DLS

DIVISION OF LOCAL SERVICES

MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

"What's New in Municipal Law"

2018

Recent Legislation

Property Taxes

An Act Relative to Veterans' Benefits, Rights, Appreciation, Validation and Enforcement (BRAVE Act)

Chapter 218 of the Acts of 2018
Effective November 7, 2018 [1:16]

- §§ 12-13 – ***Prisoners of War personal real estate tax exemption***
- **Amends G.L. c. 59, § 5, Clause 22A**
- **Makes prisoners of war eligible for Clause 22A exemption**
  - **Local acceptance not required**
  - **Prisoner of war defined**
  - **Effective for FY2020**

“BRAVE Act” (continued)

- § 15- *Surviving Parents and Guardians personal real estate tax exemption*
- **Adds new local acceptance Clause 22H to G.L. c. 59, § 5**
- **Provides full exemption from taxes on domiciles of surviving parents and guardians of active duty military personnel and veterans who died as a proximate result of injury or disease suffered during active duty**
  - **Requires being domiciled in MA 5 years (unless deceased domiciled in MA 6 months before entering service)**
  - **Effective for FY2020**

"BRAVE Act" (continued)

- **§ 11- *Reduced Residency Requirement***
- **Beginning in FY 2020, veterans seeking exemption under Clauses 22, 22A, 22B, 22C, 22E and 22F and surviving spouses under Clause 22D must meet changed residency requirement**
  - **Servicemember or veteran must have been domiciled in MA for 6 months before entering military service, or**
  - **Veteran or surviving spouse must have been domiciled in MA for at least 2 years rather than the current 5 years before the tax year begins**
- **Does not apply to Clause 22H**
- **Local option to reduce residency requirement to 1 year still remains for Clauses 22, 22A, 22B, 22C, 22D, 22E and 22F**

“BRAVE Act” (continued)

- § 15- *Trustee, Conservator or Fiduciary Holding Title to Domicile*
- **Clarifies application of Local Option G.L. c. 59, § 5, Clause 22G added by 2016 Municipal Modernization Act**
- **Treats applicant for Clause 22, 22A, 22B, 22C, 22E and 22F exemption as actual owner when legal title to applicant’s domicile is held by trustee, conservator or other fiduciary**
- **Means beneficiary can receive veterans exemption if meets all other eligibility requirements**
- **Does not apply to new Clause 22H**
- **Effective for FY 2020**

“BRAVE Act” (continued)

- § 17- *Veteran Work-off Abatements*
- Amends local option statute G.L. c. 59, § 5N
- Raises the maximum earned abatement to $1,500 from the previous $1,000
- Maximum work abatement may be based on 125 hours of voluntary service at state minimum wage, if higher, by vote of legislative body

Recent Cases

Local Taxes

Kelechi Linardon v. Stoneham Assessors

ATB 2017-475 (October 27, 2017) [2A:30]

- **Registrant claimed she moved to another community in 2015 and sought abatement of 2016 excise assessed by Stoneham**
  - **Registrant's not eligible for abatement due to relocation within MA**
  - **Registration records showed place of garaging in Stoneham because she did not notify Registry of Motor Vehicles of change of address**
- **Registrant also sought exemption as disabled person**
  - **Registrant not eligible for exemption as she did not have one of the specific disabilities required**

Thomas Jefferson Memorial Center at Coolidge Point, Inc. v. Assessors of Manchester-by-the-Sea

ATB 2018-89 (March 29, 2018) [2A:61]

- **Owner, a private foundation, exempt from federal tax, sought an exemption as a charitable organization under G.L. c. 59, § 5, Clause 3**
- **Taxpayer claimed it used the parcels to promote: (1) patriotism, (2) education of the public in early American history, and (3) maintenance of historic public buildings**
- **Appellate Tax Board (ATB) found taxpayer did not meet its burden of proving the parcels were actually used for charitable or conservation purposes**

Wayland Rod & Gun Club v. Assessors of Wayland

ATB 2018-388 (September 13, 2018) [2A:87]

- **Taxpayer operating firing ranges claimed exempt status as a charitable organization under G.L. c. 59, § 5, Clause 3**
- **Taxpayer offered educational programs, but evidence lacked specificity as to frequency and extent of use by the general public**
- **Claim that conservation was a charitable purpose undermined by lack of evidence as to how it furthered such objectives**

Wayland Rod & Gun Club v. Assessors of Wayland (continued)

- **Taxpayer's activities not traditionally charitable**
- **ATB found that taxpayer's dominant purpose was to allow members to gather, socialize, and shoot at firing ranges**
- **Taxpayer's claims that general public had access to property undermined by posted signage against trespassing**
- **ATB reaffirmed precedent that gun clubs are not eligible for exemptions as public charities**

Veolia Energy Boston, Inc. v. Assessors of Boston

ATB 2018-198 (June 5, 2018) [2A:77]

- **Manufacturing corporation owned and operated a "district energy network" in Boston, which included a co-generation facility**
- **Taxpayer supplied high-pressure steam energy to customers in Boston and Cambridge**
- **Taxpayer's personal property consisted of network of pipes through which steam was transmitted to customers**
- **Taxpayer offered evidence that pipes were not mere conduits, but an active network with control valves, metered and monitored with measuring equipment**

Veolia Energy Boston, Inc. v. Assessors of Boston (continued)

- **Assessors argued that pipes were made explicitly taxable to manufacturing corporations under G.L. c. 59, § 5, Clause 16 (3)**
- **Taxpayer countered that pipes were a component of exempt manufacturing machinery**
- **ATB found that the pipes were part of "one great integral machine" generating steam**
- **As part of machinery used in manufacturing, the ATB found that the property was exempt machinery**

Quabbin Solar, LLC v. Assessors of Barre

ATB 2017-480 (November 2, 2017) [2A:49]

- **Taxpayer claimed solar arrays capable of generating 1-2 megawatts exempt from taxation**
- **Taxpayer received net metering credits from National Grid and sold them to one customer, Honey Farms, a chain of convenience stores at 11 locations**
- **ATB followed its *Forrestall* and *KTT* precedents to hold that solar assets were exempt under Clause 45 of G.L. c. 59, § 5**

Quabbin Solar, LLC v. Assessors of Barre (continued)

- **ATB rejected assessors' argument that Honey Farms leased many of the sites where electricity was consumed, so as to require proof that the leases made it responsible for payment of electricity bills**
- **ATB found that Honey Farms was responsible for paying for electricity at leased properties, but ruled that the statute did not impose that requirement for exemption**

American Youth Hostels, Inc. v. Assessors of West Tisbury
ATB 2018-178 (May 29, 2018) [2A:1]

- **Youth hostel on Martha's Vineyard claimed exempt status as charitable organization under G.L. c. 59, § 5, Clause 3**
- **Taxpayer claimed to offer an "experiential learning experience" which promoted "cross-cultural understanding"**
- **Hostel complied with standards for "intercultural knowledge, civil engagement, and global learning" set by the American Association of Colleges and Universities**

American Youth Hostels, Inc. v. Assessors of West Tisbury (continued)

- Taxpayer offered programs designed to encourage youth use of the hostel, but did not discriminate based on age
- Taxpayer participated in nationally organized programs including the "Great Hostel Giveback," the "IOU Respect" program, the "Community Hostelling Fund, and the "Sleep for Peace" activity
- Assessors criticized the limited scale of program offerings at the property
- Assessors claimed the property was used to provide inexpensive lodging

American Youth Hostels, Inc. v. Assessors of West Tisbury (continued)

- ATB found that the communal living environment promoted cross-cultural understanding and was available to guests of all ages and different walks of life
- Employees promoted interaction among guests and facilitated educational discussions
- ATB found that hostel served the "traditionally charitable purpose" of education, so that number of people accommodated was less significant factor
- ATB split 3-2 in its decision, with the majority upholding exempt status for the taxpayer

Swissport Fueling, Inc. v. Assessors of Worcester

ATB 2018-381 (August 10, 2018) [2A:58]

- **Taxpayer Swissport Fueling was the Fixed Base Operator ("FBO") at Worcester Regional Airport, under lease to the City of Worcester**
- **FBO services included fueling, storage, repair, and maintenance of aircraft**
- **The purpose of lease was to facilitate FBO services while allowing airport accessibility for general public**
- **ATB held that Swissport Fueling was not subject to real estate tax under G.L. c. 59, § 2B because its operations were "reasonably necessary to the public purpose of a public airport…which [were] available to the use of the general public"**

Recent Cases

Collections

Hull v. Hughes
92 Mass. App. Ct. 1120, Rule 1:28 Unpublished (December 28, 2017)

- **Land Court denied motion to vacate decree of foreclosure**
- **Taxpayer had been allowed right of redemption, but was unwilling or unable to pay the required amount and order of foreclosure was entered**
- **Seeking relief after foreclosure decree, taxpayer claimed property was unbuildable and overassessed**
- **Appeals Court held that the taxpayer's complaint about overassessment should have been raised by an application for abatement**

Sturbridge Hill Condo Trust v. Selectmen of Sturbridge

Worcester Superior Court No. 2017-1050

*(*July 10, 2017) [2:108]

- **Town billed condominium association for sewage charges, although the association was not tied into the town sewer system**
- **Individual unit owners received sewer service, but association only used town water**
- **Town defended sewage charges as a "reasonable attempt" to balance costs of sewage treatment and "estimate the benefit received."**
- **Town attempted to conflate individual units and association as a single property**
- **Court held charges were invalid where no benefit was rendered to the condo association by sewage service**

Recent Legislation

Employment

An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday

Chapter 121 of the Acts of 2018
Effective January 1, 2019 [1:1]

- ***State Minimum Wage*:**
  - **Incrementally raises current state minimum wage rate from $11 per hour to $15 by 2023**
  - **Increases begin in 2019, when state minimum wage rate will increase to $12 per hour**
  - **Minimum wage rate will increase by $.75 per hour each year thereafter until $15 hourly rate is reached in 2023**

An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday (continued)

- ***Paid Leave (New G.L. c. 175M):***
  - **Beginning in 2021, employees will be allowed to take up to 12 weeks of paid family leave and up to 20 weeks of paid medical leave**
    - **Includes employees in a city, town or district that accepts G.L. c. 175M in manner set forth in § 10 of the chapter**
  - **With guarantee that they can return to prior job or an "equivalent position"**
  - **Weekly benefits will be calculated on a sliding scale, as a percentage of the employee's salary, with a maximum benefit of $850 per week**
  - **Employees cannot take more than 26 combined weeks of paid leave per year**

An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday (continued)

- ***Paid Leave*** **available for:**
  - **Employees to bond with a new child in the first 12 months after birth or adoption**
  - **Care of a family member with "a serious health condition"**
  - **Helping a family member in the military who has been called into active duty**
  - **Taking care of employee's own serious health condition**

An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday (continued)

- ***Payroll Tax*** **- Benefits will be paid out from newly-created Family and Employment Security Trust Fund financed by payroll tax**
  - **Payroll Tax of .63 % (adjusted annually)**
  - **Employer and Employee split payroll tax by payroll deduction**
  - **Takes effect July 1, 2019**
  - **New payroll deduction estimated to cost $4.00 - $4.50 per week per employee**

An Act Regulating Disability Benefits

Chapter 148 of Acts of 2018
Effective October 18, 2018 [1:15]

- **Gives firefighters diagnosed with cancer "injured on duty status" under G.L. c. 41, § 111F, entitling them to leave without loss of pay for medical treatments**
- **Designates breast and reproductive cancers as work-related injuries for female firefighters under G.L. c. 41, § 111F and G.L. c. 32, § 94B**
- **Recognizes that firefighters bear a higher likelihood of cancer occurrence due to nature of their profession**

Recent Cases

Employment

Mui v. Massachusetts Port Authority
478 Mass. 710 (2018) [2:68]

- **Plaintiff alleged State Wage Act (G.L. c. 149, § 148) violations against Massport for failure to timely pay him for accrued, unused sick time after Massport suspended, then terminated him**
- **Massport had policy awarding a % of sick time to departing personnel under certain conditions**
- **Supreme Judicial Court (SJC) held that, while G.L. c. 149, § 148 requires payment of holiday or vacation payments "as wages" due to an employee under a contract or policy, statute does not mention sick pay**

Parris v. Sheriff of Suffolk County
93 Mass. App. Ct. 864 (2018) [2:80]

- In this Wage Act (G.L. c. 149, § 148) case, Sheriff's employees alleged violations on basis of Sheriff's failure to pay overtime wages timely
- Collective bargaining agreements (CBAs) provided that employees would be paid within 25 days
  - Sheriff claimed this was a proper written waiver of the Act's 7-day payment obligation and judicial enforcement (triple damages and attorney fees)
- Appeals Court held that, while parties can negotiate CBAs with different wage payment schedules, the CBAs here did not preclude individual employees from judicial enforcement of the Act, without first having to exhaust CBA grievance procedures

State Board of Retirement v. O'Hare
92 Mass. App. Ct. 555 (2018) [2:98]

- State Retirement Board sought to revoke pension of State Police sergeant convicted of federal crime of using the Internet while off-duty to engage in unlawful conduct with a person under the age of eighteen
- G.L. c. 32, § 15(4) provides for forfeiture of pension for conviction of crimes "involving violation of … laws applicable to [the employee's] office or position"
- Appeals Court held that the sergeant's "egregious" conduct justified pension revocation as it violated fundamental tenets of his position

Dell'Isola v. State Board of Retirement
92 Mass. App. Ct. 547 (2018) [2:54]

- State Retirement Board sought to revoke pension of senior corrections officer convicted of possession of cocaine purchased with an inmate's assistance
- G.L. c. 32, § 15(4) provides for forfeiture of pension for conviction of crimes "involving violation of … laws applicable to [the employee's] office or position"
- Appeals Court held that there was a direct causal link between the senior corrections officer's position and the crime of which he was convicted to justify pension revocation

Saliba v. Worcester
92 Mass. App. Ct. 408 (2017) [2:93]

- **In 2007, Philip Saliba applies for job with Connecticut State Police and voluntarily submits to polygraph test, but he was not hired**
- **Saliba applied for jobs with Worcester and each time, the CT polygraph report was obtained and considered**
  - **Police department 2008 – Saliba bypassed**
  - **Fire department 2011 – Saliba bypassed (Saliba files civil service appeal and later withdraws)**
  - **Fire department 2013 – Saliba again bypassed (Saliba again files civil service appeal – bypass upheld)**

Saliba v. Worcester **(continued)**

- **Saliba sues city, claiming it violated G.L. c. 149, § 19B when it used CT polygraph test results during fire department hiring process**
- **G.L. c. 149, § 19B - Prohibits employers from:**
  - **Requiring or requesting applicants/employees to submit to a polygraph test in MA or elsewhere**
  - **Discharging, not hiring, demoting, negative action if employee asserts rights under G.L. c. 149, § 19B**
  - **Exception for polygraph tests administered by law enforcement agencies as otherwise permitted in criminal investigations**
- **Superior Court dismisses Saliba's claim and Saliba appeals**

Saliba v. Worcester (continued)

- **Appeals Court upholds Superior Court dismissal**
  - **Because city did not require or request Saliba to submit to polygraph, it did not violate G.L. c. 149, § 19B when it used CT State Police polygraph test results in connection with applications for city employment**
  - **Appeals Court declined to hold that G.L. c. 149, § 19B prohibits, as a matter of public policy, the use of any polygraph test results in hiring**
  - **Federal Employee Polygraph Protection Act (EPPA), 29 U.S.C. §§ 2001 et seq., not applicable to Saliba's application; EPPA applies only to nongovernmental employers**
    - **Bars employers from requiring or requesting applicants submit to a lie detector test**
    - **Makes it "unlawful" for employer to use, accept, refer to, or inquire concerning results of any lie detector test of any employee or prospective employee**

Recent Cases

Other

A.L. Prime Energy Consultant v. MBTA
479 Mass. 419 (2018) [2:1]

- **January 2015 - MBTA issues IFB for diesel fuel, attaching entire contract to be signed including**
  - **"Termination for Convenience. The MBTA may, in its sole discretion, terminate all or any portion of this Agreement or the work required hereunder, at any time for its convenience and/or for any reason…." (Emphasis added)**
- **In May - June, 2015 - Commonwealth awards statewide contract for supply of same diesel fuel at lower price**
- **July, 2015 - MBTA awards contract to Prime**
- **MBTA fiscal and management control board created**

A.L. Prime Energy Consultant v. MBTA (continued)

- **April, 2016 - MBTA tells Prime MBTA could achieve cost reductions by opting into statewide fuel contract**
- **July, 2016 - MBTA notifies Prime of intent to terminate contract under "Termination for Convenience" clause, effective August, 2016**
- **MBTA encourages Prime to submit claim for costs authorized under the "Termination" clause**
- **September, 2016 - Prime sues MBTA, claiming breaches of contract and implied covenant of good faith and fair dealing**
- **MBTA files motion to dismiss**

A.L. Prime Energy Consultant v. MBTA (continued)

- Lower Court denies MBTA's motion to dismiss
  - Applies federal law to "Termination for Convenience" clause
    - Termination solely to obtain better price not allowed
- SJC held that lower court erred
  - Where federal law would require disregarding plain language of a contract, it cannot be reconciled with "general contract principles" of MA law
  - MA law must be applied to determine proper construction of MBTA's "Termination for Convenience" clause

A.L. Prime Energy Consultant v. MBTA (continued)

- **SJC applied "general contract principles" of Mass. law**
  - **No MBTA breach of contract**
    - **Contract unambiguously gives MBTA sole discretion to terminate contract for any reason**
    - **Construing the clause as written does not make the contract "illusory" – valuable consideration still owed to Prime**
  - **No MBTA breach of implied covenant of good faith and fair dealing**
    - **No violation of Prime's expectations – no possible misunderstanding of MBTA's discretion**
    - **Prime not deprived of the "fruits" of the contract**

Boelter v. Board of Selectmen of Wayland

479 Mass. 233 (2018) [2:19]

- **Open Meeting Law (OML) violation alleged during selectboard's evaluation of town administrator's performance**
  - **In open meeting, board votes to follow a performance evaluation plan designed to comply with Attorney General (AG) guidance at the time**
  - **Board members create individual performance evaluations and submit to chair**
  - **Chair creates composite of the three evaluations received and chair's evaluation**
  - **Chair emails composite with individual evaluations to each board member as part of agenda packet**

Boelter v. Board of Selectmen of Wayland (continued)

- At open meeting, board reviews composite evaluation and approves it as final
- Composite and individual evaluations released to public after meeting
- Citizen files OML complaint with AG and AG finds no violation
- Civil complaint filed by 5 registered voters alleging OML violation
  - Superior Court holds OML violated and strikes AG's opinion of no violation
  - Board appeals and SJC decides to hear appeal itself

Boelter v. Board of Selectmen of Wayland (continued)

- **SJC's decision rests on meaning of G.L c. 30A, § 18 definition of deliberation**
  - **" 'Deliberation', an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed." (Emphasis added.)**

Boelter v. Board of Selectmen of Wayland (continued)

- **Board position was that phrase "provided that no opinion of a member is expressed" applies only to the distribution of reports or documents, not to the reports or documents themselves**
  - **Argues board members may share opinions with a quorum provided the opinions are not contained in the body of an email message or cover letter**
  - **Opinions may be included in attachments to email messages or documents referred to in a cover letter**
- **SJC response was that board's reading of the statute "would create a loophole that would render the open meeting law toothless"**

Boelter v. Board of Selectmen of Wayland (continued)

- SJC held
  - OML violation occurred when chair transmitted composite and individual evaluations to board members without making them public
    - All board members were made aware of opinions of four members in advance of open meeting
    - Circulation of opinions "constituted a deliberation, or a meeting, to which the public did not have access"
  - Member opinions may not be circulated to a quorum in any communication, enclosure or attachment
  - Superior court striking of AG's opinion was invalid

Boelter v. Board of Selectmen of Wayland (continued)

- **After SJC decision, AG revised guidance on aggregating board evaluations into a composite evaluation**
  - **Once composite evaluation is created, it may only be distributed to a quorum of the members:**
    - **At a properly noticed open meeting, or**
    - **Via public posting to a municipal website in a manner that is also available to members of the public, as long as paper copies are also made available in the city or town clerk's office**
  - **Quorum may not discuss outside of open meeting**

Board of Selectmen of W. Bridgewater v. Attorney General

93 Mass. App. Ct. 1109, Rule 1.28 Unpublished (May 4, 2018) [2:15]

- **Selectboard violated OML when professional competence of nonunion employees discussed in executive session in connection with negotiation of their contracts under G. L. c. 30A, § 21(a)(2)**
- **In executive session**
  - **Each employee made "contract presentations" highlighting projects, achievements and challenges**
  - **Board identified performance issues for some employees and asked for responses to those issues**
  - **Board deliberated and voted on salaries**
- **Employment contracts signed in open session**

Board of Selectmen of W. Bridgewater v. Attorney General (continued)

- **Attorney General (AG) position:**
  - **Board's characterization as "contract presentations" of its employee performance discussions in executive session "did not transform [the discussions] into something other than a performance review"**
  - **Board may only discuss an employee's professional competence in executive session if it has first conducted performance evaluations or otherwise discussed that competence in an open session**
- **Appeals Court upholds AG decision**

Caplan v. Town of Acton
479 Mass. 69 (2018) [2:27]

- The Acton Congregational Church applied for two grants from the Acton Community Preservation Committee (CPC) for funds to rehabilitate historic church building with active congregation
- The CPC and Town meeting recommended funding both
- Acton residents filed 10 taxpayer action seeking:
  - Declaration that the grants violated the Anti-aid Amendment to the Massachusetts Constitution (Article 18, as amended by Art. 46 and 103)
  - Injunction to prevent expenditure of appropriated funds for the grants

Caplan v. Town of Acton (continued)

- **Court applied three part test established in *Commonwealth of Massachusetts v. Springfield* that asks whether:**
  - **The purpose is to aid organization;**
  - **It does in fact substantially aid or benefit the organization; and**
  - **It avoids the political and economic abuses which prompted the passage of Anti-aid amendment**

Caplan v. Town of Acton (continued)

- This test should be considered mere guidelines and in this case, court considered:
  - Purpose
    - Historic preservation v. hidden purpose
  - Substantial Aid
    - The amount and any limiting features
  - Risk
    - Liberty of conscious
    - Improper Government Entanglement
    - Threat to civic harmony

Caplan v. Town of Acton (continued)

- **Court also considered use of three factor test v. outright prohibition in light of United States Supreme Court's 2017 decision in *Trinity Lutheran Church v. Comer***
  - **Supreme Court held state's policy of denying otherwise available public benefit on account of Trinity Lutheran's religious status as a church violated its rights under the Free Exercise Clause**
  - **Outright prohibition v. three factor test**

Ninety Six, LLC v. Wareham Fire District
92 Mass. App. Ct. 750 (2018) [2:72]

- **Property owner challenged water assessments on tracts of vacant land in Superior Court**
  - **Assessments were made to recover costs of installation of water lines**
- **Appeals Court reached merits even though owner did not appear to have followed G.L. c. 80 procedure for review of assessments by applying to Wareham Fire District commissioners for abatement**
- **Until the late 1990s, the district employed a street-frontage method**

Ninety Six, LLC v. Wareham Fire District (continued)

- **Then district changed to the uniform unit method under G.L. c. 40, § 42K**
  - **Method allocates costs among "potential" water units "calculated on the basis of zoning in effect at the date of assessment"**
- **Court upholds district assessment method and construed the language to mean:**
  - **It prohibits assessment of a lot as a potential water unit if zoning restrictions would render the lot unbuildable**
  - **And it defines the operative restrictions as the ones in effect at the time of the assessment**

Ninety Six, LLC v. Wareham Fire District (continued)

- **Court rejects owner's argument that assessments must be calculated based solely on zoning by-law and cannot consider hypothetical subdivision lots**
  - **Method allows assessments to be based on development potential of the land, which must be determined by considering "zoning in effect at the date of assessment"**
  - **May also consider subdivision control law and other laws relevant to whether the owner can build on the land**
  - **If Court accepted the Plaintiff's argument the result would almost eliminate the distinction between the frontage method and uniform unit method**
  - **No evidence land in question was undevelopable**
- **Court also rejects argument that land cannot be assessed because it does not have frontage on road where line installed**