer budget workshops for Massachusetts communities from February through June 2005. These workshops offer participating communities an opportunity to develop preliminary budget estimates for the coming fiscal year.

The workshop includes a discussion of the factors that generate changes in revenue, as well as the factors governing changes in expenditures. The computation of the tax rate also will be reviewed. Best results have occurred where the town officials and DLS employees discuss the factors in an interactive way. Participants should include representatives of the selectmen, assessors, finance committee as well as the accountant, treasurer and collector. This way, all groups involved in setting the tax rate gain a common knowledge base.

Due to resource constraints, the Division will offer approximately 10 of these workshops. Preference will be given to smaller communities that have not yet participated in a budget workshop and/or have experienced a significant turnover in municipal finance staff.

If the town would like to arrange a budget workshop, the board of selectmen should contact Tom Guilfoyle, DLS regional manager, at 617-626-2351.

Gerard D. Perry
Deputy Commissioner

Legal

in Our Opinion

Rate of Development Bylaw Unconstitutional

by James Crowley

In late August the Supreme Judicial Court issued a well-publicized zoning decision. The case is *Zuckerman v. Town of Hadley*, 442 Mass. 511 (2004).

The plaintiff in this case, Martha Zuckerman, owned a 66-acre parcel of land located in an agricultural-residential use district in the Town of Hadley. She planned to sell the property to a developer since 40 single-family houses could be built there under the town's subdivision control law. When she contacted three developers, however, they informed her that the project was not economically feasible under the town's rate of development bylaw. In 1988, the Hadley town meeting, in order to control growth and protect the agricultural character of the town, adopted the rate of development bylaw which restricted the number of building permits that could be issued in any calendar year to a developer of lots under common ownership. The bylaw essentially required development to be spread out over a 10-year period. Zuckerman sued the town alleging that the bylaw was illegal. The Land Court ruled in favor of Zuckerman. The town appealed and the case was heard by the Supreme Judicial Court.

In a unanimous decision, the Supreme Judicial Court struck down the bylaw. Although the court found there was no state statutory bar to the bylaw, the court held the rate of development bylaw was unconstitutional. According to the court, the well-established constitutional test is whether the bylaw is arbitrary and unreasonable, or bears a rational relation to a legitimate zoning purpose, making every presumption in its favor.

Relying on the earlier decision of *Sturges v. Chilmark*, 380 Mass. 246 (1980), the court held that the bylaw limiting the rate of growth for an indefinite or unlimited time, and not for the purpose of conducting local studies or planning for future growth, was illegal. In *Sturges*, the Supreme Judicial Court had upheld Chilmark's restrictive rate of development bylaw. The court noted that the Town of Chilmark only restricted development for a limited period to conduct comprehensive studies to protect the environment on Martha's Vineyard.

The Town of Hadley, however, contended that its bylaw of unlimited duration was reasonable since growth posed an indefinite threat to the town's finances and its agricultural character. The court rejected this argument. In the court's view, a rate of development bylaw does not serve a public purpose except when of reasonable duration to allow a community to perform growth planning or resolve environmental issues. The court cited its recent decision of *Home Builders Association of Cape Cod, Inc. v. Cape Cod Commission*, 441 Mass. 724 (2004) where the court upheld Barnstable's zoning ordinance, which had a permanent building cap. In *Home Builders*, the court held that the rate of development ordinance was a legitimate planning device on the part of a regional entity (the Cape Cod Commission) to protect a sole source aquifer.

According to the court, the Town of Hadley must take a different approach to protect the town's finances and its rural character. The town should revamp its zoning bylaws, or adopt measures like a cluster development bylaw. Hadley should also participate in state-enacted programs such as the Community Preservation Act. By these permissible actions, the town could limit growth.

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Focus

on Municipal Finance

MWRA Upgrades Regional Water System

by Jonathan Yeo, Communications Director, MWRA

The Massachusetts Water Resources Authority (MWRA) has made major improvements to the regional drinking water system serving over 2 million people in 47 communities. The 10-year, $1.7 billion water system program strengthens the treatment and transmission systems as well as improves security and assures high quality drinking water (*Figure 1*).

MWRA Background

The MWRA is an independent public authority created in 1984 to assume control of the regional water and wastewater systems from the former Metropolitan District Commission. Federal and state court orders and consent orders, as well as decades of backlogged infrastructure maintenance needs, have dominated the MWRA's capital improvement program from the beginning. MWRA's FY05 current expense budget is $492.6 million, with 60 percent of the budget going to capital financing.

MWRA is governed by an 11-member board of directors including eight representatives of service area communities. The governor appoints members from the Connecticut and Merrimack watershed areas and the secretary of environmental affairs serves as the chairperson. The MWRA staff is headed by an executive director, Frederick A. Laskey, who is responsible for implementation of programs, policies and procedures set by the board. The MWRA Advisory Board, including professional staff and representatives of 60 service area communities, actively monitors MWRA programs from a ratepayer and community perspective and provides detailed comments on proposed budgets.

MWRA provides wholesale water service to 47 communities and wholesale sewer service to 43 communities (see *Table 1* for a complete listing of MWRA customer communities). The Boston Water & Sewer Commission is by far the largest customer, bearing 31 percent of MWRA charges. Annual assessments to water communities are based on the past year's metered water consumption, while sewer assessments are based on three-year average metered wastewater flows, and the community's sewered and total population.

MWRA communities participate in the Commonwealth's Sewer Rate Relief Fund, along with dozens of communities outside the MWRA system, to help mitigate sewer rate increases created by large debt obligations for Clean Water Act compliance. The statewide relief fund has $10 million in funding for FY05.

Water System Improvements

The MWRA's water supply improvement program is designed to update the regional water system for the twenty-first century. The major elements include the MetroWest Water Supply Tunnel, covered storage tanks, the Walnut Hill Water Treatment Plant in Marlborough, watershed protection projects, and water pipeline upgrades in the MWRA and community water systems. The new 17.6-mile-long tunnel now serves as the system's transmission backbone, instead of the Hultman Aqueduct, a 60-year-old surface aqueduct with numer-

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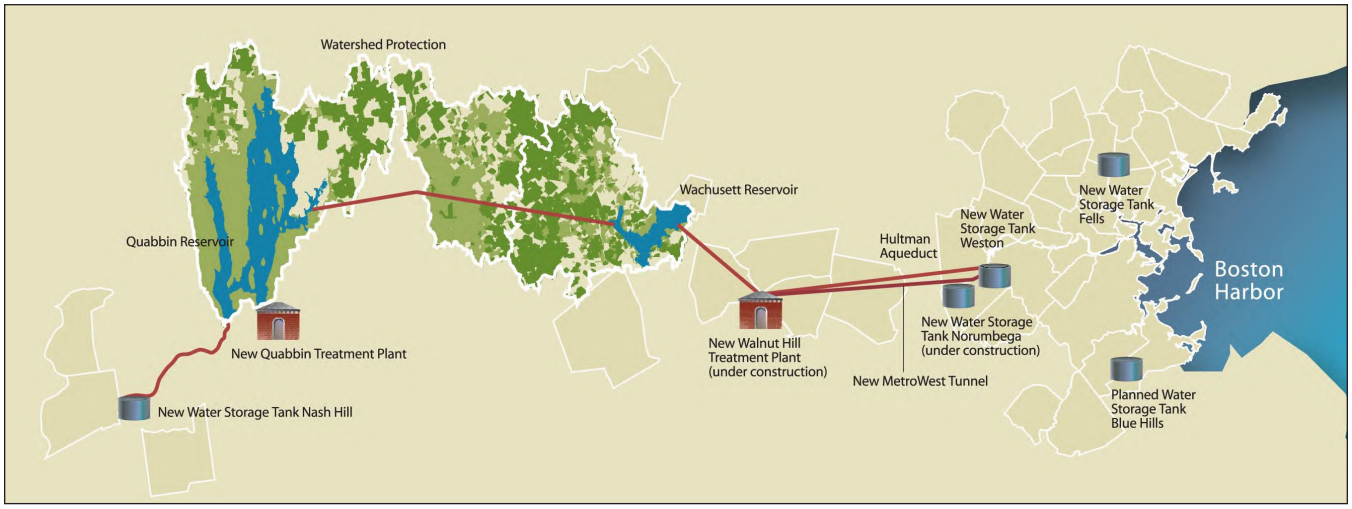

Figure 1: MWRA Water System Program

MWRA Upgrades Regional Water System

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ous leaks. These changes represent the largest improvement to the water system since the Quabbin Reservoir was built during the Depression.

In a major upgrade for metropolitan Boston's water system, the MWRA celebrated on May 6, 2004, the shutdown of a 64-year-old open storage reservoir for drinking water. The MWRA's Norumbega Reservoir in Weston was officially taken "off-line" and replaced by a massive underground storage tank recently built along the Massachusetts Turnpike. The event marked the culmination of over eight years of construction on the MetroWest Tunnel and the 115-million-gallon storage tank. MWRA's water now flows completely underground from the reservoirs to the customer's tap, providing for greatly improved security and protection of excellent water quality.

MWRA has built five covered storage facilities to replace open distribution reservoirs like Norumbega, which was the last open reservoir to be removed from service. The $100 million facility in Weston covers 17 acres of land and will eventually be covered by a grassy meadow and small vegetation. Trees are being planted this fall along the steep earthen slopes next to the Turnpike.

"Since the events of September 2001, water suppliers across the country have been working to assess their vulnerabilities and increase security," says Executive Director Laskey. "These investments will greatly secure this critical infrastructure and assure high quality drinking water in the MWRA system."

MWRA's new water treatment plant is nearing completion at Walnut Hill and is on schedule for opening in Spring 2005, serving over 2 million people with treated water. The Walnut Hill facility switches MWRA's disinfection system from using chlorine to ozone gas, a more effective protection against pathogens without the by-products associated with chlorine.

Protection of the source reservoirs and watersheds covering 400 square miles is a critical component of MWRA's water program. The Department of Conservation & Recreation's (DCR) watershed

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MWRA Customer Communities

Community	Services provided by MWRA
Arlington	Water and Sewer
Ashland	Sewer
Bedford	Water (partially supplied), Sewer
Belmont	Full Water and Sewer
Boston	Full Water and Sewer
Braintree	Full Sewer
Brookline	Full Water and Sewer
Burlington	Full Sewer
Cambridge	Water (emergency backup only), Sewer
Canton	Water (partially supplied), Sewer
Chelsea	Water and Sewer
Chicopee	Water
Clinton	Water and Sewer
Dedham	Sewer
Everett	Water and Sewer
Framingham	Water and Sewer
Hingham	Sewer
Holbrook	Sewer
Lancaster	Sewer
Leominster	Water (emergency back-up only)
Lexington	Water and sewer
Lynn (GE only)	Water (partially supplied)
Lynnfield Water District	Water
Malden	Water and Sewer
Marblehead	Water
Marlborough	Water (partially supplied)
Medford	Water and Sewer
Melrose	Water and Sewer
Milton	Water and Sewer
Nahant	Water
Natick	Sewer
Needham	Water (partially supplied), Sewer
Newton	Water and Sewer
Northborough	Water (partially supplied)
Norwood	Water and Sewer
Peabody	Water (partially supplied)
Quincy	Water and Sewer
Randolph	Sewer
Reading	Sewer
Revere	Water and Sewer
Saugus	Water
Somerville	Water and Sewer
Southborough	Water
South Hadley Fire District #1	Water
Stoneham	Water and Sewer
Stoughton	Water (partially supplied), Sewer
Swampscott	Water
Wakefield	Water (partially supplied), Sewer
Walpole	Sewer
Waltham	Water and Sewer
Watertown	Water and Sewer
Wellesley	Water (partially supplied), Sewer
Weston	Water
Westwood	Sewer
Weymouth	Sewer
Wilbraham	Water
Wilmington	Sewer
Winchester	Water (partially supplied), Sewer
Winthrop	Water and Sewer
Woburn	Water (partially supplied), Sewer
Worcester	Water (emergency back-up only)

Table 1

MWRA Upgrades Regional Water System **continued from page four**

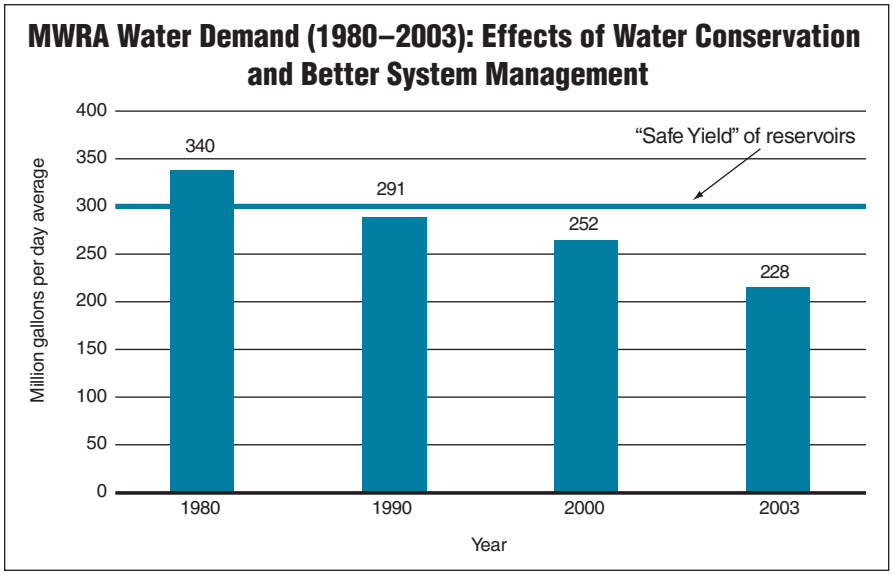

Table 2

unit takes the lead role in watershed management with MWRA participating in water quality monitoring and capital improvements. The FY05 state budget created a statutory trust called the Water Supply Protection Trust that will allow MWRA to directly finance DCR's watershed operations and programs and assure adequate funding to protect the supplies. MWRA provides over $20 million annually for watershed protection, debt service on capital and land acquisition, and payment-in-lieu-of-taxes (PILOT) payments to watershed communities.

The Quabbin-Wachusett Reservoir system is one of the strongest water systems for a major city in North America. The 477 billion gallons in storage capacity, enough for over five years' supply, makes the system quite drought-tolerant. With MWRA water demand declining by nearly 100 million gallons per day (mgd) over the past 18 years due to conservation and leak repair (see *Table 2*), two communities have been allowed to join the water service area in the past decade to purchase relatively small water flows to supplement local supplies. Several other additional communities are currently seeking state approvals to join and purchase supplemental water.

Continued Work on Sewer System and Combined Sewer Overflows

In addition to the completion of the Deer Island Wastewater Treatment Plant on Boston Harbor, MWRA has dozens of large and small projects underway to improve wastewater system capacity, repair aging infrastructure, and reduce or eliminate combined sewer overflows (CSOs). MWRA's CSO Control Program, encompassing 25 projects totaling over $700 million, is well underway with 14 projects completed and five in construction. The $300 million CSO tunnel project along two miles of South Boston beaches has recently received state and federal approvals and construction is slated for the 2006–2011 period.

The Deer Island facility is working very well, treating an average of 380 mgd in 2003. Discharge through the outfall diffuser system 10 miles out in Massachusetts Bay is closely monitored and has not shown any signs of creating problems. The facility won a prestigious Gold Award last year for perfect permit compliance. Every year, thousands of people, including service area school groups, international delegations, scientists and citizens, tour the facility and enjoy the parkland surrounding the plant. ■

New Drinking Water Assessment Reports

The Department of Environmental Protection's (DEP) Drinking Water Program has completed assessments for more than 1,700 public drinking water systems statewide.

As part of the Source Water Assessment and Protection (SWAP) program, potential threats of contamination to surface and groundwater sources of public drinking water were evaluated and recommendations were provided to help guide efforts to maintain and improve the high quality of drinking water in Massachusetts.

"I encourage residents to become familiar with the information in these assessment reports," DEP Commissioner Robert W. Golledge, Jr. said. "It is important to be informed about where your drinking water comes from and to become actively involved in protecting this precious and limited resource. By working together we can ensure that a clean, safe and plentiful supply of drinking water is available for us and for generations to follow."

The reports for 772 community and non-transient non-community systems were provided to the public water suppliers and city or town officials and can be obtained from them. Copies of these reports and other SWAP program information can also be obtained by going to the DEP website at: www.mass.gov/dep/brp/dws/files/swap/swapreps.htm.

Copies of SWAP reports for the smaller transient non-community systems were provided to the water suppliers and local city and town officials and can be obtained by contacting them. ■

DLS Update

Change in Definition of Veteran

The definition of "veteran" found in M.G.L. Ch. 4 Sec. 7, Clause 43 has been expanded by recent legislation (Chapter 116 of the Acts of 2004) to include several categories of persons who do not have wartime service, *i.e.,* they served during peacetime. This definition is used to define eligibility for a number of benefits, such as civil service, retirement and veteran benefits. It is also used to determine eligibility for property tax exemptions, but a change in the definition alone would not have made peacetime veterans who came within the new definition eligible since the exemption statutes themselves expressly required wartime service. Those definitions have now been deleted, however, to make the exemption statutes consistent with the new definition of veteran.

The acts changing the definition of veteran and amending the exemption statutes become effective after the July 1, 2004, qualifying date for FY05 property tax exemptions. Therefore, they do not affect exempt status until FY06.

For more information, refer to Bulletin 2004-17B, available on the Division of Local Services' website at www.mass.gov/dls.

Data Exchange Agreements

The Division of Local Services recently issued a Bulletin (2004-21B) regarding data exchange agreements. This Bulletin explains a new procedure available to assessors to verify residency of applicants for local property tax exemptions. With regard to motor vehicle excises, new legislation (M.G.L. Ch. 90 Sec. 3½) allows boards of assessors, the Department of Revenue (DOR), the Registry of Motor Vehicles and state and local law enforcement officials to exchange confidential data to enforce motor vehicle registration laws.

The Bulletin also provides information regarding how assessors may now verify a person's domicile for local property tax exemption purposes by requesting DOR to perform data matches against its tax return information. Assessors seeking tax return information for verification purposes must enter into a data exchange agreement with DOR and agree to specific procedures regarding access, use and disposition of any information provided in order to ensure its confidentiality.

For more information, click on the direct link to this Bulletin: www.mass.gov/dls/publ/bull/2004/2004_21B.pdf.

New CPA Communities

On Election Day, November 2, 2004, residents in Barnstable, Concord, Groton, Hadley, Hanover, Middleton, Needham, Northborough, Sharon and Wilbraham voted to accept the Community Preservation Act (CPA). This law allows municipalities to establish a special "Community Preservation Fund" that may be appropriated and spent for certain open space, historic resource and affordable housing purposes.

The primary source of revenue for the local Community Preservation Fund is a property tax surcharge of up to three percent that will be assessed on each parcel of taxable real estate within the community. A second source of revenue for the fund is the annual distributions received from the state "Massachusetts Community Preservation Trust Fund" also created under the act. Monies from the state trust fund will come primarily from surcharges on fees charged for recording various documents with the Registry of Deeds or Land Court. The local Community Preservation Fund is also credited with proceeds from the disposition of real property acquired with fund monies.

For each fiscal year, the community must spend or reserve at least 10 percent of the annual revenues in the fund for each of the act's community preservation purposes: open space, historic resources and affordable housing.

Since its passage in September 2000, CPA ballot votes have occurred in 114 communities. Of those, 65 communities have adopted the CPA and voters in 49 communities have rejected it.

The surcharges adopted by these 10 communities are as follows:

Barnstable, Groton, Hanover and Hadley: 3 percent

Needham: 2 percent

Wilbraham, Northborough and Concord: 1.5 percent

Middleton and Sharon: 1 percent

For more information on the municipal finance provisions of the Community Preservation Act (M.G.L. Ch. 44B), refer to Informational Guideline Release (IGR) 00-209 (as amended by IGR 01-207 and IGR 02-208). ■

DLS Update

CPA Matching Funds Distributed

Deputy Commissioner Gerard D. Perry has announced that the matching funds under the Community Preservation Act (M.G.L. Ch. 44B) reflecting surcharges on property taxes during FY04 were distributed on October 15, 2004.

The state matching funds this year were calculated at 100 percent of the amounts committed by the assessors, based on the surcharge rate adopted. While Chapter 44B provided for a multi-tier formula for computation of the matching funds, the fund balance at June 30, 2004, was sufficient to award 100 percent of the commitment in the first tier, which is the maximum allowed under the statute.

Chapter 44B contains requirements for minimum appropriations or reservations for each of the three purposes of the Act. Chapter 165 of the Acts of 2002 expanded many of its purposes. Local officials should consult Informational Guideline Release 00-209 (as amended by IGR 01-207 and IGR 02-208). These IGRs are available on the Division of Local Services' website at www.mass.gov/dls under "IGRs" in the Quick Links Box.

The table below lists the matching fund awards for the 61 communities that adopted the CPA for FY04. ■

CPA Matching Funds

Municipality	Fiscal year adopted	CPA reimbursement	Surcharge pct. adopted (3% max.)
Acton	2003	534,467	1.50
Acushnet	2004	81,176	1.50
Agawam	2003	313,190	1.00
Amherst	2002	154,264	1.00
Aquinnah	2002	46,034	3.00
Ashland	2003	499,082	3.00
Ayer	2002	89,962	1.00
Bedford	2002	870,283	3.00
Boxford	2002	403,714	3.00
Braintree	2003	406,556	1.00
Cambridge	2002	5,563,415	3.00
Carlisle	2002	262,655	2.00
Chatham	2003	503,006	3.00
Chelmsford	2002	189,483	0.50
Chilmark	2002	122,711	3.00
Cohasset	2002	254,690	1.50
Dartmouth	2003	342,981	1.50
Dracut	2002	502,489	2.00
Duxbury	2002	941,841	3.00
Easthampton	2003	174,773	3.00
Easton	2002	560,666	3.00
Georgetown	2002	205,817	3.00
Grafton	2003	173,731	1.50
Hampden	2002	31,117	1.00
Harvard	2002	119,516	1.10
Hingham	2002	483,468	1.50
Holliston	2002	269,739	1.50
Hopkinton	2002	513,429	2.00
Leverett	2003	47,522	3.00
Lincoln	2003	220,879	1.50
Marshfield	2002	705,842	3.00
Medway	2002	389,821	3.00
Mendon	2004	156,374	3.00
Nantucket	2002	1,096,276	3.00
Newburyport	2004	396,341	2.00
Newton	2002	1,830,295	1.00
Norfolk	2002	309,790	3.00
North Andover	2002	1,021,824	3.00
Norwell	2003	534,732	3.00
Peabody	2002	490,281	1.00
Plymouth	2003	1,081,593	1.50
Rockport	2003	299,695	3.00
Rowley	2002	226,855	3.00
Scituate	2003	686,222	3.00
Southampton	2002	85,347	3.00
Southborough	2004	188,653	1.00
Southwick	2004	140,911	3.00
Stockbridge	2003	72,980	3.00
Stow	2002	302,236	3.00
Sturbridge	2002	213,239	3.00
Sudbury	2003	1,090,772	3.00
Tyngsborough	2002	310,487	3.00
Upton	2004	177,832	3.00
Wareham	2003	349,938	3.00
Wayland	2002	447,456	1.50
Wellesley	2003	559,717	1.00
Westfield	2004	224,236	1.00
Westford	2002	1,005,454	3.00
Weston	2002	1,122,336	3.00
Westport	2003	296,150	2.00
Williamstown	2003	125,877	2.00
Total		**30,822,218**	

DLS Update

An Assessor's Thoughts on Interim Year Adjustments

by Walter Poirier, Chief Assessor, City of Leominster

I have just read an article in a North Shore daily newspaper that reports that a town administrator and selectmen have an issue with the Department of Revenue's (DOR) new policy on reporting interim year adjustments. They state that it causes instability in their constituents' tax bills. Also, a town has requested their state representative to put forth a home rule bill that would give communities the option not to perform interim year adjustments every year. These complaints are reminiscent of those brought up 25 years ago, when the Classification Act became law, and assessors were *finally* required to assess all property at full and fair value.

As an assessor for the last 22 plus years who has served two cities and two towns, I have come to realize that equitable and fair assessments are vital for communities' fiscal health. In the early 1980s, revaluations caused uproars probably because both the assessing community and DOR were feeling their way through the process. Now municipalities have settled into the three-year recertification routine. During the mid-1980s the three-year period was satisfactory because values were rising. The only complaints heard were from real estate brokers who were distressed because the valuations didn't reflect the seemingly outrageous prices that were being asked for real estate. Everyone went along "fat, dumb, and happy."

Then came FY89 and the real estate bubble burst. Communities being certified that year used calendar year 1987 sales. By the time most of those municipalities completed their values and sent out the tax bills the market crashed, especially the residential market. In my community's case, the values were 15–20 percent too high at the time the FY89 tax bills went out. What a catastrophe! In a town with barely 5,000 parcels, we experienced over 600 applications for abatement, and 90 percent of those were residential. The board of assessors then ordered a review of the valuation process and decided to make changes in values the following year without waiting for the three-year revaluation cycle and without conferring with DOR.

So in FY90, we performed what is now known as an interim year adjustment. There were no guidelines available, we did the update just as if we were doing a recertification. When we submitted for tax rate certification, we also gave the Bureau of Local Assessment the same paperwork as we had the year before. I must admit, they were a little bewildered upon receiving the paperwork, but they adjusted to it. It should be noted that during the spring 1990 Massachusetts Association of Assessing Officers conference in Lowell, an Appellate Tax Board (ATB) commissioner stated quite clearly, that the ATB would not look favorably on assessments that did not reflect current fair market value. Since that time, and two jurisdictions later, interim year adjustments have been made when necessary, all but two fiscal years. Since FY99, we have adjusted values every year. Abatements have gone down, from 375 for FY97 to 128 for FY04. The taxpayers have come to expect annual valuation changes. They are told that just as values are adjusted when the market goes up, values will be adjusted when they go down. That time may be approaching soon.

I understand that small communities may find it burdensome to perform yearly adjustments. However, with the current availability of good software, it should be easier for every community to review the statistics, even those that do not employ full-time assessing personnel. Those that have full-time assessors, despite the political furor that sometimes accompanies interim year adjustments, should give assessors the support, both morally and monetarily, to do the job that they are statutorily required to perform. It will only serve to instill more confidence in your local government. The savings from not having to use funds for abatements as well the service you are rendering to the taxpayers of your communities will more than compensate for any cost. ■

Editor's note: This article represents the opinions and conclusions of the author and not those of the Department of Revenue.

Bylaw **continued from page two**

In conclusion, the Supreme Judicial Court invalidated Hadley's bylaw, which regulated for an unlimited duration the number of building permits that could be issued. ■

ATB Dismissals **continued from page one**

days, he may be prevented from having his case heard by the Appellate Tax Board;

e. That if the taxpayer fails to respond to the information request within 30 days, the assessors will use all legal remedies available to them.

4. The easiest way to avoid any misunderstandings as to the taxpayer's obligations is to set forth not only those items listed in paragraph 3, but also set forth, verbatim, M.G.L. Ch. 59 Sec. 61A.

What should an assessor do if a taxpayer fails to respond to the information request and subsequently files with the Appellate Tax Board?

An assessor (or his counsel) can file a motion to dismiss the case due to the taxpayer's failure to respond to an information request promulgated pursuant to M.G.L. Ch. 59 Sec. 61A. The motion to dismiss should contain the following information.

1. The date the taxpayer filed his abatement application;

2. The date the assessors issued the information request;

3. The date the response to the request was due;

4. A statement that the taxpayer was made aware of the need to respond in 30 days, and that the assessors would pursue their legal remedies should the taxpayer fail to respond;

5. A statement that the response was never received. (Seeking dismissal for a response that was filed late, i.e. after 30 days is not likely to cause the Appellate Tax Board to dismiss the case);

6. A statement that the assessors rely on the information request to determine if the property is overvalued or misclassified, and to determine if an abatement is warranted;

7. A statement that the assessors have been prejudiced, or injured by the taxpayer's failure to respond to the information request (legal expenses; time involved in handling an ATB case, etc.);

8. A request that the case be dismissed.

Note that in addition to putting these statements and items in the motion, an assessor should execute an affidavit setting forth and swearing to the above information. The affidavit should be attached to the motion, as should a copy of the cover letter and information request that was sent to the taxpayer.

The Appellate Tax Board's overarching concerns in these matters are twofold: (1) that the taxpayer was given proper notice that a failure to respond to the information request could result in the dismissal of his case; and (2) that the assessors rely on the information that is requested, and that the assessors were injured or prejudiced by the taxpayer's failure to provide the requested information.

While there are certainly no guarantees, if assessors and/or their counsel follow the above steps, they will increase their odds of obtaining a dismissal for failure to respond to an information request. ■

Ms. Hutchinson's legal practice is heavily focused on Appellate Tax Board matters. She has represented many assessors. She is a frequent guest speaker at assessors' meetings and conferences, and lectures every summer at the assessors' school at the University of Massachusetts, Amherst.

I&E Requests **continued from page one**

Once the requested information has been furnished, the assessors can request the taxpayer to answer questions under oath as set forth in M.G.L. Ch. 59 Sec. 38E. Any information submitted by the taxpayer under M.G.L. Ch. 59 Secs. 38D and 38E is not open to public inspection in accordance with M.G.L. Ch. 59 Sec. 52B. ■

Circuit Breaker Credit Update

For tax years beginning on or after January 1, 2001, an owner or renter of a principal residence located in Massachusetts who is age 65 or older, at the close of the taxable year, may be eligible to claim a refundable tax credit against personal income taxes. Known as the "circuit breaker tax credit," this credit is based upon the actual real estate taxes or rent paid by a taxpayer eligible to claim the credit. See M.G.L. Ch. 62 Sec. 6(k), added by Sections 80 and 81 of Chapter 127 of the acts of 1999.

In accordance with this statute, for the purposes of calculating the circuit breaker credit total income, assessed valuation and maximum credit thresholds are adjusted annually by multiplying the statutory base amounts of these thresholds by the cost-of-living adjustment for the calendar year in which the taxable year begins.

For renters and owners in 2004, the taxpayer's "total income" cannot exceed $44,000 for a single individual who is not the head of household; $55,000 for a head of household; and $66,000 for a husband and wife filing a joint return.

For tax year 2004, the assessed valuation, before the residential exemption but after the abatements, of the homeowner's principal residence may not exceed $441,000.

For homeowners and renters, the maximum credit available in 2004 is $820. For more information on the 2004 circuit breaker credit, refer to Technical Information Release (TIR) 04-32. This TIR can be accessed through the Department of Revenue's website (www.mass.gov/dor) under Rulings and Regulations. ■

DLS Profile: Farewell to Veteran Staff Members

On behalf of the Division of Local Services, Deputy Commissioner Gerard D. Perry recently extended best wishes for health and happiness to three veteran staff members who retired or left the Division.

Dora Brown and Deputy Commissioner Gerald D. Perry

Originally from Venezuela, Dora Brown ventured to the United States in the early 1980s to attend college. In 1984, she began working for the Division's Municipal Data Bank while a student in Northeastern University's cooperative education program. After graduating with a bachelor's degree in business management, Dora became a full-time staff member in the Data Bank. Her most recent duties included managing the Schedule A (the annual statement of a municipality's revenues, expenditures and other financing sources) database and coordinating the exchange of data with other state and federal agencies.

This past November, Dora and her family relocated from Methuen to Phoenix, Arizona. At a farewell luncheon, Dora thanked her coworkers for "all their support and help. She also stated, "I couldn't have had a better team and a better place to work." Data Bank and Local Aid Section Director Lisa Juszkiewicz complimented Dora for setting "high standards of customer service and meeting them on a daily basis."

This past fall, the Bureau of Local Assessment bid farewell to two longstanding members of its field appraisal staff. Jacki Barden of the Springfield regional office and John Howard of the Worcester office retired after working for the Division for at least 20 years. Local communities in which Jacki and John worked have expressed their gratitude for the quality of work done by these two highly qualified appraisers. Bureau Chief Marilyn Browne said, "It is sad to see Jacki and John retire. I could always count on their expertise and experience to deal with the more complex appraisal matters. They will be missed but we all wish them well."

Deputy Commissioner Perry commended all three of these staff members for their hard work and dedication to the Division. ■

Ethics Commission Ruling on Tax Work-Off Abatement

The Massachusetts State Ethics Commission recently issued an opinion, EC-COI-04-04, regarding town employees participating in the Senior Citizen Property Tax Work-Off Abatement Program under M.G.L. Ch. 59 Sec. 5K. According to the opinion, otherwise qualified municipal employees may participate in a senior citizen property tax work-off abatement program established by M.G.L. Ch. 59 Sec. 5K as long as they are able to secure an exemption to Section 20 of M.G.L. Ch. 268A. Every participant in an abatement program will be considered a municipal employee for the purposes of M.G.L. Ch. 268A during the time they participate in the abatement program and must comply with the restrictions of M.G.L. Ch. 268A. Abatement program participants are eligible to be designated as special municipal employees.

The full text of the opinion is available at www.mass.gov/ethics/COI_04_4.pdf. For more information, contact Carol Carson of the Massachusetts State Ethics Commission at 617-727-0551 or at www.mass.gov/ethics. ■

New Growth Training

The Division of Local Services (DLS) has prepared a new online training application on the topic of "new growth" using PowerPoint software. This comprehensive training program is designed to guide local officials through the completion of the Tax Base Levy Growth (LA-13) and the Amended Tax Base Levy Growth (LA-13A). This presentation will also clarify what is allowable new growth and proper column adjustments (particularly Column D) through the use of examples and exercises.

After completing the new growth PowerPoint presentation, click on "case study" to measure your comprehension of the subject matter. This program is available on the DLS website at www.mass.gov/dls under "Training and Seminars."

The Division of Local Services has also created an online PowerPoint tutorial to familiarize local officials with the functions of the Division's bureaus. New officials are especially encouraged to run this presentation (also accessible under "Training and Seminars"). ■

City & Town
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Joan E. Grourke, *Editor*

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