



## WHAT'S NEW IN MUNICIPAL LAW 2022

### Alphabetical Listing of ATB and Court Decisions

**Akamai Technologies, Inc. v. Commissioner of Revenue and Board of Assessors of the City of Cambridge**, Mass Appellate Tax Board (ATB) Findings of Fact and Report Docket Nos. C332360, C334907, C336909, (12/10/21). ATB held Akamai was engaged in the sale of remotely accessed standardized computer software subject to sales tax and rejected the Commissioner's argument that Akamai was merely engaged in nontaxable sale of services.

<https://www.mass.gov/doc/akamai-technologies-v-commissioner-of-revenue-and-the-board-of-assessors-of-the-city-of-cambridge-intervenor-december-10-2021/download>

**Bask, Inc. v Municipal Council of Taunton**, 490 Mass. 312 (7/21/22). The Supreme Judicial Court (SJC) held that the Land Court does not have broad equitable authority to regulate marijuana licenses or otherwise interfere with city or town marijuana regulations outside the scope of the issues presented for Land Court determination.

<http://masscases.com/cases/sjc/490/490mass312.html>

**Berisha v. Sandwich**, No. 21-P-144 Memo and Order Under Rule 23 (App. Ct. 12/8/21). Court upheld dismissal of claim of discharged employee alleging that the town had retaliated against him for reporting health and safety violations contrary to the Whistleblower Act. The Court applied the doctrine of issue preclusion where an arbitration initiated by his union found his discharge justified.

<https://www.mass.gov/media/2492761/download>

**Boston v. Conservation Commission of Quincy**, 490 Mass. 342 (7/25/22). SJC sided with Boston on its plan to build a bridge to Long Land, despite the denial of a permit by the Conservation Commission of Quincy under the Wetlands Protection Act. Boston sought a superseding order of conditions from the Department of Environmental Protection, which was granted. Since Quincy did not rely on a more stringent local ordinance, the SJC affirmed the superseding order.

<http://masscases.com/cases/sjc/490/490mass342.html>

**Boston Clear Water Co., LLC v. Lynnfield**, 100 Mass. App. Ct. 657 (App. Ct. 1/26/22). Plaintiff filed a Notice of Intent to make improvements to wetlands protection act property. Conservation Commission missed the 21-day time frame for holding a hearing, but eventually heard the case and denied the application. Plaintiff sought a superseding order from the Department of Environment Protection, which was granted and upheld by the Appeals Court. Failure to observe the 21-day hearing requirement deprived Lynnfield of its authority to act.

<http://masscases.com/cases/app/100/100massappct657.html>

**Bourne v. Coffey**, 101 Mass. App. Ct. 496, (App. Ct. 8/12/22). Appeals Court held that a petition to vacate a foreclosure decree, even if filed within one year, requires extenuating circumstances and that Land Court Recorder's denial of petition to vacate was within discretion.

<https://www.mass.gov/media/2492766/download>

**Brooks v. Haverhill**, No. 20-P-1008 Memo and Order Under Rule 23 (App. Ct. 8/16/22). Court affirmed a Land Court decision to uphold a zoning ordinance which identified a busy downtown area where retail cannabis establishments were prohibited.

<https://www.mass.gov/media/2492771/download>

**Brayton Point Energy, LLC v. Somerset**, 101 Mass. App. Ct. 466 (App. Ct. 7/19/22). Court affirmed ATB denial of exemption. The Court concluded that disregarded entities are not business corporations subject to the excise tax under G. L. c. 63, § 39 and therefore do not qualify for the local personal property exemption under G. L. c. 59, § 5 Clause 16(2).

<http://masscases.com/cases/app/101/101massappct466.html>

**Buckingham v. Barrett**, No.21 MISC 000221 (Land Ct. 3/10/22). Court dismissed claim of plaintiff seeking a declaration that a solar facility construction project was governed by a Wareham city ordinance regulating earth removal. Claim dismissed for lack of standing.

<https://www.mass.gov/media/2492776/download>

**City Council of Springfield City Council v. Mayor of Springfield**, 489 Mass. 184 (2/22/22). Court upheld the Council's power to reorganize the police department, replacing a single commissioner with a five-member board. The ordinance did not interfere with the Mayor's appointment powers, which were unaffected.

<http://masscases.com/cases/sjc/489/489mass184.html>

**Commcan, Inc. v. Mansfield**, 488 Mass. 291 (8/30/21). SJC affirmed the Land Court's award of summary judgment to plaintiffs who challenged the Town of Mansfield's zoning restriction that prevented a medical cannabis dispensary from qualifying as a recreational cannabis retailer.

<http://masscases.com/cases/sjc/488/488mass291.html>

**Conservation Commission of Norton v. Pesa**, 488 Mass. 325 (8/31/21). Conservation Commission brought enforcement action against subsequent owners of property as to which conditions of the permit were violated. SJC held that within three years of the acquisition of the property by a first or subsequent owner, the enforcement action was proper. After three years from acquisition by that owner, a statute of repose descends to extinguish the commission's enforcement jurisdiction.

<http://masscases.com/cases/sjc/488/488mass325.html>

**Foster v. Adams Fire District**, No. 1976CV00198 (Super. Ct. 9/9/21). Superior Court granted summary judgment against the Adams Fire District because it lacked legal authority to tax for services beyond the provision of water.

<https://www.mass.gov/media/2492781/download>

**Lay v. Lowell**, 101 Mass. App. Ct. 15 (App. Ct. 4/28/22). City Election Commission refused to seat first runner-up for School Committee from the last election, when a vacancy arose because of a member's resignation. The Commission asserted his domicile was not in Lowell. The Court disagreed, finding that numerous indicia of domicile that were present in the case. The Superior Court decision reversing the commission was affirmed.

<http://masscases.com/cases/app/101/101massappct15.html>

**NRT Bus v. Lowell**, No. 2084CV1814BLS2 (Super. Ct. 12/16/21). In the aftermath of the COVID pandemic in 2020, a school bus contractor was idled as schools shut down. Contractor brought action for breach of contract. Court dismissed the City's counterclaim for alleged breach of contract, unfair and deceptive practices, and violation of the duty of good faith and fair dealing. City suffered no compensable damages.

<https://www.mass.gov/media/2492786/download>

**Newton v. CERB**, 100 Mass. App. Ct. 574 (12/30/21). City was required by Appeals Court to engage in mandatory impact bargaining when it imposed a requirement of fitness for duty examinations for police officers. The city had to negotiate with the union implementation of the examination policy because the terms and conditions of employment were affected.

<http://masscases.com/cases/app/100/100massappct574.html>

**O'Brien v. Pembroke**, No. 21-P-99 Memo and Order Under Rule 23 (App. Ct. 4/8/22). Plaintiff's claim for defamation against the Town of Pembroke and four health department officials was dismissed. Grounds were the expiry of the statute of limitations under the Mass. Tort Claims Act and defendants' conditional privilege was not forfeited. Allegations concerned an environmental and public health report on conditions in the plaintiff's rental properties in Town.

<https://www.mass.gov/media/2492791/download>

**RCN Becocom LLC v. Commissioner**, 100 Mass. App. Ct. 802 (App. Ct. 4/1/22). ATB upheld the Commissioner's telephone property values in a number of communities finding that taxpayer did not prove that the values were "substantially higher" than fair cash value. Appeals Court affirmed ATB's decision to take jurisdiction over the appeal, notwithstanding the slipshod character of taxpayer's filing practices.

<http://masscases.com/cases/app/100/100massappct802.html>

**Reilly v. Hopedale**, No. 2185CV00238D (Super. Ct. 11/11/2021), injunction aff'd, No. 2021-J 0111 (Single Justice App. Ct. 4/8/22). Superior Court held that the Selectboard lacked authority to settle a claim for enforcement of the right of first refusal on G.L. c. 61 land because Town Meeting had authorized only the acquisition of the entire property. The Court also extended a temporary injunction barring the purchaser of the beneficial interest from clearing trees from the G.L. c. 61 property while the Selectboard decided whether to seek Town Meeting approval for the settlement.

<https://www.mass.gov/media/2492796/download>

**Reuter v. Methuen**, 489 Mass. 465 (4/4/22). Treble damages ordered under the Wage Act where defendant did not pay discharged employee her full wages (for accrued vacation time) on the termination date. The Court ruled that the Wage Act did not provide for interest on the unpaid wages.

<http://masscases.com/cases/sjc/489/489mass465.html>

**Savage v. Springfield**, No. 1679CV00364 (Superior Ct. 12/21/21). After bench trial, court declared a provision of the Springfield residency ordinance to be invalid. The provision required the automatic termination of employees not in compliance with the ordinance after a one-year grace period.

<https://www.mass.gov/media/2492801/download>

**Smith v. West Bridgewater**, No.21-P-108, Memo and Order Under Rule 23 (Appeals Court 3/11/22). Summary judgment in favor of defendants upheld. Former police officer's claim under the whistleblower act failed because he could not prove that any "protected activity" caused the allegedly retaliatory action.

<https://www.mass.gov/media/2492806/download>

**Smith v. Westfield**, No. 20-P-1180, Memo and Order Under Rule 23 (App. Ct. 9/1/21). Ten-taxpayer suit challenged plans to convert a park into the site of a school building. Superior Court dismissed case as moot (the city had abandoned these plans as a result of separate litigation). Appeals Court affirmed.

<https://www.mass.gov/media/2492811/download>

**Springfield Rescue Mission v. Springfield Assessors**, No. 19-P-1629, Memo and Order Under Rule 23 (Appeals Court 2/5/21); FAR denied at 487 Mass. 1105 (SJC 4/15/21). Assessors lost at the ATB when they denied a charitable exemption on the ground that the deed to the subject property was in the possession of an escrow agent on the qualification date, 7/1/15. Deed is not required to be delivered in person and the parties' intention as of the qualification date was that the charity would assume ownership of the subject property. ATB's finding that the charity held legal ownership of the property was affirmed as founded in substantial evidence.

<https://www.mass.gov/media/2492816/download>

**Tracer Lane II Realty, LLC v. Waltham**, 489 Mass. 775 (6/2/22). SJC decided in favor of solar power use notwithstanding zoning rules. Waltham denied solar developer (mostly based in neighboring Lexington) a permit to construct an access road for its solar power facility on its residentially zoned Waltham property. The restrictive zoning treatment violated the Dover amendment, which precludes “unreasonable” regulation of property intended for use for solar power generation.

<http://masscases.com/cases/sjc/489/489mass775.html>

**West Street Associates LLC v. Mansfield**, 488 Mass. 319 (8/30/21). Preemption challenge to local by-law requirement that medical cannabis dispensaries be organized as non-profit corporations. The SJC held that the by-law had been preempted by the provision of the 2017 cannabis statute eliminating the non-profit requirement for medical dispensaries.

<http://masscases.com/cases/sjc/488/488mass319.html>

**Western Massachusetts Electric Company v. Board of Assessors of Springfield**, No. 21-P-596, Memo and Order Under Rule 23 (App. Ct. 4/1/22). Appeals Court affirms valuation methodology for utility personal property blending net book and RCNLD approaches. Court stressed that the ATB had correctly found special circumstances in light of regulatory changes at the Department of Public Utilities, justifying departure from sole reliance on net book value.

[https://scholar.google.com/scholar\\_case?case=3613206054144065782&q=Western+MA+Electric+v.+Springfield+Assessors,&hl=en&as\\_sdt=40000006&as\\_vis=1](https://scholar.google.com/scholar_case?case=3613206054144065782&q=Western+MA+Electric+v.+Springfield+Assessors,&hl=en&as_sdt=40000006&as_vis=1)

**Westervelt, c/o Sail Martha’s Vineyard Inc. v. Board of Assessors of the Town of Oak Bluffs**, Mass ATB Findings of Fact and Report Docket No. F334981, (9/29/21). Educational organization focused on sailing instruction in the summer months was recognized as exempt. Its charitable purpose depended on providing affordable housing for the instructors who teach sailing to Vineyard youth in the summer. Exemption allowed on finding that real property was occupied for a charitable purpose.

<https://www.mass.gov/doc/westervelt-leslie-s-co-sail-marthas-vineyard-inc-v-board-of-assessors-of-the-town-of-oak-bluffs-september-29-2021/download>