



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

“What’s New in Municipal Law” 2023

Recent Legislation

Tax Title Expense

An Act Further Regulating Tax Title Expense

Chapter 356 of the Acts of 2022

- **Amends G.L. c. 60, § 79 by increasing the mandatory \$50 legal fee added to the land of low value foreclosure procedure to “\$500 or actual costs, whichever is less”**
- **Under G.L. c. 60, § 79, the legal fee must be added to the applicable tax title account of the land being foreclosed and must be included in an amount due for redemption should the redemption be made prior to the sale**

Recent Bulletin

Tax Title Foreclosure Agency Accounts

DLS Bulletin 2023-5

- **With legal uncertainty as to whether or not surplus proceeds from a sale of property as a tax possession after the community has acquired title through foreclosure will need to be returned to property owners, DLS will not object to a community temporarily holding any such surplus proceeds in an agency account until there is a directive from the courts on this matter**
- **Municipal treasurers should consult with their local counsel, chief executive officer(s) and finance team(s) before deciding to do so**

Recent Legislation

Chapterlands

An Act Relating to Economic Growth and Relief for the Commonwealth

Chapter 268 of the Acts of 2022

- **An Act Relating to Economic Growth and Relief for the Commonwealth**
 - **§§ 90-100**
 - **Amends G.L. c. 61, 61A & 61B**
 - **Annual applications now due Dec. 1, not Oct. 1**
 - **In “revaluation” years landowners who did not file timely had 30 days after the property tax bills were mailed to file; now they have until the date property tax abatement applications are due**
 - **G.L. c. 61B applications not acted on within three months will now be deemed allowed**
 - **Applicable for FY24**

Recent Legislation

Municipal Finance

An act making appropriations for the fiscal year 2024 for the maintenance of the departments, boards, commissions, institutions, and certain activities of the commonwealth, for interest, sinking fund, and serial bond requirements, and for certain permanent improvements
Chapter 28 of the Acts of 2023

- **Amended G.L. c. 44, § 10 concerning debt limitations for certain school building projects**
- **Amended G.L. c. 44, § 54 concerning the investment of trust funds**
- **All land comprising the north shore regional 911 center and the Essex County correctional facility in the town of Middleton was added to the state-owned land program**

Recent Cases

Hull Lighthouse

Graves Light & Fog Station, LLC v. Town of Hull

31 LCR 458

(August 1, 2023)

- **LLC purchased from US government a rocky ledge in the Boston Harbor, featuring an approximately hundred-year-old lighthouse and known as The Graves or Graves Ledge**
- **Town Assessor's Maps were updated in or around September 2019, added Graves Ledge to Map 61 and thereafter assessed taxes in 2019**
- **Long history through land grants starting in 1634**
- **Ultimately land court rules island is in Boston**

Recent Cases

Chapterland

Henry Komosa v. Board of Assessors of Montague

**Mass ATB Findings of Fact and Report 2023-91
(February 24, 2023)**

- **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**

Recent Cases

Land Use

Amaral v. City of Gloucester

101 Mass. App. Ct. 1115

(August 11, 2022)

- **Citizen group claiming transfer of public recreational land, 'Mattos Field,' to the School Department was unlawful**
- **Article 97 parkland cannot be used for any other use without 2/3 approval of the State Legislature**
- **Gloucester received Special Legislation for this transfer**
- **Judgment affirmed for Gloucester**

Nahant Preservation Trust v.
Northeastern University

2022 Mass. Super. LEXIS 197 (September 20, 2022)

- Article 97 land at issue over a parcel used by Northeastern University for its Marine Science Center (MSC) since the mid 1960s
- 1. Whether Northeastern intended to dedicate land on the Murphy Bunker to the public for use as an ecological preserve and for passive recreation? 2. Did Northeastern intend to permanently dedicate the land to the public for such use? 3. Did the public accept Northeastern University's permanent dedication of the land ?
- There is no intent demonstrated through the years from Northeastern to dedicate the land to public use

Recent Cases

10 Taxpayer Lawsuit

Hall v. Board of Selectmen
Of Edgartown

**102 Mass. App. Ct. 1104, Rule 23.0 Unpublished
(November 2, 2022)**

- Owners of commercial real estate filed three lawsuits to overturn Town Meeting vote to take the property by eminent domain, per G.L. c. 79, partially using 44B CPA funds
- In this case, the plaintiffs filed a ten-taxpayer lawsuit to enjoin use of CPA funds for historic preservation purposes
- Per G.L. c. 40, § 53, ten taxpayers may restrain c/t's to prevent unlawful appropriations or borrowing
- Superior Court held for Town
- Appeals Court affirmed, holding that plaintiffs failed to prosecute their claims timely

Recent Cases

Employment

Comtois v. State Ethics Commission

102 Mass. App. Ct. 424

(March 21, 2023)

- **The State Ethics Commission (SEC) fined Comcois, a former Selectboard Chair, \$20,000 for violations of G.L. c. 268A, §§ 19(a) and 23(b)(2)(ii) of the State Ethics Law**
- **Comtois, in capacity as Chair of the Selectboard, interfered with donation of land to the Town, in order to buy the land for himself**
- **He subsequently purchased the parcel, assessed at \$43,900, for less than \$1,000**

Comtois v. State Ethics Commission, Con't.

- **As a result of a complaint, the SEC concluded the actions of Comcois were State Ethics Law breaches**
- **On appeal, the Superior Court upheld the SEC's finding and fines, under G.L. c. 268A, §§ 19(a) and 23(b)(2)(ii) of the State Ethics Law**
- **The Appeals Court likewise concluded that Comtois had unlawfully used his official position to purchase the property and upheld the SEC fines and conclusions**

Tetreault v. Board of Selectmen of Lynnfield

103 Mass. App. Ct. 330

(February 24, 2023)

- **Selectboard informed Fire Chief that it would not renew his employment contract**
- **Fire Chief sought declaratory relief, claiming he was granted “lifetime tenure” under the so-called “Strong Chief” statute**
- **Superior Court held for Chief, ruled that Board violated law, its charter and personnel bylaw**
- **Appeals Court reversed, declaring that Board’s nonrenewal of contract was permitted and was not a removal from office, which statute would have required cause, notice and a Board removal hearing**

Recent Cases

**Constitutional Law /
Dover Amendment**

Barron v. Kolenda (Selectboard and Town of Southborough)

**491 Mass. 408
(March 7, 2023)**

- **The plaintiff local resident addressed a public comment portion of a BOS meeting to complain forcefully about the BOS Open Meeting Law violations and her opinion on Town spending practices**
- **Acting BOS Chair interrupted remarks, declared resident in violation of BOS policy, accused her of slander and threatened to have her removed from meeting**
- **BOS public comment policy directed that remarks be respectful and courteous and free of rude, personal or slanderous remarks**

Barron v. Kolenda, Con't.

- The resident sued the Acting Chair, BOS members and the Town alleging violations of State Constitution's guarantees of the right of free speech and assembly, that the Chair's actions violated her state civil rights and that the BOS policy was unconstitutional
- Superior Court ruled in favor of Town
- SJC took case from Appeal Court on appeal
- SJC held Town did violate state constitutional rights of free speech and assembly, the Town and Chair violated her civil rights and that BOS comment policy was unconstitutional

Hume Lake Christian Camps, Inc.
v. Planning Board of Monterey
492 Mass. 188 (June 7, 2023)

- **“Dover Amendment” appeal concerned with zoning, also invokes G.L. c. 59, § 5[3] religious exemption issues**
- **Pltf religious organization, owner of 400-acre camp, carries out its mission through its “camping ministry”**
- **Hume sought to expand camp to include RV park; PB denied application as zoning bylaw banned “trailer or mobile home park,” and RV camp is recreational, not religious**
- **Land Court struck down PB decision, held RV park was part of Hume’s religious purpose, invoking Dover Amendment exemption**

Hume Lake Christian Camps, Con't.

- Land Court, however, also affirmed PB finding that use of RV park by volunteers and seasonal staff was financial, not religious
- SJC took case from Appeals Court on appeal
- SJC concluded that the RV park, and use by volunteers and seasonal staff, would have religious use as its dominant purpose, and promote religious practice and spirituality
- SJC rejected PB's arguments to the contrary
- SJC analyzed La Salette case for religious analysis on two grounds: 1) whether use has as "religiously significant" goal; and

Hume Lake Christian Camps, Con't.

- 2) whether that “religiously significant goal” is the “primary or dominant” purpose for which land or structures will be used
- SJC reviewed all elements of RV park and use by volunteers and seasonal staff and concluded that the La Salette criteria were met
- Therefore, SJC concluded, Hume’s uses qualified for Dover Amendment exemptions

Recent Cases

Motor Vehicle Excise

**LTC Jonathan L. Riggs v. Assessors of
Bedford**

ATB 2023-120 (March 9, 2023)

- **Nondomiciliary servicemember from West Virginia stationed in Massachusetts pursuant to military orders received excise bill from Town of Bedford**
- **Assessors denied his abatement application and he appealed to the ATB**
- **Riggs claimed he was exempt from excise under federal law which exempts the personal property of an active duty servicemember from tax in the state where they are temporarily stationed**
- **Bedford argued Riggs leased and did not own vehicle and was not exempt from excise - ATB upheld exemption**
- **CAUTION**

Vincent Gillespie v. Greenfield Assessors

ATB 2023-157 (April 6, 2023)

- Registrant received excise bill from Greenfield which he refused to pay. His abatement application was denied and he appealed to ATB
- He claimed his vehicle was not subject to Greenfield excise since he lived in Athol
- He produced proof of residence in Athol since 2013 and only had a post office box in Greenfield
- ATB ruled in favor of taxpayer due to billing error
- If assessors learn taxpayer's residence is in another community, they should notify the actual community

Recent Cases

Liens

Town of Orange v. Sheridan

Mass. Land Court 31 LCR 92 (January 30, 2023)

- Parcel was in tax title and treasurer filed action in Land Court to foreclose the right of redemption
- Orange Board of Health recorded two Statements of Claim under State Sanitary Code
- At issue in Land Court was whether \$58,000 in Board of Health liens should be added to tax title redemption amount
- Land Court ruled the lien provisions of Ch. 139, §3A applied to any debts under Ch. 111, § 127B and were not limited to the removal of a structure
- Board of Health could record liens under § 127B
- Town followed statutory procedure to add liens

LHPNJ, LLC v. Jefferson Dev. Partners

31 LCR 260 (April 19, 2023)

- **Jefferson Development owned 42 acre site in Taunton which contained an old textile mill**
- **Parcel was in tax title, and LHPNJ, which had been assigned tax title by Taunton, sought foreclosure**
- **Mortgagee challenged redemption amount as excessive - of the over \$450,000 in fire watch liens, Court ruled only \$88,000 in liens was 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. City either never sent the owner an accounting after the watches were completed, or did not provide written abatement order before starting fire watches**

Recent Cases

Assessment Administration

Murrow v. Board of Assessors of Boston

102 Mass. App. Ct. 278

(February 06, 2023)

- **City assessed tax to owner of a permanent easement on a parking space for the first time in FY19, though taxpayer has the easement since 1987**
- **The Appeals Court determined that because the easement confers exclusive use of a parking spot which is freely transferable and permanent, there is a sufficient “present interest” for purposes of assessing a property tax under G.L. c. 59, § 11**
- **Even if the space itself is taxed as part of the common areas of the development, that does not preclude assessing the value of a related easement**

City of Boston v. Kehoe

31 LCR 306

(April 28, 2023)

- Taxpayers sought equitable relief from Land Court to waive or otherwise excuse a bill of over \$166K, the large majority of which was interest charges that accumulate at 16% for properties in tax title
- Taxpayers claimed they had not received bills after moving from CA to FL
- The Land Court lacks statutory authority to excuse tax and associated interest based on taxpayers' claim they did not receive tax bills or a notice of foreclosure and right to redeem
- Taxpayers are liable for real property tax regardless of whether they received a bill
- Taxpayers claimed they had not received bills after moving from CA to FL, and though it may have been gratuitous, the Court noted some taxes had been received since they moved to FL

Pompi v. Board of Assessors of Adams
2022 Mass. App. Unpub. LEXIS 592
(September 27, 2022)

- Taxpayer sought abatement on basis the Assessors “willfully overvalued” their property, primarily relying on valuation of other properties they claimed were similar
- The Town explained that the structures on those properties were considerably older and were small relative to the lots they stood on, which decreases the value of the land
- The Court’s function was to determine whether the Appellate Tax Board decided based on “substantial evidence” - the ATB is due considerable deference, and the Court may only overturn its decisions based on error of law, not factual determinations, and correct valuation is a factual determination
- The Court would overturn the ATB decision only if the method or rationale for calculating the tax was inherently defective - not the case here, ATB upheld

UHRICH & BROGAN. v. WAYLAND BOARD OF ASSESSORS

Mass ATB Findings of Fact and Report 2022-161

(September 12, 2022)

- **Parcel, and the residential structure itself, were divided by border of Wayland and Lincoln**
- **Taxpayer applied for abatement of Wayland assessment on the theory that because the property was not accessible from a “municipally accepted way”, no part of the Wayland portion should be classified as “prime lot”**
- **The Town of Lincoln took the position that it was entitled to classify substantially all of its portion as “prime lot” because it was responsible for municipal services relative to the property (education, public safety, etc...)**
- **ATB rejected taxpayers’ reasoning as it ignored the fact the entire lot was needed to satisfy either Town’s zoning ordinance - ATB decided Wayland must be entitled to classify some part of its portion as “prime” due to its contribution to the ability to build there**
- **ATB said Lincoln’s theory that apportionment of taxes between towns based on provision of municipal services was without support in statute or precedent**

Thomor Inc. v. Board of Assessors of Norwood

102 MassApp Ct 1105 (December 21, 2022)

- **Town denied taxpayers applications to abate taxes as untimely**
- **Under G.L. c. 59, § 59, for applications sent by US Mail, the date of the postmark is deemed the date it was delivered**
- **Common law demurrer system applies**
 - **ATB is required to presume the allegations stated in a complaint are true when ruling on a motion to dismiss**
 - **The town did not submit evidence of nonreceipt to rebut the presumption**
- **ATB decision reversed and remanded: taxpayers sufficiently stated a claim**

Sunshine Village, Inc. v. Board of Assessors of Agawam

ATB Findings of Fact and Report (January 30, 2023)

- **Town denied taxpayer application to abate taxes as untimely paid and the taxpayer appealed to the ATB - ATB dismissed appeal for lack of jurisdiction:**
 - **Tax > \$5000, tax shall not be abated unless the full amount of said tax due...is paid without incurring any interest charges...G.L. c. 59, § 64**
 - **Omission to send notice shall not affect the validity either of the tax or its collection per G.L. c. 60, § 3**
 - **Date of determination as to ownership shall be July 1 per G.L. c. 59, § 5**
 - **ATB proceedings are defined by statute**

Recent Cases

Other

Reagan v. Commissioner of Revenue

491 Mass. 446 (March 10, 2023)

- **Commissioner issued notice of assessment and ATB upheld assessment**
- **At issue: whether the capital gain from the sale of an urban redevelopment project undertaken pursuant to G.L. c. 121A, § 18C was exempt from taxation?**
- **SJC reversed ATB decision**
- **121A Partnerships' capital gains from sale of their projects exempt under G.L. c. 121A, § 18C(f); Entitled to exemption for any taxes causally connected to project**
 - **Where project sale is within 40 yr. statutory exemption period**

Outfront Media LLC v. Board of Assessors of the City of Boston

**ATB Findings of Fact and Report
(September 15, 2022)**

- **City refused to abate real property tax on certain outdoor advertising structures (signs) owned by the MBTA and assessed to taxpayer**
- **At issue: whether the Taxpayer uses the signs in connection with a business conducted for profit within the meaning of the MBTA Exemption Statute?**
- **City's Motion for Partial Summary Judgment was granted and the signs should be valued, classified, assessed and taxed to the taxpayer in the same manner and extent as if it were the owner thereof in full G.L. c. 161A, §24**