

Something for Nothing? Eminent Domain and Just Compensation

James Crowley, Esq., Bureau of Municipal Finance Law

Recently, the Appeals Court rendered an eminent domain decision entitled North Adams Apartments Limited Partnership v. City of North Adams, 78 Mass. App. Ct. 602 (2011).

In this case, a limited partnership owned two parcels in North Adams. It planned to build an apartment complex on one parcel, and to construct a subdivision consisting of single family houses on the other parcel. The limited partnership, however, had no access to the city's sewer system since the nearest sewer line ended about 1,800 feet south of the partnership's property. A private septic system was apparently ruled out due to cost. Then, in 1991, the partnership obtained an easement from the city to construct a sewer system under a road that would link the partnership's development to the city's sewer system. In 1992, the partnership built a pumping station and a sewer line extension at a cost of \$137,000. Shortly thereafter, an apartment complex was built and the residential subdivision was being prepared for construction.

In December 2005, the North Adams City Council voted to take the easement and sewer system by eminent domain. A study commissioned by the city had determined that it would cost the city about \$200,000 to build a sewer system parallel to the partnership's sewer system. For this reason, the city opted to take the partnership's sewer system by eminent domain. The partnership, however, was entitled to just compensation and the order of taking included a pro tanto award of \$10,000. Dissatisfied by the amount, the partnership filed a petition in 2007 in Superior Court seeking additional compensation for the taking.

At a jury waived trial in 2009 the sole issue for the judge was the value of the sewer system. Expert witnesses on both sides offered testimony. Plaintiff's expert testified that the sewer system was a special use property which means it seldom trades on the open market and is therefore not suited to valuation by the comparable sales method. Instead, plaintiff's expert relied on the depreciated

reproduction cost method which is defined as the current cost of reproducing the sewer system less depreciation from deterioration and obsolescence. Under this method, plaintiff's expert valued the property at \$271,000. In a secondary approach, plaintiff's expert used the income capitalization method. On the theory that the neighboring property owners would abandon their failing septic systems and would be willing to tie into the municipal sewer system at a cost of \$20,000 per property, the plaintiff's expert calculated that the discounted net income from tie-ins over the next five years would be \$235,000.

Not surprisingly, the city's expert disagreed with the plaintiff's expert. In his experience, the city's expert found that developers are very willing to build a connecting sewer system and then deed it to the municipality in order to avoid maintenance and upkeep of the system. For this reason, it was his opinion that the highest and best use of the sewer system would be to deed it to the City of North Adams for no consideration.

After hearing all the evidence, the trial judge ruled that the fair market value of the sewer system was zero. Since it was standard practice for developers to convey developer-built sewers to a municipality for nominal consideration, the judge ruled that the sewer system was really a liability with no value. The judge rejected plaintiff's depreciated reproduction cost methodology since the \$271,000 amount derived, by common sense, did not reflect the fair market value of the sewer system. The judge also rejected the plaintiff's income capitalization method with its \$235,000 value since no neighboring parcel had tied into the system over the 14 year period prior to the December 2005 eminent domain taking. In the judge's view, the \$20,000 tie-in figure was also unrealistic and exorbitant.

The plaintiff then appealed to the Appeals Court. Plaintiff argued that the trial court judge erred as a matter of law in awarding nothing for the taking. In its decision, the Appeals Court stated that a property owner is entitled to just compensation for what the owner has lost. Just compensation is never what the municipality has gained. For this reason, the Appeals Court did not take into consideration that the city saved \$200,000 by taking plaintiff's sewer system instead of building a parallel system. The Appeals Court held that damages are measured by the fair market value of the property at the time of the taking. For this reason, the Appeals Court had to determine whether the plaintiff suffered any monetary loss when the city took the property by eminent domain. The Appeals Court was also aware from prior court decisions that not all takings result in an obligation to pay compensation.

The Appeals Court agreed with the trial judge that the property owner suffered no monetary loss from the eminent domain taking. The plaintiff built the sewer system to permit construction of apartments and offset the sewer construction costs with rental income from the apartments. After the eminent domain taking, the plaintiff's property continued to be tied into the sewer system but the plaintiff was no longer responsible for the upkeep of the system. In addition, the plaintiff in the future could derive income from the sale of lots in the subdivision which now had municipal sewer.

Consequently, the Appeals Court in agreement with the trial court held that the plaintiff suffered no monetary loss and was not entitled to compensation. Further appellate review was denied by the Supreme Judicial Court.

New Regional School Districts Approved

City and Town Editorial Staff

For the first time in over ten years, several new regional school districts have been approved by the Department of Education. The new regions are listed below with their effective dates.

FY12: These regional districts are fully operational.

Ayer-Shirley (PreK-12)
Somerset-Berkley (9-12)
Freetown-Lakeville (PreK-12 – Region was 5-12)

FY13: These regional districts are operating under an approved transition period in FY12. During the transition planning period, the local school committees continue to oversee and operate the schools in their respective towns. The regional school committee has non-operating status during this period but has the power to hire staff, enter into contracts, and take such other actions as are needed to prepare for an orderly transition. In FY13 the transition planning period ends and the responsibility for the oversight and operation of the schools transfers to the regional school committee.

Monomoy (Chatham-Harwich) (PreK-12)
Southwick-Tolland-Granville (PreK-12 – Region was expanded to include the town of Granville)

Regional school districts have been a frequent topic of discussion at this month's Municipal Affairs Coordinating Cabinet chaired by Lieutenant Governor Timothy Murray. Over the month of October, meetings have been held to discuss the state's efforts to encourage regionalization and highlight best practices in regions across the Commonwealth and promote the regionalization of local services, including but not limited to: public safety, public health, education, housing and economic development, and green communities. The series also provides immediate feedback from municipal managers and local planners leading up to the release of guidelines and applications for funding from the state's new regionalization and efficiency incentive grant program. The series has included Cabinet meetings in Haverhill, New Bedford and Walpole. A meeting will be held today in Barre. The final meeting is scheduled for Friday, October 28th at 1:30 p.m. in the Council Chambers at Holyoke City Hall at 536 Dwight Street.

For information on school regionalization, please contact Director of School Governance Christine Lynch at the Department of Education at CLynch@doe.mass.edu or 781-338-6520. To learn more about the Municipal Affairs Coordinating Cabinet visit www.mass.gov/governor/municabinet.

You Spoke, We Listened: City and Town Changes in the Works

Thank you to the more than 300 readers who took the time to respond to last month's *City and Town* survey. The goal of the survey was to hear directly from our readers about your preference for frequency of publication, method and date of delivery. We received all that and more. We appreciate that you took the time to help us make a better *City and Town* for you and we thank you.

As a result, I'm pleased to announce that we've reviewed your responses and will be implementing some changes. First and foremost, *City and Town* will transition from a weekly to a twice-monthly publication. We believe this new schedule will allow us to continue to provide up-to-date information while reducing the number of redundant articles and posts. Further, this new timetable will allow us to develop more in-depth features and analysis. Our survey showed that original content developed by the Department, specifically the Division of Local Services, is overwhelmingly the reason you read *City and Town*. Moving forward, we'll do our best to focus our energies on that while still providing the other "bread and butter" features you utilize such as the Municipal Calendar. In addition, while the e-newsletter format will remain, we'll be looking for new and innovative ways to add more color and supporting graphics to our publication. As we incorporate more of your suggestions, we'll keep you posted.

Once again, thank you for helping us improve *City and Town*. I'd also like to thank our new editor, Dan Bertrand, and the entire *City and Town* editorial board for their hard work both on this survey and in general. As always, if you have any suggestions or comments, please feel free to email us at cityandtown@dor.state.ma.us.

Robert G. Nunes
Deputy Commissioner & Director of Municipal Affairs

Department of Revenue Welcomes New Commissioner Amy Pitter

Amy Pitter was appointed as the Commissioner of Revenue for the Commonwealth of Massachusetts on September 19, 2011, and began her duties on October 3. She is responsible for overseeing about 2,000 DOR employees in offices across the state in Tax Administration, Child Support Enforcement and the Division of Local Services.

Ms. Pitter holds a degree in law from the New England School of Law, a master's degree in accounting from Northeastern University, and an undergraduate degree from Connecticut College. She has extensive experience in both the public and private sectors. She worked at DOR from 1991 to 2000, serving as Deputy Commissioner of Taxpayer Services and later as Deputy Commissioner of Child Support Enforcement.

For the past 11 years she has worked for CGI, an independent information technology and business process services firm, consulting with agencies such as the Internal Revenue Service to conduct strategic planning initiatives and program design and clients such as the Australian Tax Office and Child Support Agency to develop new systems and reengineer business processes.

Ms. Pitter's background in technology and business processes will be an asset as DOR embarks on the implementation of two new core processing systems for tax administration and child support over the next few years.

DLS Announces FY2011 CPA State Match

Municipal Data Management and Technical Assistance Bureau

The Division of Local Services is pleased to announce that it will be distributing FY2011 matching funds from the state Community Preservation Act trust fund to the 143 participating communities late next week. The first round match will be 26.64 percent of the total FY2011 local surcharge collections of \$84,844,480. The first round match is based on a total state CPA trust fund balance of \$28,252,235, with 80 percent or \$22,601,788 used for the first round match. Dividing this \$22,601,788 by the \$84,844,480 in local surcharge collections yields the first round match percentage of 26.64 percent. Communities that adopted the maximum three percent surcharge will receive additional funds in the second and third round distributions. A full spreadsheet detailing these calculations for individual communities is posted to our website [here](#).

October and November Municipal Calendar

October 1: Collector

Mail Semi-Annual Tax Bills - For communities using the regular semi-annual payment system, actual tax bills or optional preliminary bills should be mailed by this date.

October 1: Taxpayer

Semi-Annual Preliminary Tax Bill — Deadline for Paying Without Interest

According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the preliminary tax payment without interest in

communities using the annual preliminary tax billing system, unless the bills were mailed after August 1. If mailed after August 1, the payment is due November 1, or 30 days after the bills were mailed, whichever is later.

October 1: Taxpayer

Deadline for Applying to Have Land Classified as Agricultural/Horticultural Land or Recreational Land, M.G.L. Ch. 61A and Ch. 61B. - According to M.G.L. Ch. 61A, Sections 6 and 8, and Ch. 61B, Sections 3 and 5, this is the deadline to apply to Assessors to have land valued, taxed and classified as agricultural/horticultural or recreational land in the next fiscal year, unless a revaluation program is being conducted for that fiscal year. Under M.G.L. Ch. 59, Section 38 and DOR guidelines, Assessors must review all property valuations and make adjustments to ensure current fair cash valuations every year. Because a revaluation program is being conducted every year, taxpayers who do not submit their applications by October 1 have until 30 days after the actual tax bills for the fiscal year are mailed to apply.

October 15: Superintendent

Submit School Foundation Enrollment Report to DESE

October 31: Accountant

Submit Schedule A for Prior Fiscal Year - This report is a statement of the revenues received, expenditures made and all other transactions related to the community's finances during the previous fiscal year. The Schedule A classifies revenues and expenditures into detailed categories that will provide information essential for an analysis of revenues and expenditures generated by various departments. This data, like other financial information reported to DOR, is entered into DOR's Municipal Data Bank; as such, the Department may provide time series, comparative and other types of analyses at the request of a city or town. This information is also sent to the US Census Bureau and eliminates a prior federal reporting requirement. Failure to file by October 31 may result in withholding major distributions of state aid until the Schedule A is accepted by BOA.

October 31: Selectmen

Begin Establishing Next Fiscal Year Budget Guidelines and Request Department Budgets

October 31: Assessors

Begin Work on Tax Rate Recapitulation Sheet (to set tax rate for annual preliminary tax bill communities) - A community that uses the annual preliminary tax bill system (on a quarterly or semiannual basis) should begin gathering tax recap information in order to have enough time for the tax rate to be set and tax bills mailed by December 31. See August's Complete Tax Rate Recapitulation Sheet.

NOVEMBER

November 1: Taxpayer

Semi-Annual Tax Bill — Deadline for First Payment - According to M.G.L. Ch. 59, Sec. 57, this is the deadline for receipt of the first half semi-annual tax bills or the optional preliminary tax bills without interest, unless bills were mailed after October 1, in which case they are due 30 days after mailing.

November 1: Taxpayer

Semi-Annual Tax Bills — Application Deadline for Property Tax Abatement
According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on the same date as the first actual tax installment for the year.

November 1: Taxpayer

Quarterly Tax Bills — Deadline for Paying 2nd Quarterly Tax Bill Without Interest

November 1: Treasurer

Deadline for Payment of First Half of County Tax

November 15: Treasurer

Submit First Quarter Reconciliation of Cash

November 15: DESE

Notify Communities/Districts of Any Prior Year School Spending Deficiencies - By this date, or within 30 days of a complete End of Year Report (see September 30), DESE notifies communities/districts in writing of any additional school spending requirements.

November 30: Selectmen/Mayor

Review Budgets Submitted by Department Heads. (This date will vary depending on dates of town meeting.)

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.

Dan Bertrand, Editor

Marilyn Browne, Editor Emeritus

Editorial Board: **Robert Nunes, Robert Bliss, Zack Blake, and Amy Handfield**

To obtain information or publications, contact the Division of Local Services via:

- website: www.mass.gov/dls
- e-mail: cityandtown@dor.state.ma.us
- telephone: 617-626-2377
- mail: PO Box 9569, Boston, MA 02114-9569

Follow DOR on Twitter at <http://twitter.com/dormedia> or the DOR Blog at <http://revenue.blog.state.ma.us/>