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City and Town

A Publication of the Department of Revenue's Division of Local Services



Volume 17, No. 8 September 2004

Recent Developments Under the Open Meeting Law

by Attorney Elaine M. Lucas, President, Massachusetts City Solicitors and Town Counsel Association

The Open Meeting Law, M.G.L. Ch. 39, §§ 23A and 23B, was passed to ensure that government business would take place in the open. Recently, issues have arisen relative to the Open Meeting Law in the areas of electronic mail use and the comprehensive permit process. Also, the Legislature has passed an act to allow municipal board members to vote on a matter even when a session has been missed.

Electronic Mail

The prevalence of the use of electronic mail among municipal board and commission members has raised a question as to whether serial e-mail messages among a quorum of a board, regarding a pending matter, could constitute a violation of the Open Meeting Law. The problem does not arise when there are individual e-mails between the members of separate boards, but when there are serial e-mails among a quorum of the same board. The Middlesex District Attorney's office has published guidelines that prohibit any substantive discussion by a quorum of members of a governmental body about public business by electronic mail. Opinions among the various district attorneys have differed and the Attorney General's office is attempting to bring the district attorneys together in order to obtain a consensus so that a consistent policy can be developed on this issue.

No Massachusetts appellate court has ruled on this matter. The Supreme Court of Virginia, however, has done so. That court issued a decision on an appeal from a lower court ruling that had held that e-mail communications among and between the mayor and various councilmen, constituted a "meeting" subject

to and in violation of, the open meeting requirement of the Virginia Freedom of Information Act (FOIA). The lower court decision was overturned in part (there were several allegations of meetings in violation of the FOIA) and in so doing, the court made a distinction based upon the nature of e-mail communications. The court ruled that the e-mails were the functional equivalent of letters or facsimile transmissions, specifically noting that in some cases, there was a significant delay between the sending of the e-mail and its receipt. However, the court also stated that its decision would have been different had the discussions occurred via instant messaging or in a chat room.

A number of towns have adopted e-mail policies to make certain that officials' use of e-mail complies with the Open Meeting Law. These guidelines should direct all members of town boards, departments and committees to refrain from discussing any substantive matters by way of e-mail. E-mail exchanges should be limited to procedural discussions regarding agendas and scheduling.

Comprehensive Permit Work Sessions

Another recent development under the Open Meeting Law concerns the comprehensive permit process under M.G.L. Ch. 40B. That statute empowers zoning boards of appeals to waive all local bylaws and regulations and, in fact, in some cases requires them to do so. The Ch. 40B application process can be quite complex and, because of the added density of affordable housing developments, require extensive review by civil engineers, traffic engineers and environmental experts. Zoning boards

have found it helpful to have informal work sessions between the developer's consultants and the board's consultants. Usually one member of the zoning board of appeals is present at these meetings.

In some cases, these work sessions generate complaints to a district attorney. The Norfolk District Attorney issued an opinion dated May 15, 2003, in a matter where there was a negotiating committee, which included the zoning board chair, a board of selectmen member, town manager, town counsel, the engineering consultants and the developer. The meeting was organized and chaired by the project's facilitator who had been appointed by the MassHousing Partnership Fund. While opining that it may be desirable to post such meetings in the public interest, the district attorney concluded that the group was not, in fact, a committee covered by the Open Meeting Law, stating that when a single member of a

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From the Deputy Commissioner

When comparing the state and municipal budget processes, one notable similarity is that both processes benefit from

adherence to target dates for completing certain budgetary tasks. For example, due to the efforts of the governor and the Legislature in preparing budget proposals for FY05 in a timely manner, the governor was able to sign the state budget before the close of fiscal year 2004.

Similarly, communities should clearly define the time frame for completing each step of the budget process. A timeline distributed to all the individuals involved will inform them of when they are expected to fulfill their responsibilities. The Division's *Municipal Calendar* is a useful tool in this regard.

Both state and local budget preparation also involves planning, hearings and negotiations. For the state as well as municipalities, the budget is an important communication and public information document.

Unlike municipal budgets, the state budget includes "outside sections." The text of an outside section is identical to a legislative bill, but instead of becoming a bill, it is proposed as part of the budget. Outside sections are often technical amendments and clarifications, although some include substantive provisions.

The state budget process includes other components that are not common to municipalities. However, it is more important to recognize that public budgeting systems, no matter how complex, benefit from an organized process with careful adherence to deadlines.

Gerard D. Perry
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Legal

in Our Opinion

Is a Group Medical Practice Exempt from Local Tax?

by James Crowley

After two decisions by the Appellate Tax Board and years of litigation, the Massachusetts Appeals Court held that a medical office building was not eligible for a Clause 3 charitable exemption. The decision is *Sturdy Memorial Foundation, Inc. v. Board of Assessors of North Attleborough*, 60 Mass. App. Ct. 573 (2004).

Sturdy Memorial Foundation, Inc. (Foundation) is a Chapter 180 non-profit corporation organized "to support the advancement of the knowledge and practice of, and education and research in, medicine ... exclusively for the benefit of Sturdy Memorial Hospital and its affiliated organizations." After a corporate reorganization in 1982, Foundation emerged as the successor corporation to the Attleborough Hospital, and formed a new hospital named Sturdy Memorial Hospital. On June 30, 1993, Foundation acquired a five-acre parcel in North Attleborough which contained a two-story office building. Beginning in November 1993, Foundation leased 82 percent of the premises to Sturdy Memorial Associates, Inc. (Sturdy) for a medical center. Sturdy is also a Chapter 180 non-profit corporation formed to provide medical services and health education to individuals in the Sturdy Memorial Hospital's service area. At the North Attleborough site, Sturdy employed four full-time and two part-time physicians. Sturdy paid all expenses for the doctors including malpractice insurance, equipment, supplies and staff. Visits by patients were by appointment only. There was no medical education or research conducted at the site. Any free care pro-

vided resulted from charges that were not collected.

The North Attleborough assessors taxed the property for fiscal years 1996 and 1997. Foundation filed timely exemption applications that were denied. Foundation then appealed to the Appellate Tax Board (ATB) claiming that the portion of the premises (82 percent) leased to Sturdy was exempt. M.G.L. Ch. 59 Sec. 5 Cl. 3 provides an exemption for real estate owned by a charitable organization and occupied by it or by another charitable organization in furtherance of its corporate purposes. Under the Clause 3 charitable ownership-occupancy test, both the owner and the lessee had to qualify as charitable organizations, and the lessee had to occupy the property for charitable purposes. In a November 17, 1997, decision, the ATB held that Sturdy's medical clinic was conducted like a commercial group medical practice and operated primarily for the benefit of the physician members and not for the general public. On appeal, the Appeals Court held that the charitable nature of a group practice of medicine prohibits private inurement.¹ In addition, the people deriving a benefit from the group practice must be a sufficiently large or indefinite class. The Appeals Court then remanded the case to the ATB for further consideration of additional findings of facts offered by Foundation.

After remand, the ATB denied the exemption for fiscal years 1996 and 1997 on the ground that Sturdy was not operated as a charity. For similar reasons, the ATB also denied exemptions for fiscal years 1998 to 2000 inclusive. On further appeal, the case at hand came before the Appeals Court.

The Appeals Court addressed certain contentions by the ATB. First, the ATB noted that the doctors received salaries

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Focus

on Municipal Finance

FY04 Average Single-Family Tax Bills and Assessed Values

by Andrew S. Nelson

This Focus article reviews the average single-family property tax bills and values for communities in the Commonwealth. Using the largest residential property category, the single-family home, this article provides estimates of an average tax bill and assessed value for each community, ranks communities statewide and allows the reader to compare communities.

The calculation for the average single-family tax bill for a community is a simple process. First, the combined assessed values of all single-family parcels are calculated by community. Second, the combined sum is multiplied by the community's residential tax rate. Lastly, the product is then divided by the reported number of single-family parcels in the community.

The analysis is based on only 339¹ of the 351 communities because Boston, Brookline, Cambridge, Chelsea, Marlborough, Nantucket, Somerset, Somerville, Tisbury, Waltham and Watertown adopted a residential exemption and are therefore omitted from this analysis. The residential exemption reduces the taxable valuation of each residential parcel that is a taxpayer's principal residence. Granting the exemption raises the residential tax rate and shifts the residential tax burden from low and moderately valued homes to apartments and higher valued homes. Communities granting residential exemptions do not submit adequate detailed data to the Division of Local Services (DLS) to determine average tax bills.

Statewide Analysis

Statewide average single-family tax bills have increased every year during the last 10 years in both actual and constant (1995) dollars. *Table 1* shows a comparison of average tax rates, average values (actual and constant dollar) and average tax bills (actual and

constant dollar) over the past 10 years. Constant dollars have been calculated by taking FY95 dollars and applying the Consumer Price Index (CPI) for all Urban Consumers, Boston.

Actual average statewide tax bills have increased steadily in the past years. Increases over the prior year have ranged from 3.8 percent (FY97 and FY99) to a high of 6.7 percent (FY02) over this period. FY04 saw an increase of 6.5 percent in average statewide tax bills. This was the second largest increase over the past 10 years. In total, average statewide tax bills increased from \$2,182 in FY95 to \$3,413 in FY04. This is an increase of 56.4 percent. Using constant FY95 tax dollars, bills have also increased every year since 1995, however, at a more moderate pace. The total increase over the 10-year period in constant FY95 dollars was 18.9 percent.

Also shown in *Table 1* is the dramatic increase in the statewide average assessed value over the past decade. Since FY95 this figure has doubled (100.2 percent) from \$153,571 in FY95 to \$307,417 in FY04. The current year saw the largest single-year increase (15.4 percent) over the period detailed. FY04 was the fourth consecutive year that experienced a double-digit increase in statewide average assessed value for single-family homes. The average assessed value in constant FY95 dollars also increased over the majority of the 10 years covered. The first three years of the analysis saw a decrease in assessed values in constant FY95 dollars and has steadily risen every year since. The cumulative increase in constant FY95 dollars over the 10 years was still a robust 52.2 percent.

As expected, the statewide average tax rate has decreased in recent years as the average assessed value has grown at a faster rate than the tax bills them-

Average Single-Family Value and Tax Bill in Actual and Constant Dollars, FY95–FY04

Fiscal year	Avg. tax rate	Actual avg. value	Actual avg. tax bill	Constant avg. value	Constant avg. tax bill
1995	14.21	153,571	2,182	153,571	2,182
1996	14.55	156,159	2,272	152,496	2,219
1997	14.76	159,838	2,359	151,655	2,238
1998	14.92	165,050	2,463	152,214	2,271
1999	14.73	173,576	2,557	156,547	2,306
2000	14.48	185,009	2,679	162,918	2,359
2001	13.67	206,789	2,827	174,612	2,387
2002	12.76	236,229	3,015	191,010	2,438
2003	12.03	266,350	3,205	209,973	2,527
2004	11.10	307,417	3,413	233,773	2,595
Dollar change		153,846	1,231	80,202	413
Percent change		100.2%	56.4%	52.2%	18.9%

Notes: These figures have been updated to reflect information for communities previously excluded for reasons other than the residential exemption. Constant FY95 dollars calculated using the Consumer Price Index for All Urban Consumers, Boston.

Table 1

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FY03 and FY04 Average Single-Family Tax Bills and Assessed Values

Municipality	FY03 avg. value	FY04 avg. value	Pct. change value	FY03 tax bill	FY04 tax bill	Pct. change tax bill	FY04 hi-lo rank	FY04 tax rate	Municipality	FY03 avg. value	FY04 avg. value	Pct. change value	FY03 tax bill	FY04 tax bill	Pct. change tax bill	FY04 hi-lo rank	FY04 tax rate
Abington	195,541	297,469	52.1	3,197	6,623	13.3	101	12.18	Cheshirefield	111,570	111,845	0.2	2,647	2,800	5.8	179	18.44
Acton	438,456	466,751	6.9	5,914	6,249	5.7	16	14.03	Chicopee	1,111,710	1,151,958	3.6	1,892	1,951	3.1	302	17.43
Acushnet	147,078	214,000	45.5	2,328	2,517	8.1	229	11.76	Chilmark	1,554,163	1,524,515	-1.9	2,580	2,790	8.1	182	1.83
Adams	99,973	100,564	0.6	1,631	1,713	5.0	320	17.03	Clarksburg	96,979	119,876	22.7	1,246	1,350	8.3	331	11.35
Agawam	238,504	286,213	20.5	3,197	3,623	13.3	101	12.18	Clinton	179,996	182,925	1.6	2,417	2,473	2.3	235	13.52
Afford	353,694	382,514	8.2	5,352	5,713	6.7	275	14.75	Cohasset	576,202	622,072	8.0	6,909	7,396	7.0	9	11.89
Amesbury	238,504	286,213	20.5	3,197	3,623	13.3	101	12.18	Colrain	109,991	130,307	18.5	1,934	2,030	5.0	294	15.58
Amherst	230,037	236,015	2.6	3,396	3,407	0.3	53	15.76	Concord	754,913	754,200	-0.1	7,270	7,987	9.9	7	10.59
Andover	469,998	497,785	5.9	5,466	5,710	4.5	29	11.47	Conway	177,649	179,663	1.1	3,127	3,342	6.9	121	18.60
Aquinnah	726,097	729,143	0.4	3,115	3,376	8.4	116	4.63	Cummington	136,381	150,231	10.2	1,889	1,983	5.0	297	13.20
Arlington	316,291	414,125	30.9	4,305	4,406	2.3	54	10.64	Dalton	135,712	152,170	12.1	2,384	2,578	8.1	222	16.94
Ashburnham	165,686	188,756	13.9	2,555	2,514	-1.6	230	13.32	Danvers	276,828	352,031	27.2	3,463	3,844	11.0	83	10.92
Ashby	187,876	205,506	9.4	2,516	2,770	10.1	187	13.48	Dartmouth	214,642	301,070	40.3	2,312	2,514	8.7	231	8.35
Ashfield	151,223	161,899	7.1	2,395	2,466	3.0	237	15.23	Dedham	239,960	361,422	50.6	3,367	3,697	9.8	98	10.23
Ashland	308,775	312,432	1.2	4,113	4,377	6.4	56	14.01	Deerfield	179,939	176,080	-1.2	2,087	2,192	5.0	274	12.45
Athol	86,970	135,002	55.2	1,424	1,490	4.6	326	11.04	Dennis	271,372	345,909	27.5	1,550	1,685	8.7	321	4.87
Attleboro	182,817	187,001	2.3	2,367	2,495	5.4	234	13.34	Dighton	166,678	237,372	42.4	2,492	2,687	7.8	199	11.32
Auburn	150,103	200,116	33.3	1,993	2,341	17.5	251	11.70	Douglas	181,662	183,705	1.1	2,723	3,027	11.2	155	16.48
Avon	185,998	186,243	0.5	2,303	2,432	5.6	240	13.06	Dover	836,051	933,673	11.7	7,675	8,412	9.6	5	9.01
Ayer	213,455	232,777	9.1	2,028	2,337	15.2	253	10.04	Dracut	225,425	227,853	1.1	2,646	2,752	4.0	189	12.08
Barnstable	282,285	404,619	43.3	2,653	2,675	0.8	202	6.61	Dudley	150,477	165,313	9.9	1,589	1,749	10.1	318	10.58
Barre	130,401	172,171	32.0	2,141	2,083	-2.7	286	12.10	Dunstable	300,422	332,289	10.6	4,578	4,675	2.1	50	14.07
Becket	114,228	157,431	37.8	1,398	1,562	11.7	325	9.92	Duxbury	458,808	510,324	11.2	5,533	5,782	4.5	27	11.33
Bedford	425,429	444,397	4.5	4,582	5,031	9.8	42	11.32	E. Bridgewater	183,914	284,409	54.6	2,847	3,089	8.5	152	10.86
Belchertown	167,566	186,570	11.3	2,909	3,116	7.1	150	16.70	E. Brookfield	139,304	139,808	0.4	1,936	1,943	0.4	304	13.90
Bellingham	191,344	245,500	28.3	2,283	2,553	11.8	228	10.40	E. Longmeadow	165,742	168,204	1.5	3,302	3,487	5.6	105	20.73
Belmont	633,746	689,809	8.8	6,832	7,388	8.1	10	10.71	Eastham	124,520	396,729	94.0	1,935	2,031	5.0	293	5.12
Berkley	174,722	249,073	42.6	2,065	2,272	10.0	262	9.12	Easthampton	204,778	166,035	-31.1	2,116	2,263	6.9	284	13.63
Berlin	246,237	332,550	35.1	3,479	4,183	20.2	62	12.58	Easton	281,645	335,229	19.0	3,659	3,825	4.5	85	11.41
Bernardston	121,081	151,905	25.5	2,228	2,280	2.3	260	15.01	Edgartown	664,323	790,712	19.0	2,445	2,775	13.5	185	3.51
Beverly	338,623	372,946	10.1	3,931	4,073	3.6	69	10.92	Egremont	254,694	312,929	22.9	2,384	2,635	10.5	206	8.42
Billerica	190,301	289,516	51.8	2,891	3,162	9.4	145	10.92	Erving	132,326	121,961	-1.4	742	771	3.9	338	6.32
Blackstone	195,518	232,337	19.0	2,448	2,609	6.6	212	11.21	Essex	314,261	400,496	27.4	3,803	4,081	7.3	68	10.19
Blandford	133,131	164,010	23.2	2,334	2,253	-3.5	265	13.74	Everett	224,684	225,101	0.2	1,714	1,855	8.2	313	8.24
Bolton	450,532	452,878	0.5	5,731	5,996	4.6	24	13.24	Fairhaven	166,996	185,942	11.3	1,974	2,032	2.9	292	10.93
Boston*	298,887	347,540	16.3	2,409	2,561	6.3	226	7.37	Fall River	127,704	180,539	41.4	1,368	1,482	8.3	327	8.21
Bourne	488,223	485,822	-0.5	6,239	6,471	3.7	19	13.32	Falmouth	309,571	339,818	9.8	2,464	2,576	4.5	223	7.58
Boxborough	509,491	513,225	0.7	5,905	6,297	6.6	22	12.27	Fitchburg	137,520	163,097	18.6	2,166	2,254	4.1	266	13.82
Boylston	265,312	326,914	23.2	3,669	3,760	2.5	94	11.50	Florida	76,932	79,063	2.8	885	921	2.9	337	11.65
Braintree	282,319	298,439	5.7	2,882	2,850	-1.1	174	9.55	Foxborough	263,755	343,485	30.2	3,624	3,720	2.6	96	10.83
Brewster	299,895	344,173	14.8	2,336	2,509	7.4	233	7.29	Framingham	298,620	298,845	0.1	3,787	3,978	5.0	75	13.31
Bridgewater	276,145	278,533	0.9	3,035	3,156	4.0	147	11.33	Franklin	300,482	305,456	1.7	3,326	3,372	1.4	117	11.04
Brimfield	147,619	149,925	1.6	2,510	2,689	7.5	239	18.00	Freetown	169,046	257,198	52.1	2,502	2,703	8.0	196	10.51
Brockton	181,343	211,575	16.7	2,292	2,435	6.2	239	11.51	Gardner	121,229	122,519	1.1	2,148	2,231	3.9	269	18.21
Brookfield	122,309	173,103	41.5	2,535	2,723	7.4	191	15.73	Georgetown	262,576	354,411	35.0	3,308	3,456	4.5	108	9.75
Brookline*	110,925	140,433	26.6	2,113	2,135	1.0	279	15.20	Gill	124,707	126,002	1.0	1,970	2,428	23.2	242	19.27
Burlington	311,660	340,233	9.2	2,556	2,756	7.8	188	8.10	Gloucester	347,313	408,780	17.7	3,803	3,928	3.3	77	9.61
Cambridge*	286,012	412,259	44.1	3,592	3,776	5.1	90	9.16	Goshen	141,101	142,506	1.0	2,355	2,468	4.8	236	17.32
Canton	569,094	723,044	27.1	8,565	9,016	5.3	4	12.47	Gosnold	491,642	497,948	1.3	1,165	1,210	3.9	334	2.43
Carle Place	209,435	229,224	9.4	3,066	3,211	4.7	137	14.01	Grafton	203,139	303,870	49.6	3,047	3,285	7.8	129	10.81
Carver	118,695	140,061	18.0	2,385	2,586	8.4	220	18.46	Granby	155,222	157,226	1.3	2,293	2,390	4.2	245	15.20
Charlton	165,603	169,010	2.1	2,138	2,251	5.3	267	13.32	Granville	143,896	187,787	31.9	2,394	2,596	8.4	216	13.68
Chatham	415,494	616,717	48.4	2,651	2,775	4.7	184	4.50	Greenfield	126,713	134,255	6.0	2,688	2,827	5.2	176	21.06
Chelmsford	280,991	320,799	14.2	3,948	4,212	6.7	60	13.13	Groton	341,397	349,227	2.3	4,858	5,392	11.0	37	15.44
Chelsea*	124,139	125,026	0.7	1,428	1,475	3.3	329	11.80	Groveland	277,908	323,559	16.0	3,192	3,297	3.4	127	10.19
Cheshire	111,773	112,365	0.5	2,128	2,286	7.4	258	20.34	Grt. Barrington	193,496	228,401	18.0	3,022	3,357	11.1	120	14.70
Chester	111,773	112,365	0.5	2,128	2,286	7.4	258	20.34	Hadley	172,983	174,934	1.1	2,238	2,293	2.5	257	13.11

Municipality	FY03 avg. value	FY04 avg. value	Pct. change	FY03 tax bill	FY04 tax bill	Pct. change	FY04 hi-lo rank	FY04 tax rate	FY04 hi-lo rank
Methuen	218,063	219,636	0.7	2,560	2,576	0.6	224	11.73	224
Middleborough	173,688	247,492	42.5	2,656	2,888	8.7	171	11.67	171
Middlefield	114,365	114,658	0.3	2,200	2,236	1.6	268	19.50	268
Middletown	392,775	427,666	8.9	4,344	4,925	4.2	52	10.58	52
Milford	223,243	272,036	21.9	2,983	3,248	8.9	132	11.94	132
Milbury	174,006	175,337	0.8	2,610	2,634	0.9	208	15.02	208
Millis	243,092	244,334	0.5	3,768	3,878	2.9	80	15.87	80
Millville	181,333	192,789	11.2	2,643	2,971	12.4	160	15.41	160
Milton	401,772	403,116	0.3	4,713	4,886	3.7	46	12.12	46
Monroe	68,732	69,895	1.7	1,090	1,136	4.2	335	16.25	335
Monson	135,333	162,214	19.9	2,435	2,591	6.4	218	15.97	218
Montague	113,314	135,697	19.8	2,162	2,341	8.3	252	17.25	252
Monterey	257,127	258,214	0.4	2,031	2,092	3.0	284	8.10	284
Montgomery	147,022	180,234	22.6	2,316	2,383	2.9	247	13.22	247
Mt. Washington	299,394	280,563	8.2	1,245	1,476	18.6	328	5.26	328
N. Adams	84,259	99,215	17.8	1,238	1,318	6.5	332	13.28	332
N. Andover	365,570	437,771	19.8	4,796	5,148	7.3	39	11.76	39
N. Attleborough	218,608	222,385	1.7	2,674	2,853	6.7	173	12.83	173
N. Brookfield	125,062	188,106	50.4	1,733	1,960	13.1	301	10.42	301
N. Reading	340,994	366,655	7.5	4,123	4,290	4.1	58	11.70	58
Nahant	421,013	469,343	11.5	3,840	3,961	3.2	76	8.44	76
Nantucket*	317,563	403,904	27.2	3,912	4,108	5.0	66	10.17	66
Natick	518,508	554,681	7.0	4,775	5,242	9.8	38	9.45	38
Needham	132,284	133,993	1.3	1,046	1,264	20.8	333	9.43	333
New Ashford	138,325	170,851	23.5	2,028	2,113	4.2	282	12.37	282
New Bedford	146,542	208,833	42.5	2,547	2,635	3.5	207	12.62	207
New Braintree	177,797	291,640	64.0	1,959	2,941	4.2	291	7.00	291
New Marlborough	321,043	389,594	21.4	3,275	3,358	2.5	119	8.62	119
Newbury	288,663	291,493	1.0	3,940	4,165	5.7	64	14.29	64
Newburyport	593,537	669,688	12.8	6,481	6,831	5.4	13	10.20	13
Newton	338,073	381,609	12.9	4,398	4,553	3.5	51	11.93	51
Norfolk	169,391	220,271	30.0	2,778	2,947	6.1	164	13.38	164
Northampton	264,539	355,505	34.4	4,188	4,902	17.0	45	13.79	45
Northborough	189,841	194,213	2.3	2,451	2,567	4.7	225	13.22	225
Northbridge	120,761	151,588	25.5	1,663	1,939	16.6	306	12.79	306
Northfield	296,250	258,619	0.9	2,957	3,083	4.3	153	11.92	153
Norton	418,178	422,269	1.0	5,319	5,566	4.6	31	13.18	31
Norwell	289,908	290,977	0.4	2,656	2,799	5.4	180	9.62	180
Norwood	399,905	472,469	18.1	2,791	3,227	15.6	135	6.83	135
Oak Bluffs	159,314	162,180	1.8	1,912	1,872	-2.1	311	11.54	311
Oakham	116,109	142,450	22.7	2,145	2,283	6.4	249	16.03	249
Palmer	185,463	233,201	52.7	3,318	3,639	9.7	99	12.85	99
Paxton	265,430	334,202	25.9	2,686	2,704	0.7	177	4.41	177
Peabody	181,468	203,945	12.4	3,686	4,177	13.3	63	20.48	63
Pelham	261,746	293,540	12.1	3,172	3,446	8.6	109	11.74	109
Pembroke	222,852	224,237	0.6	2,899	2,969	2.4	161	13.24	161
Pepperell	105,115	108,128	2.9	1,851	2,054	11.0	290	19.00	290
Peru	160,924	223,465	38.9	2,845	2,939	3.3	165	13.15	165
Petersham	140,492	152,689	8.6	1,641	1,774	8.1	317	11.62	317
Philliston	106,097	106,562	0.4	2,123	2,157	1.6	277	20.24	277
Pittsfield	130,054	132,004	1.5	1,821	1,980	8.7	299	15.00	299
Plainfield	251,391	253,239	0.7	3,168	3,322	4.9	124	13.12	124
Plainville	230,597	273,821	18.7	2,836	3,234	14.0	131	11.81	131
Plymouth	258,793	260,680	0.7	3,921	4,160	6.1	65	15.96	65
Plympton									
Tyngsborough	227,865	307,983	35.2	3,762	3,911	4.0	79	12.70	79
Tyringham	236,806	241,262	1.9	2,150	2,297	6.8	256	9.52	256
Upton	269,529	272,134	1.0	3,463	4,019	16.1	73	14.77	73
Uxbridge	175,079	257,433	47.0	2,847	2,984	4.8	158	11.59	158
W. Boylston	214,007	237,978	11.2	3,272	3,463	5.8	107	14.55	107
W. Bridgewater	243,433	243,849	0.2	3,150	3,175	0.8	141	13.02	141
W. Brookfield	150,180	152,619	1.6	2,012	2,157	7.2	278	14.13	278
W. Newbury	367,732	498,115	35.5	4,494	4,822	7.3	47	9.68	47
W. Springfield	136,361	138,102	1.3	2,468	2,556	3.6	227	18.51	227
W. Stockbridge	250,756	261,485	4.3	3,197	3,595	12.4	103	13.75	103
W. Sturbridge	702,217	700,945	-0.2	3,476	3,771	8.5	91	5.38	91
Wakefield	131,330	281,175	-0.8	3,133	3,205	2.3	138	11.40	138
Wales	114,218	115,856	1.4	2,007	2,098	4.5	283	18.11	283
Walpole	293,684	295,646	0.7	4,091	4,275	4.5	59	14.46	59
Walworth*	123,415	124,848	1.2	2,142	2,230	4.1	270	17.86	270
Ware	180,820	182,556	1.0	1,761	1,866	6.0	312	10.22	312
Wareham	115,307	129,308	12.1	1,954	2,351	20.3	230	18.18	230
Warren	105,115	122,272	16.3	2,150	2,450	14.0	258	20.04	258
Watertown	118,680	158,229	33.3	1,910	1,997	4.6	295	12.62	295
Wayland	574,301	578,474	0.7	7,190	7,595	5.6	8	13.13	8
Webster	813,623	184,634	0.6	1,884	1,822	-3.3	314	9.87	314
Wellesley	817,980	855,156	4.5	6,642	7,320	10.2	11	8.56	11
Wellfleet	347,172	492,960	42.0	2,271	2,386	5.1	246	4.84	246
Wendell	101,544	103,862	2.3	1,975	1,978	0.2	300	19.04	300
Wenham	532,669	537,529	0.9	5,875	6,230	6.0	23	11.59	23
Westborough	375,537	392,930	4.6	4,987	5,450	9.3	35	13.87	35
Westfield	134,906	170,990	26.7	2,435	2,647	8.7	204	15.48	204
Westford	347,271	385,413	11.0	5,039	5,396	7.1	36	14.00	36
Westhampton	158,947	208,960	31.5	2,909	3,325	14.3	122	15.91	122
Westminster	155,599	215,444	38.5	2,605	2,590	-0.6	219	12.02	219
Weston	1,062,321	1,162,135	9.4	10,783	11,238	4.2	1	9.67	1
Westport	247,666	262,267	5.9	2,043	2,116	3.6	281	8.07	281
Westwood	512,688	514,856	0.4	5,870	6,673	13.7	14	12.96	14
Weymouth	211,221	212,236	0.5	2,604	2,693	3.4	198	12.69	198
Whately	166,611	167,752	0.7	3,031	3,171	4.6	143	18.90	143
Whitman	177,260	194,894	9.9	3,246	3,372	3.9	118	17.30	118
Wilbraham	188,750	235,795	24.9	3,448	3,867	12.2	81	16.40	81
Williamsburg	155,013	203,810	31.5	2,646	3,194	20.7	139	15.67	139
Williamstown	287,077	270,321	1.2	3,509	3,822	8.9	86	14.14	86
Wilmington	222,379	322,046	44.8	2,982	3,108	4.2	151	9.65	151
Winchendon	134,142	143,770	7.2	1,824	1,898	4.1	308	13.20	308
Winchester	597,262	618,928	3.6	6,797	7,043	3.6	12	11.38	12
Windsor	129,604	130,428	0.6	1,698	1,749	3.0	319	13.41	319
Winthrop	301,029	301,862	0.3	3,086	3,157	2.3	146	10.46	146
Woburn	267,352	305,107	14.1	2,254	2,709	20.2	194	8.88	194
Worcester	156,420	180,193	15.2	2,528	2,658	5.1	203	14.75	203
Worthington	139,463	142,650	2.3	2,421	2,512	3.8	232	17.61	232
Wrentham	287,144	363,918	26.7	3,897	4,043	3.7	70	11.11	70
Yarmouth	163,936	318,650	94.4	1,816	2,125	17.0	280	6.67	280
Statewide average	266,350	307,417	15.4	3,205	3,413	6.5			

*Data not available for communities with residential exemptions.

Table 2

FY04 Tax Bills

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Statewide Average Single Family Tax Bills for Communities Adopting Chapter 3 of the Acts of 2004

	FY2003 shift	Max. FY2004 allowable shift	Adopted FY2004 shift	2003 actual tax bill	2004 actual tax bill	Pct. change tax bill FY03/04
Boston	175	200	200	\$1,972	\$2,257	14.45
Dedham	175	200	200	\$3,367	\$3,697	9.80
Everett	175	193	193	\$1,714	\$1,855	8.23
Fall River	175	200	200	\$1,368	\$1,482	8.33
Lexington	170	194	180	\$5,775	\$6,428	11.31
Lynn	175	195	195	\$2,621	\$2,618	-0.11
Malden	175	200	187	\$2,524	\$2,624	3.96
Medford	175	200	200	\$2,980	\$3,171	6.41
New Bedford	175	187	184	\$2,028	\$2,113	4.19
Saugus	175	192	192	\$2,505	\$2,595	3.59
Somerville	175	200	200	\$3,839	\$3,674	-4.30
Waltham	175	194	194	\$2,987	\$3,121	4.49
Wilmington	174	200	200	\$2,982	\$3,108	4.23

Note: Tax bill data for Boston, Somerville and Waltham was provided by the community. Because they grant a residential exemption DLS does not collect information necessary to calculate an average tax bill.

Table 3

selves. Tax bills increased 6.5 percent for the current year, while average assessed values increased 15.4 percent. As a result, the statewide average tax rate decreased from \$12.03 in FY03 to \$11.10 in FY04.

Municipal Analysis

Table 2 details the average single-family assessed value and tax bill for FY03 and FY04, ranks the 339 communities included from high to low for the FY04 tax bill, and shows the percentage change in assessed value and tax bills.

The data reveals that communities with higher assessed values also tend to have high average tax bills. This relationship is not unexpected nor is it a new concept. For FY04, the five communities with the highest average tax bills are Weston (\$11,238), Sherborn (\$9,591), Lincoln (\$9,394), Carlisle (\$9,016) and Dover (\$8,412). Based on the average assessed value for these same communities, they ranked as follows: Weston (2), Sherborn (15), Lincoln (3), Carlisle (10) and Dover (4). Conversely, the five communities with the lowest average tax bills were Rowe (\$469), Erving (\$771), Florida (\$921), Tolland (\$995) and Monroe (\$1,136).

The relationship between tax bill and assessed value, while strong, is not as closely correlated on the lower end of the rankings. This is largely due to the existence of power plants that pay the majority of the taxes in all of these towns except Tolland. These communities, with regard to their average assessed value, rank as follows: Rowe (312), Erving (321), Florida (338), Tolland (237) and Monroe (339).

With an average single-family assessed value of \$1.52 million, Chilmark was the highest in the state, yet it ranked 182nd for average tax bill. This exemplifies the situation regarding the Cape and Island communities, which tend to have higher assessed values but lower tax bills due to the large number of seasonal properties whose residents have a lesser demand for municipal services. Seven of the top 20 communities when ranked by average assessed value were Cape or Island communities, however only one (West Tisbury) ranked in the top 100 single-family tax bills, with a ranking of 91.

On average, statewide tax bills increased 6.5 percent between FY03 and FY04. There were 153 communities (45

percent) with an equal or greater increase than the state average. The highest percentage increase in a tax bill was 23.2 percent in the western community of Gill. Another western community, the town of Blandford, experienced the largest decrease (-3.5 percent) in tax bills on a percentage basis. Also, 81 communities (24 percent) saw increases in the tax bill equal to or less than the Consumer Price Index (CPI) growth of 3.7 percent for FY04.

Split Rate Classification Shift

From 1988 until last year, communities that used different tax rates for residential and commercial properties, known as split rates, were restricted from taxing commercial taxpayers more than 175 percent of the taxes they would have to pay under a single rate. Additionally, residential taxpayers could be taxed no less than 50 percent of their tax burden under a single rate system.

Chapter 3 of the Acts of 2004 passed by the Legislature and signed by the governor allows for a temporary adjustment to this formula. Communities that adopted this provision for FY04 were allowed to shift the commercial tax burden up to 200 percent and reduce the minimum burden for residential properties to 45 percent. This provision will be rolled back over the ensuing four years by reducing the maximum commercial percentage and increasing the minimum residential percentage each year. In FY09 the communities that adopted the shift will have a maximum commercial percentage of 170 and a minimum residential percentage of 50. These communities will not be returned to the preexisting 175/50 commercial/residential split.

Table 3 depicts the 13 communities that utilized Chapter 3 of the Act of 2004 for the purpose of shifting their tax burden. The data indicates that eight of the thirteen communities experienced smaller percentage increases in their tax bills than the state average of 6.5 percent (taken from Table 2). Of those

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DLS Update

Course 101 Reminder

There is still time to register for the Department of Revenue's Course 101, *Assessment Administration: Law, Procedures, Valuation*. This course will be offered in the evening in October and November 2004 at the Bourne High School, 75 Waterhouse Road.

Attendance at Course 101 and successful completion of the examination satisfies minimum qualification requirements for assessors that were established by 830 Code of Massachusetts Regulation (CMR) 58.3.1. Assessors, and assistant assessors with valuation responsibilities, must fulfill the minimum qualifications within two years of the date of their original election or appointment.

For more details and to access a registration bulletin, click on www.mass.gov/dls/PUBL/BULL/2004/2004_10b.pdf. Please note that all registrations must be received by Friday, October 1, 2004.

FY05 Cherry Sheets

The FY05 estimated receipts for cities, towns and regional school districts total \$4.936 billion, an increase of \$124.9 million or 2.6 percent from the FY04 Cherry Sheet totals of \$4.811 billion. The increase is primarily attributable to a \$72.2 million increase in Chapter 70 aid, a \$9.9 million increase in Regional Transportation aid, a \$24.8 million increase in Charter Tuition Assessment Reimbursements and a \$4.5 million increase in State-Owned Land reimbursements. Most other Cherry Sheet programs were level funded or had modest changes from FY04.

FY05 estimates for School Construction reflect recent legislation changing state school construction financing. The legislation provides for the continuation of on-going payments for projects that have already received their first payment. No new projects from the wait list

are included in the FY05 estimates. When these new projects are funded the new legislation provides for a lump sum payment representing the state share of the project costs. More information regarding the legislative change in the School Building Assistance law can be found at www.mass.gov/legis/laws/seslaw04/sl040208.htm.

In FY05 the Division of Local Services (DLS) posted estimates based on the various stages of the state budget process. It is the intention of the Division to continue this process of providing valuable local aid information for communities and school districts as they begin their annual budget process. Local aid proposals and final cherry sheet estimates will be available at www.mass.gov/dls/cherry/index.htm.

For further information, call the DLS Local Aid Section at (617) 626-2386 or (617) 626-2320.

New School Building Reform Law

On July 28, 2004, the governor approved sweeping reforms to the Commonwealth's school building assistance program, clearing the way for the expedited construction or renovation of 425 school projects statewide. Under the old school construction system, it would have taken 15 years for all of the projects on the waiting list to receive state reimbursement.

This new legislation clears the program's backlog by establishing a capital grant program, which will provide funding at the beginning of a construction project and an accelerated reimbursement schedule. Instead of receiving payments from the state over 20 years, communities will promptly receive their final reimbursement as soon as the newly created School Building Authority has audited the project.

The reform package also sunsets the current moratorium on July 1, 2007, for new school construction projects to be added to the list.

Under the new law, the school building assistance program will be managed by the independent Massachusetts School Building Authority overseen by a seven-member board chaired by state Treasurer Tim Cahill. Both the secretary of Administration and Finance and the education commissioner will serve on the board.

The governor signed the bill at the Jeremiah E. Burke High School in Dorchester, which is planning a \$37 million addition and renovation. With the new law, they will receive accelerated payments from the state nearly six years earlier than under the old system. ■

FY04 Tax Bills

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eight communities, Lynn and Somerville, actually experienced a decrease in their tax bill from FY03 to FY04. Additionally, only three of the communities, Dedham (\$3,697), Lexington (\$6,428) and Somerville (\$3,674) had average tax bills that exceeded the state average tax bill of \$3,413 (taken from *Table 2*). Lexington (ranked 20th) was also the only community adopting the shift that ranked in the top 75 average tax bills for FY04. ■

1. Hancock had not set a tax rate at the time this article was written. Therefore, it was excluded from this analysis.

DLS Update

Healey Signs Construction Reform into Law

On July 19, 2004, Lieutenant Governor Kerry Healey signed a new public construction reform package into law. These reforms will save taxpayer dollars and prevent unnecessary delays in construction projects.

Healey said that the passage of construction reform allows cities and towns to begin new projects through an inclusive process that saves money and results in better quality construction. With annual public construction spending in Massachusetts at more than \$3 billion, the series of reforms will save as much as 10 percent on building costs statewide.

Under the new law, all large public building projects valued at \$5 million or more will be eligible to use the "construction manager at risk" method. With this approach, the construction manager will guarantee a maximum price for the project and any cost overrun will be borne by the contractor — not the taxpayer.

"The reform package now holds construction managers accountable for project delays that result in cost overruns, not the taxpayers," said Healey. "By streamlining the construction process for cities and towns, we will reduce statewide construction costs and proceed with projects that have previously been stalled."

The new law also adopts a "design-build" delivery system for road and bridge projects, a process that greatly reduces construction time. Massachusetts will now join 45 other states that have established this system of construction.

In addition, the legislation requires municipalities to hire a professional project manager for all projects valued at more than \$1.5 million to ensure that in-

formed decisions are made every step of the way.

The bill, which reflects recommendations of the Special Commission on Public Construction Reform, represents the most significant changes in public construction reform since the Ward Commission report was released nearly 25 years ago.

"This bill reaches an appropriate balance between private sector style efficiencies and public sector transparency and access," said Chris Gordon, director of capital programs at the Massachusetts Port Authority and chair of the commission. "It will provide significant, long-term advantages for taxpayers including more options and accountability, and no perceived disadvantages. The only groups that will not benefit from this reform will be unqualified contractors, designers and owners."

Springfield Finance Control Board Appointments

Eric Kriss, secretary of the Executive Office for Administration and Finance, has named Revenue Commissioner Alan LeBovidge, Michael (Jake) Jacobson and Tom Trimarco to the Springfield Finance Control Board. This board was established under Chapter 169 of the Acts of 2004 in July 2004.

This five-member team, which will also include Springfield Mayor Charles Ryan and Springfield City Council President Dominic Sarno, will help restore fiscal stability to the Commonwealth's third largest city over the next three years.

"We have assembled a team of top-caliber individuals who are experts in their respective fields to help restore the fiscal condition of the City of Springfield," said Kriss. "We will work together to establish sound business practices and create a balanced budget that aims to prevent future crises."

As revenue commissioner, LeBovidge oversees the state's collection of billions of dollars in revenue as well as the Division of Local Services. Prior to assuming that position, LeBovidge worked for more than 20 years at PricewaterhouseCoopers, retiring as vice chairman of the taxes division.

Jacobson assisted state officials in a 2003 assessment of Springfield's finances that recommended special legislation to establish an oversight board. He has more than 25 years of experience in management consulting and executive positions. Jacobson holds an MBA from Harvard Business School and a bachelor's degree in mathematics from the Massachusetts Institute of Technology.

Trimarco has experience in both the public and private sector. He served as chairman of the Pension Reserve Investment Management (PRIM) board, which oversees the state's retirement fund. He also served as an advisor to John Volpe during Volpe's tenure as U.S. secretary of transportation and as U.S. ambassador to Italy. Trimarco is currently a legal consultant and is a graduate of Dartmouth College and Boston College Law School.

The Executive Office for Administration and Finance has launched a Springfield Finance Control Board website that contains a schedule of upcoming meeting dates as well as background information relating to the board and the City of Springfield. The direct link to the website is: www.mass.gov/portal/index.jsp?pageID=sfcbhomepage&L=1&LO=Home&sid=sfcb. ■

DLS Update

Collaborative Purchasing with Out-of-State Communities

by Katherine Rudeen,
Office of the Inspector General

The Massachusetts Office of the Inspector General (OIG) is charged with preventing and detecting fraud, waste, and abuse in the expenditure of public funds. A principle objective of the OIG is to prevent fraud, waste, and abuse before they happen. Toward this end, the OIG has long been involved in interpreting and applying the provisions of M.G.L. Chapter 30B, the Uniform Procurement Act. Chapter 30B governs the procurement of supplies and services, surplus supply disposition, and the acquisition and disposition of real property for cities, towns, counties, districts, local authorities, and other public entities at the municipal and regional level.

The OIG has received several inquiries concerning collaborative purchases with non-Massachusetts governmental entities. This issue has been raised because an out-of-state collective purchasing group informed certain municipalities in Massachusetts that municipalities may participate in such purchases with out-of-state communities based on an exemption found in Chapter 30B, Section 1(b)(3). Chapter 30B, Section 1(b)(3) provides an exemption for inter-governmental agreements subject to the provisions of Chapter 40, Section 4A. In the opinion of the OIG, Massachusetts law does not support the contention that the exemption applies to a collaborative contract entered into with an out-of-state entity.

Chapter 40, Section 4A is primarily applicable when governmental entities contract with each other for the performance of public services. These contractual relationships are direct, meaning that the governmental entities involved provide the contracted services themselves. These public services may include, for example, water and firefighting services.

In the opinion of the OIG, Chapter 40, Section 4A was not intended to apply to collective purchasing. Although Chapter 40, Section 4A does not explicitly restrict contracts with out-of-state entities and Massachusetts governmental entities, it does not explicitly allow collective purchasing.

However, Chapter 7, Sections 22A and 22B permit Massachusetts governmental entities to conduct collective purchases with other state or local entities that have agreed to be part of a collective bidding process. For example, two or more local entities may jointly purchase vehicles. Perhaps the Legislature will eventually broaden these collective purchasing provisions to encompass collaborative purchasing agreements established in other states or by the federal government. In the opinion of the OIG, however, municipalities in Massachusetts should not currently rely on Chapters 7, 30B, or 40 to make collective purchases with out-of-state governmental entities. ■

Open Meeting Law

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governmental body attends a meeting, there is no "subcommittee under the Open Meeting Law created." Other factors that influenced the opinion were the absence of votes designating representatives to the meeting on behalf of the various boards, the absence of deliberations, and the lack of authority to make factual investigations or to make recommendations.

Thus, municipalities must take care when scheduling work sessions.

Pending Legislation

Currently, when a member of a multi-member board or commission is absent from a session in which a matter is being heard, that member is disqualified from voting on the application before the board. This court-imposed rule has placed a hardship on many communities, volunteer boards, as well as, on applicants. An amendment to Chapter 39 has been favorably acted upon by the Legislature. The governor has proposed amending the legislation to make it a local option and sent it back to the Legislature. Assuming that this act becomes law, municipalities will be empowered to allow board members who miss a session of a hearing to review the testimony, evidence and the audio or video recording and then vote on the matter. ■

The City Solicitors and Town Counsel Association is a bar association dedicated to the promotion of better government through the advancement of municipal law.

DLS Profile: Property Tax Bureau Attorney

Property Tax Bureau attorney **Kathleen Colleary** is a valuable resource for state and local officials, as she possesses a wide range of expertise in laws relating to municipal finance. She is regarded as a subject matter expert in such key areas as assessment administration, Proposition 2½, special funds, the Community Preservation Act and town meeting procedures relating to budgets.

Due to her vast legal knowledge and ability to communicate complicated issues clearly and concisely, Kathleen is an instructor in most of the Division of Local Services' training programs, including Course 101, the basic course for assessors, and the annual New Officials Finance Forum. She also participates in the Division's "What's New in Municipal Law" seminars and is an instructor in educational programs sponsored by the various statewide, professional associations of municipal finance officers.

According to Kathryn Peirce, president of the Massachusetts Association of Assessing Officers (MAAO), "Kathleen is the backbone of resources for the newer assessors. She is the first face they meet and is very personable. She puts them at ease and provides no-nonsense answers." Donna Putt, MAAO executive board member, added, "Kathleen is very knowledgeable and always willing to help in any way she can. She has been more than generous in giving time and assistance to members of the assessing profession."

Kathleen is charged with overseeing the publication of most guidelines (Information Guideline Releases or IGRs) and other written materials for local officials. She is a member of the Division's education and training committee, where she plays an important role in developing more effective and innovative training programs for local officials.

Kathleen began working for the Division in 1980 as an attorney in the Bureau of Local Assessment and eventually joined the Division's legal staff in 1986. She holds a bachelor's degree in political science from Arizona State University and a law degree from Boston College Law School. In 1996, she was an individual recipient of the Commonwealth of Massachusetts' Citation for Outstanding Performance.

Originally from Woburn, Kathleen attended high school and college in Arizona, and eventually moved back to Massachusetts to attend law school. She currently resides in Watertown. ■



Kathleen Colleary

Legal

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based on the going rate earned by doctors in private practice. They also received bonus compensation that amounted to 50 percent of excessive productivity over and above the anticipated productivity for the year. The ATB ruled that the incentive bonus plan essentially diverted income or profits to the employee physicians, which contravened M.G.L. Ch. 59 Sec. 5 Cl. 3(a). That statutory provision prohibits any private inurement. In the court's view, tying the bonus payment to the productivity of each physician was suggestive of a commercial venture. Under the facts presented, the court held that the ATB ruling on the bonus payment was supported by substantial evidence.

Second, the ATB stated that Sturdy did not operate as a charity because it did not benefit an indefinite class of the public. The Appeals Court distinguished the case at hand from that presented in *Harvard Community Health Plan, Inc. v. Assessors of Cambridge*, 384 Mass. 536 (1981). In *Harvard Community*, the Supreme Judicial Court found that the health plan provided substantial medical services at less than average cost to approximately 64,000 enrollees who came from all walks of life. In the present situation, the Appeals Court found that Sturdy did not provide medical care at a lower cost than charged by conventional health plans.

Consequently, on the evidence presented, the Appeals Court upheld the denial of the exemption since the parcel was not occupied for charitable purposes. Further appellate review was denied by the Supreme Judicial Court. ■

1. *Black's Law Dictionary* defines inurement as "service to the use or benefit of a person."

City & Town

City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

Joan E. Gourke, Editor

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