

# Commonwealth of Massachusetts



# DLS

DIVISION OF LOCAL SERVICES  
MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

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## “What’s New in Municipal Law” 2025



## Agenda for Today

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9:00-10:15 DLS Updates & General Court Cases

10:15-10:30 Break

10:30-12:15 DLS Updates & General Court Cases

12:15-1:30 Lunch

1:30-3:00 Afternoon Workshops



## Announcement: Ask DLS Law



As a complement to the Bureau's Attorney of the Day service, local officials can utilize a Zoom link every Wednesday between 10:00 AM and 12:00 PM to speak directly with the Bureau's legal counsel. Local officials only need to [click the button on the DLS website](#) and will then be placed in a waiting room and addressed in the order of arrival.

Just expanded to include Tuesdays from 1030-1230!



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# **Recent Cases**

## **Miscellaneous Cases**

# **Citation Insurance Company v. Chicopee**

**105 Mass. App. Ct. 423 (April 9, 2025)**

- **Negligence action against city: tree on city property fell on home causing substantial damage**
- **Massachusetts Tort Claims Act (MTCA) establishes public employers liable for negligent acts of public employees**
- **G.L. c. 258, § 10 (b) Exemption for discretionary function**
  - **discretionary conduct that involves policy making or planning**
  - **ordinance/by-law does not determine whether exemption applies**
- **Tree warden's failure to remove unhealthy tree does not qualify as policy making or planning**

# **Attorney General v. Milton**

## **495 Mass. 183 (January 8, 2025)**

- Town rejected scheme that would have complied with the act
- Whether MBTA Communities Act & its guidelines are constitutional & whether AG has authority to sue to enforce?
- Act & its guidelines are constitutional & AG has authority to sue to enforce
  - Executive Office of Housing & Livable Communities did not comply with Administrative Procedure Act (Ch. 30A) when promulgating guidelines
    - Guidelines ineffective

## **Duxbury v. Commonwealth**

### **Plymouth Superior Ct. (June 6, 2025)**

- Court rejected attempt by 9 towns to be exempted from MBTA Communities Act (Act)
- Division of Local Mandates held Act with its multi-family housing and resulting costs was an unfunded State mandate
- Court wrote not bound by this determination
  - G.L. c. 29, § 27C “imposes direct service or cost obligations”
  - In this instance any possible infrastructure costs are speculative and indirect
  - For this reason, the Act is not an unfunded mandate

# **Oklahoma Statewide Charter School**

## **Board v. Drummond**

**145 S. Ct. 1134 (May 22, 2025)**

- **Board approved a public charter school (CS) to operate with a religious mission**
- **AG joined a coalition of 17 attorneys general in filing an amicus brief**
- **Federal govt. & 44 states require nonsectarian CS; 2 states require this through general school law; 4 states don't have CS**
- **CS are public governmental entities**
- **Establishment of religion clause of First Amendment: Neither federal nor state govt. can set up church or favor 1 religion over another**
- **4-4 split affirmed OK Supreme Court ruling that struck down school board decision**



**State Ethics Commission Disposition**  
**Agreement in Matter of Erik Ormberg**  
**Docket # 25-0002 (April 30, 2025)**

- **School Counselor & Head Football Coach established for-profit business & was sole owner, manager & director**
  - **Ran football & athletics camps and reserved, rented & paid rental fees for use of Medfield High School facilities for his private business**
- **Use of public position & public resources to promote & encourage students to attend private for-profit football camp**
- **Acted as agent for someone other than Medfield in which Medfield was a party or had a direct & substantial interest**
- **\$16,000 penalty for conflict of interest violations**

# **Register of Deeds for Norfolk County v.** **County Director for Norfolk County**

**SJC 13669 (February 14, 2025)**

- **Register of Deeds attempted to reallocate funds within the Registry of Deeds budget (specifically within Main Group 2 – Contractual Services) to cover litigation costs**
- **County Director denied the transfers, demanding justification; Plaintiff refused to provide more detail / sued**
- **Issue: Whether the plaintiff as an authorized official needed to provide further justification for his opinion that transfers were required by public necessity and convenience**
- **G. L. c. 35, § 32, transfers within a main group may be made at the authorized official's discretion, based solely on his opinion of public necessity and convenience**
- **Decision: Statutory language is clear and unambiguous: authority rests with the authorized official's opinion - Justification is not required**

# **Michael Meyers v. City of Marlborough**

**24-03044  
(July 24, 2025)**

- Meyers sought an injunction to void the City of Marlborough's actions under the LOLV process
- Meyers was the highest bidder at auction - Claimed City improperly denied bid
- Issue: Whether City had the discretion to reject the highest bid, even when it exceeded the tax liability on the property, under G.L. c. 60, §§ 79 and 80.
- G.L. c. 60, § 79 grants the treasurer broad discretion to reject bids, stating: "the treasurer at such auction may reject any bid which he deems inadequate"
- The court ruled that the plain language of the statute allowed the City to reject any bid, including those above the tax amount, as long as the treasurer deemed them inadequate - the statute does not limit this discretion to bids below the tax amount owed on the property



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# **Recent Cases**

## **Appellate Tax Board (ATB) Cases**



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# **Recent Cases**

## **ATB Cases: Trusts**

# **John Helbert v. Assessors of Wilmington**

**ATB Docket No. F347522 (January 31, 2024)**

- Taxpayer filed timely veterans exemption application for FY 2022 which was denied by assessors
- Taxpayer appealed to ATB
- Property was held in trust and assessors claimed the veteran lacked a sufficient beneficial interest in the domicile
- Under the Kirby case an exemption applicant must hold both legal title and a sufficient beneficial interest in the premises
- Veteran and wife conveyed house to themselves as co-trustees of two revocable trusts - ATB held veteran eligible for exemption since he held legal title as a trustee and held a sufficient beneficial interest with right to possession and use of the property under his trust
- Town did not appeal decision
- House was sold for \$775,000 on March 30, 2023

# **Bouley v. Board of Assessors of Stow**

**ATB Docket No. F350391 (December 16, 2024)**

- **Whether a schedule of beneficiaries needs to be recorded with the Registry of Deeds to meet the sufficient beneficial interest in a property for a CPA surcharge exemption?**
- **This property is held in a trust which was recorded with the Registry of Deeds, and reserved a life estate to William and Louise-remainder interest listed two other beneficiaries**
- **Applied for a low to moderate senior income exemption for the CPA surtax**
- **No dispute that this was their domicile or that they met the annual income prerequisites to qualify for low or moderate income senior housing in Stow**
- **LFO-2022-2, an applicant can qualify for a personal or residential exemption from real property taxation as a named beneficiary in a trust instrument or referenced schedule of beneficiaries, G.L. c.184, §35, eliminated the requirement that the names of the beneficiaries of a trust be recorded**



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# **Recent Cases**

## **ATB Cases: Charitable**



# **Havenside Corporation v. Tisbury**

## **ATB Docket No. F347297 (September 24, 2024)**

- **Charitable Purpose: Fulfill a critical housing need for senior residents with 29 affordable units in 4 bldgs**
- **Whether the residents occupied the property under a traditional landlord-tenant arrangement or whether Havenside had a sufficient presence in the property to satisfy Clause 3rd occupancy requirement?**
- **In absence of exclusive possession by residents, the owner considered an occupant**
- **Use of property by residents was concurrent with Havenside's active presence**
- **Havenside occupancy of property demonstrated through managerial, social, and support services provided by their full-time employee to residents**
- **Services, bulk of heating costs & capital improvements provided by Havenside from its own resources**
- **Ruling: Havenside met burden, property exempt**



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# **Recent Cases**

## **ATB Cases: Affordable Housing**

# **Cynthia Aguilar v. West Tisbury**

## **ATB Docket No. F350278 (January 31, 2025)**

- **Central question here was whether covenant governing the subject property established it as an affordable property such that the fair cash value would be lower than the assessed value for FY23?**
- **Covenant governing property & filed at Registry of Deeds different from sample affordable deed restriction**
- **Maximum resale price – allowed taxpayer to sell for price as high as fair cash value at time of sale**
- **Property can pass through estate plan, regardless of income, free of restriction**
- **Covenant ends once property passes through estate to immediate family**
  - **Does not remain affordable in perpetuity – hallmark of valid deed restriction**
- **Decision for town - Covenant ineffective - No other evidence of fair cash value presented, taxpayer failed to meet burden was lower than assessed value for the FY**



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# **Recent Cases**

## **ATB Cases: Procedural**

# **Paul and Eileen Gilligan v. Assessors of Plymouth**

**ATB Docket No. F350284 (October 28, 2024)**

- Taxpayers filed abatement application for FY 2023 which was denied by assessors
- Taxpayers appealed to ATB
- Assessors filed motion to dismiss case since second quarter bill paid late and interest accrued
- Tax bills were assessed and sent to record owner as of January 1, 2022
- Former owner did not forward tax bill to current owner
- Assessors followed statutory assessment procedure
- Where real estate tax bill is more than \$5,000 and interest has accrued on preliminary or actual installments, ATB has no jurisdiction
- Taxpayers' appeal was dismissed



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# **Recent Cases**

## **ATB Cases: Values**

# **Marco Investments, LLC v. Assessors of Wellfleet**

**ATB Docket No. F347734 (March 25, 2025)**

- Taxpayer appealed to ATB claiming the property had a disproportionately high assessment when compared with other commercial properties in the area
- Assessors valuation is presumed valid - Burden is on taxpayer to prove lower valuation
- Taxpayer presented no evidence of changes in real estate market accounting for lower valuation, comparable sales in the area, errors in the method of valuation or an intentional scheme of valuing properties at lower rates
- Additionally, taxpayer did not offer appropriate evidence of comparable assessment analysis
- Only based comparison on square footage rather than size, age, and condition of properties
- Board denied appeal - comparable-assessment analysis lacked probative value for determining the subject property's fair cash value

# **Romaine Randall v Concord Board of Assessors**

**Docket No. F348308 (November 7, 2024)**

- **Tpr. appealed BOA's fair cash value determination, claiming that the subject older, unimproved ranch house was overvalued on the basis that the property was subject to flooding, requiring sump pump use and limiting improvements, and was a mile downstream from a Superfund site**
- **Tpr. argued that comparable-sales analysis supported a lower valuation, while BOA denied the appeal, offering property record cards to support its valuation**
- **On appeal, ATB determined that two of the Tpr.'s six comps, which likewise contained no significant improvements, were more comparable to the features of Taxpayer's house**
- **ATB reduced Tpr.'s fair cash value due to flooding**
- **These comps supported a FCV of \$830,000, compared to BOA's higher FCV of \$896,400, Tpr. entitled to abatement**





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# **Recent Cases**

## **ATB Cases: Chapterland**

# **Pinardi v. Board of Assessors of Montague**

**ATB Docket Nos. F350338, F350339, F350340 (April 2, 2025)**

- Chapter 61 Forest Land totaling 34.406 acres owned by Ms. Pinardi
- The assessed value based on Chapter 61 valuation and listed as 'special values'
- Appraised value verses fair cash value
- If taken out of chapterland status, then the real estate taxes and roll back taxes would be assessed pursuant to the appraised values
- Ms. Pinardi has not been aggrieved, nor does she claim to be aggrieved
- Skiski v. Assessors of Lincoln, the ATB actions are limited by statute and the ATB cannot rule on theoretical issues that do no affect an assessment for the tax year at issue
- ATB issued a decision for Montague



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# **Recent Cases**

## **ATB Cases: Residential Exemption**

# **Mandelbraut v. Board of Assessors of Boston**

**ATB Docket No. F346785 (May 29, 2025)**

- **Fountain Square, LLC owned condominium unit in Boston; Mandelbraut was sole member of LLC**
- **Applied for residential exemption, denied by Boston, overturned by ATB (appeal pending)**
- **ATB: as property was principal residence, taxpayer made payments in connection with ownership, and was the sole member of a disregarded entity for income tax purposes meant he was the “taxpayer” for purposes of § 5C**
- **DLS has consistently and historically advised this is not the case and stands by our prior guidance**



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# **Recent Cases**

## **ATB Cases: Water Charges**

## **Haroutunian v. Watertown DPW**

**ATB Docket No. F347793 (June 11, 2025)**

- **Taxpayer appeals water charges**
- **Lives in FL, tenant at property, saw spike in pricing in 2021**
- **City sent notices when spotted the increase, eventually inspected and saw what looked like water damage from a toilet, meter was tested as accurate, and the City reduced a portion of taxpayer bills**
- **ATB found evidence as to leak causing increase in water usage and no credit to testimony that amounts charged were excessive**



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# **Recent Cases**

## **ATB Appeals**

# **480 McClellan LLC v. Board of Assessors of Boston**

**495 Mass. 333 (2025)**

- **At ATB:**
  - **480 McClellan leased property from Massport**
  - **Massport is exempt from local taxes**
  - **McClellan is a for profit LLC who was conducting business at this property**
  - **Section 17 of the Enabling Act requires no finding by the board of a public purpose, only that the subject property was leased for business purposes**
  - **McClellan was not an exempt entity and owes over \$500,000 in real estate taxes**

**SJC:**

- **Affirm ATB findings**
- **The property was leased for profit for commercial purposes**



# **Komosa v. Board of Assessors of Montague**

**105 Mass. App. Ct. 75 (2024)**

- **At ATB:**
  - **Refusal of the Board of Assessors of the Town of Montague to value property under the provisions of G.L. c. 61A**
  - **Issue concerned sufficiency of acreage and “actively devoted to” language**
  - **Board found that the parcels at issue were not entitled to 61A classification for fiscal year 2022 due to the failure to meet the five-acre requirement**
- **Appeals Court:**
  - **Affirm ATB findings**
  - **“the plain language of the statute requires that a minimum of five acres must be actively devoted to a horticultural use or uses, or ones reasonably related thereto, to receive c. 61A classification”**



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# **Recent Cases**

## **Land Use**

# **LHPNJ LLC v Jefferson Dev Partners LLC**

**105 Mass. App. Ct. 1116 (2025)**

- **At Land Court:**
  - **Jefferson Development owned 42 acre site in Taunton which contained an old textile mill**
  - **City took tax title & initiated proceedings to foreclose & held tax title auction. LHPNJ assigned tax title by City, substituted City in proceedings to foreclose.**
  - **Mortgagee (Whittenton) challenged redemption amount as excessive; Court ruled only \$88,000 in liens were perfected**
  - **City could abate hazardous conditions and lien charges if unpaid provided City followed statute**
  - **City only followed statutory procedure for two of the five fire watches**
- **Appeals Court:**
  - **Affirm substance of order. Remanded back to Land Court for determination on applicability of *Tyler* & Chapter 60 amendments**

# **MJ Operations, LLC v. Degrazia**

**33 LCR 112 (February 21, 2025)**

**Bldg. Commissioner determination & Middleborough ZBA upheld bldg. commissioner determination:**

- **12-18 mo. career & life skill program where participants lived at 7 acre property during program (communal living)**
- **Residential use primary or dominant purpose. Bedrooms occupy large amt. of living space. Temp. housing.**
- **Doesn't qualify for Dover Amendment protection.**

**At Land Court:**

- **Educationally significant goal must be primary or dominant purpose & must predominate over other components (residential and/or recreational).**
- **Consider the property as a whole, including remaining space on property and overall goals of the program.**
- **Educationally significant goal is primary & dominant use purpose.**
- **Voided ZBA decision: property exempt from use restrictions of zoning bylaw.**

# **320 Fall River, LLC v. Town of Seekonk**

**2025 U.S. Dist. LEXIS 77212**

**(April 23, 2025)**

- Town received notice to convert land classified under Chapter 61B to residential use; Agreement concerning option to purchase was executed.
- Town voted to exercise ROFR to purchase land at appraised value of \$6,970,000 & motion to appropriate funds passed; owner was notified.
- 320 Fall River sought to enjoin town from owning property & from selling or developing property in any way and voiding, blocking or rescinding the P&S.
- Contended Town's exercise of its ROFR constitutes an unconstitutional taking & that town's actions violated its constitutional rights.
- Parties contracted to waive fed. constitutional claims, & owner not likely to prevail on claims
- Motion by 320 Fall River for preliminary injunction denied



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# **Recent Cases**

## **Home Rule Petitions**

## **Home Rule Petitions in Massachusetts**

- **“To improve is to change; to be perfect is to change often.”  
- Sir Winston Churchill**
- **“We don’t agonize, we improvise.”  
-Max, Retired Marine, Present Municipal DPW  
Employee**

# Home Rule Petitions in Massachusetts

## Introduction:

- **What is a Home Rule Petition?**
  - **Allows cities and towns to seek legislation tailored to local needs**



# **Home Rule Petitions in Massachusetts**

## **Legal Foundation:**

- **History of Home Rule Authority in  
Massachusetts**
- **Adoption of Home Rule Amendment  
to the Massachusetts State  
Constitution, Article 89**

## **Home Rule Petitions in Massachusetts**

### **Article 89 created three new powers:**

- The power to establish the local form of government by charters
- The delineation of municipal Home Rule authority, and its limitations
  - The seven excluded areas of local legislation
- Created the Home Rule Petition process for permission to take certain actions

## **Home Rule Petitions in Massachusetts**

- **Conceptualizing the Need for a Home Rule Petition**
  - **Originating from Municipal officials;**
  - **Originating ideas from citizen petitions;**
  - **Originating ideas from interacting with municipal colleagues**
- **Example from the City of Somerville**
  - **Amend G.L. c. 44, s. 53C**

# **Home Rule Petitions in Massachusetts**

- **Examples of Home Rule Petitions from other Communities:**
  - Senior exemption means testing;
  - Real estate transfer fees for affordable housing;
  - Development of land banks to preserve open space;
  - Creation of special revenue accounts for the treatment of certain local revenues;
  - Zoning and land use issues;
  - Climate-friendly energy initiatives;
  - Personnel and employment rule variations;
  - Requests for additional liquor licenses;
  - Municipal charter amendments; and
  - Actions pertaining to local infrastructure and economic development

## **Home Rule Petitions in Massachusetts**

- **Form of the Home Rule Petition:**
  - **Ensure compliance with state and federal law;**
  - **Serve a clear public purpose;**
  - **Application must pertain to municipality**
- **Allow state legislature to make amendments?**
  - **General vote;**
  - **Vote restricting amendments;**
  - **Vote allowing the municipal executive to approve amendment – so-called hybrid approach**

## **Home Rule Petitions in Massachusetts**

- **Process for Local Adoption of Home Rule Petition**
- **Section 8(1) of Home Rule Amendment requires that petition be approved by:**
  - **Approved by city or town vote;**
  - **Town meeting, no other approval needed;**
  - **City council, with approval of mayor;**
  - **Town Council, no approval needed from Town Manager**

## **Home Rule Petitions in Massachusetts**

- **Submission of Home Rule Petition to the General Court:**
  - **Certified copy of vote and Home Rule Petition text;**
  - **Submitted by city or town clerk;**
  - **Date and attestation;**
  - **Home Rule Petition assigned a bill number;**
  - **Referred to joint house and senate committee, sometimes the Committee on Municipalities and Regional Governments; and**
  - **Try to file at the beginning of the legislative session**

## **Home Rule Petitions in Massachusetts**

- **Advocacy before General Court:**
  - Local officials must stay vigilant;
  - Make case for your Home Rule Petition;
  - Legislative committee needs to know why the municipality needs the Home Rule Petition;
  - Brief your legislative delegation, supplement with additional documents;
  - Testify at committee hearing, submit written testimony;
  - Be available for committee staff follow-up; and
  - Share back-up information, such as charters, ordinances and by-laws, maps, economic information



## **Home Rule Petitions in Massachusetts**

- **After the hearing:**
  - **Legislative committee issues report recommending “out to pass” or “ought not to pass”**
  - **Review continues to other committees for reading and votes**
  - **DLS asked to review**
  - **Sent to the Governor for signing**

# Home Rule Petitions in Massachusetts

## ■ Conclusion:

- Seek advice from your  
municipal attorney