



*Massachusetts Municipal Lawyers Association*

# **MMLA MUNICIPAL MINUTE**

## **VOLUME I, ISSUE 16 – OCTOBER 5, 2022**

Greetings, and welcome to this issue of the MMLA Municipal Minute, our e-newsletter to you, our Massachusetts Municipal Lawyers Association (MMLA) membership. Make sure to click the hyperlinks below for more information about a particular topic or matter.

### **[2022-23 MMLA Membership Applications and Dues Reminder](#)**

If you have not already done so, please renew your MMLA membership for the membership year that began July 1, 2022 and ends June 30, 2023. **As a reminder, you must be current on your dues to use the ListServ and other membership benefits. Under MMLA Bylaws dues not paid by October 1 are delinquent.**

**All** applications **must** be made electronically this year. If you are part of a municipality, non-municipal government agency, law firm or other private organization with six (6) or more attorneys eligible for membership, an **Organizational Membership Application Spreadsheet** can be downloaded and submitted on behalf of you and all other eligible members and dues paid at one of three (3) flat rates. All other applications must be made using Survey Monkey. Please see the information found **[here](#)** for specific instructions for submitting applications and dues payments, including links to the spreadsheet and 2022-2023 dues schedule.

### **[2022 MMLA Awards](#)**

Each year, MMLA recognizes individuals for their contributions to municipal law. This year's **President's Award**, **Robert W. Ritchie Special Achievement Award** and a new **One to Watch Award** will be presented at an upcoming event. Members who wish to recommend individuals for these awards can do so by completing the brief nomination survey found at this **[link](#)**. The survey includes a description of each award. You can also find a **[list of past award recipients](#)** on the MMLA website. The survey is anonymous. Nominations can be submitted until the close of business on **Wednesday, October 12, 2022.**

## **Upcoming Programs and Events:**

- **REGISTER NOW** – The Annual Conference is Back! Join us for a day of learning, networking, and camaraderie, at the **Hogan Center on the Holy Cross campus, in Worcester**. Featured speakers include the lawyers who argued the Shurtleff case before SCOTUS, the Tracer Lane Solar case before the SJC, and experts on gun licensing and Cannabis. Hear the latest advice and tips to update your own clients on these issues that may impact their decision making. The conference runs from 9:00AM to 4:45PM on **Friday October 14, 2022**. We have also planned some post-conference social time at a Worcester location for beers, appetizers, Municipal Potpourri, and just plain hanging out with your colleagues. You can find further details about the agenda and presenters on the MMLA website [here](#).

Use [this](#) link to **REGISTER NOW**. Cost **\$135** for current MMLA members; **\$150** for non-members. Includes programs, materials, breakfast, lunch, and appetizers. Cash bar.

Thanks to the generous donations of our membership, grants are available to attorneys (whether they are members of MMLA or not) who are **new to the practice of municipal law** and want to see what MMLA and our programming is all about. **If you or a colleague wish to inquire about financial assistance to attend this program through MMLA’s grant program, please contact Jim Lampke at [jlampke@massmunilaw.org](mailto:jlampke@massmunilaw.org) or 617-285-4561.**

- **Executive Board Meetings**: MMLA members are welcome to attend monthly Executive Board meetings, typically held on the second **Thursday** of each month. To attend an Executive Board meeting, please contact MMLA Executive Director/Secretary-Treasurer Jim Lampke ([jlampke@massmunilaw.org](mailto:jlampke@massmunilaw.org)).

## **Recent Decisions, Rulings, Cases, and Legislative Developments of Note:**

- [\*Boston Public Health Commission v. Commonwealth Employment Relations Board\*](#) (Appeals Court, October 4, 2022; Rule 23.0 Decision): “The Boston Public Health Commission (the Commission) appeals from a Commonwealth Employment Relations Board (CERB or board) decision affirming the dismissal of its prohibited practice charge against the American Federation of State, County, and Municipal Employees, Council 93 (Union). On appeal, the Commission claims CERB erroneously ruled that the Union did not act in bad faith when it filed a prohibited practice charge against the Commission. According to the Commission, the Union's charge was knowingly baseless and amounted to a repudiation of a collectively bargained agreement. We affirm.”
- [\*Zebrowski v. Mobile Home Rent Control Board of Springfield\*](#) (Appeals Court, September 28, 2022; Rule 23.0 Decision): “Hayastan Industries, Inc. (Hayastan), the owner of a manufactured housing community in Springfield known as Bircham Bend Mobile Home Park (park), appeals from a judgment of the Housing Court vacating the 2017 rate setting decision of the Springfield Mobile Home Rent Control Board (board) and entering

judgment, as a matter of law, in favor of the plaintiffs. For the reasons that follow, we affirm the judgment in part, vacate it in part, and remand the case for further proceedings.”

- [\*Boston Clear Water Co., LLC v. Zoning Board of Appeals of Lynnfield\*](#) (Appeals Court, September 27, 2022; Rule 23.0 Decision): In this unpublished disposition, the Appeals Court upheld a grant of summary judgment to the Lynnfield Board of Appeals (“Board”) regarding its interpretation of the zoning by-law definition of “public water supply” to mean a water supply operated by a public sector entity. This interpretation meant that the plaintiff was not a “Community and Exempt Use” under the zoning by-law, and was thus prohibited from using a spring located in a residential zoning district for a commercial water facility. The Court’s decision discussed application of the Home Rule Amendment and the authority granted to municipalities to adopt ordinances and by-laws as long as they are not inconsistent with the Constitution or state law. The plaintiff asserted that the Board’s interpretation was preempted by the DEP’s definition of “Public Water System.” Distinguishing the purpose of zoning by-laws as regulating the use of land, from the purpose for the DEP’s regulations to “promote the public health and general welfare by preventing the pollution and securing the sanitary protection of all such waters used as sources of water supply and ensuring that public water systems,” the Court stated that the DEP regulation was not frustrated by the Board’s interpretation and therefore, there was no inference that the legislature intended to preempt local action on the same subject. The Court also affirmed that the Board’s interpretation of “public water supply” was neither legally untenable nor unreasonable, arbitrary or capricious.
- [\*Pompi v. Board of Assessors of Adams\*](#) (Appeals Court, September 27, 2022; Rule 23.0 Decision): “The taxpayers, Christopher A. Pompi and Jill A. Pompi (collectively, Pompis), appeal from a decision of the Appellate Tax Board (ATB), which affirmed a decision of the board of assessors of Adams (assessors) denying their application for real estate tax abatements on residential property owned by them (property) for fiscal years 2019 and 2020. The Pompis argue that the assessors willfully overvalued the property, and the ATB improperly affirmed the assessors' decision. The Pompis request that we equitably value the property and award them damages for their overpayments of real estate taxes, as well as costs and attorney's fees. We affirm.”
- [\*Curtis v. City of Cambridge\*](#) (Appeals Court, September 27, 2022; Rule 23.0 Decision): “In the underlying action, a tenant of a privately-owned apartment building in Cambridge sought to compel the city of Cambridge to remove a motion-activated light in the hallway outside her apartment unit. Before us now is the tenant's pro se appeal from a Superior Court judge's order denying her "emergency" motion seeking that relief. See G. L. c. 231, § 118, second para. We affirm. For present purposes, it suffices to say that the tenant has not demonstrated that the city has any ownership interest in, or control of, the building to render it a proper defendant in this action. Having not shown any reasonable likelihood of success on the merits, the tenant cannot demonstrate that the judge abused his discretion in denying the injunction.”

- [\*PelleVerde Capital, LLC v. Board of Assessors of West Springfield\*](#) (SJC, September 21, 2022): “In fiscal years 2015, 2016, and 2017 (tax years), PelleVerde Capital, LLC (PelleVerde) owned a solar photovoltaic facility (solar power facility) whose output went only to municipal properties used for public purposes in the town of West Bridgewater. During these tax years,<sup>2</sup> the Legislature exempted from taxation ‘[a]ny solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter’ (emphasis added). G. L. c. 59, § 5, Forty-fifth, as amended by St. 1978, c. 388 (solar exemption). PelleVerde sought personal property tax abatements for each of the three tax years, all of which were denied by the board of assessors of West Bridgewater (assessors). PelleVerde then appealed to the Appellate Tax Board (board), arguing that it was entitled to the solar exemption. The board affirmed the decisions of the assessors, concluding that the municipal properties supplied by PelleVerde’s solar facility were not subject to taxation under G. L. c. 59 and, therefore, PelleVerde was not entitled to the solar exemption. Although we acknowledge that the statutory scheme produced a counterintuitive disincentive for solar power facilities to provide their output to municipal properties, we nonetheless affirm the board’s decision. The Supreme Judicial Court has repeatedly held that municipal property used for a public purpose is exempt from taxation under c. 59; therefore, PelleVerde did not supply its output to ‘property taxable under [c. 59],’ as required to obtain the solar exemption.”

*Do you have any decisions that you would like to share with the MMLA membership and/or have posted on the MMLA website, such as recent federal or state court or administrative decisions? Note that the MMLA is looking to create a database of notable Supervisor of Public Records decisions, which are presently unavailable through a publicly available online search platform – we welcome your submissions. Please send an email containing any recent decisions that you would like to spotlight, to [massmadmin@massmunilaw.org](mailto:massmadmin@massmunilaw.org).*

### **Member Contributions:**

**Thank you** to MMLA Member Greg McGregor, who has generously provided articles for the MMLA membership, which will be featured in upcoming issues of the Municipal Minute. Here are some recent articles:

- [\*SJC Nixes Boston Waterfront Harbor Plan and with it the Harbor Tower Garage and the Municipal Harbor Plan Approval Process: Stay Tuned for Revamped MassDEP MHP Regulations\*](#)
- [\*First Circuit Rules Federal Clean Water Act Citizen Plaintiffs Are Not Completely Trumped by Past or Pending EPA or State Agency Administrative Enforcement Against the Violator\*](#)

Stay tuned for future articles from Greg and his firm in upcoming issues of the Municipal Minute.

*Do you have any client alerts, articles, news, or other information that you would like to share with the MMLA membership? If so, please send an email to [massmadmin@massmunilaw.org](mailto:massmadmin@massmunilaw.org).*

### **Employment Opportunities:**

The MMLA recently posted the following opportunities on its website:

- [City of Cambridge, Affordable Housing Outside Counsel Services](#)

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*This newsletter is sent as a service to our membership. If you would like to update your contact information or city/town affiliation, please visit the [MMLA website](#).*

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