



Massachusetts Municipal Lawyers Association

MMLA MUNICIPAL MINUTE

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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.

HAPPY THANKSGIVING!

MMLA Award Winners and Committees:

- **MMLA Awards:** The MMLA's Executive Board voted on the award recipients (a formal presentation will take place at an upcoming MMLA event). Please extend your congratulations to the following winners:
 - Presidents Award: Patty Correa, John Giorgio, Ray Miyares and Frank Wright
 - Robert W. Ritchie Award: Robert Arcangeli (City of Boston) and Deanna Fitzgerald (Ropes & Gray)
 - One to Watch: Ken Woodland (DOR/DLS)
- **MMLA Committees:** Appointments have been made, and MMLA's Committees are as follows:

STANDING COMMITTEES

Amicus

James Timmins (Chair)

David Shapiro (EB)

Bryan Bertram

Rose Crowley

Ian Keefe

Ginny Kremer

Paul Kominars

Maura O'Keefe
Matthew Thomas

Legislative

Jillian Jagling (Chair)
Susan Murphy (EB)
Brian O'Donnell (EB)
John Barrett
Andrew Bettinelli
Nicole Costanzo
Stephen Roche
Ken Woodland

Programming

Brian O'Donnell (EB/Chair)
Donna MacNichol (EB)
Susan Murphy (EB)
Kathleen Colleary
Lauren Goldberg
Barbara Saint Andre

Annual Meeting Planning

Karis North (Vice President/Chair)
Anatoly Darov
Greg McGregor
Brian Tobin
Rachel Young

Member Outreach/New Lawyers

Ivria Fried (EB/Chair)
Chris Brown (EB)
Devan Braun
Shamus Hyland
Melissa Murray
James Wellock
Ken Woodland

Finance

Kathleen Colleary (Chair)
Matthew G. Feher (President/EB)
Jim Lampke (Treasurer/EB)
Brandon Moss (Immediate Past President/EB)
Karis North (Vice President/EB)

Governance

Peter Mello (Past President/Chair)

Karis North (Vice President/EB)
Ellen C. Doucette (EB)
Christine Griffin (EB)
Shawn Williams (EB)
Angela Atchue

Past Presidents/Emeritus

Angela Atchue (Chair)
John Barrett
Kathleen Colleary
Ellen C. Doucette
John Finnegan
Robert Kerwin
Carol McGravey
Brandon Moss
Peter Mello
Brandon Moss
Ed Pikula
Chris Petrini
Bob Ritchie
Bill Solomon
Heather White

Nominating

TBD

AD HOC COMMITTEES

Website

Bob Ritchie (Chair)
Chris Brown (EB)
Joe Callanan
Kathleen Colleary
Jim Lampke
Brandon Moss

APA/MMLA Land Use

Bob Ritchie (Chair)
Sue Murphy (EB)
Ellen C. Doucette
John Goldrosen
Katie Laughman
Greg McGregor
Barbara Saint Andre
Brian Tobin

E-Newsletter

Brandon Moss (Immediate Past President/Chair)

Christine Griffin (EB)

Angela Atchue

Joe Callanan

John Clifford

Kathleen Colleary

Ellen C. Doucette

Jim Lampke

Upcoming Programs and Events:

- **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).

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

- [*Cotton Tree Service, Inc. v. Planning Board of Westhampton*](#) (Appeals Court, November 15, 2022; Rule 23.0 Decision): “These consolidated cases have a long and complicated history dating back to an application by Cotton Tree Service, Inc. (Cotton Tree) for a special permit to operate a sawmill in the town of Westhampton (town). In 2015, the town's planning board (board) denied the application and the parties have been involved in litigation ever since. Cotton Tree appealed the denial and the board settled that case, entering into an agreement for judgment that would grant the special permit under certain conditions. Cotton Tree returned to the Superior Court seeking to enforce the agreement for judgment. The court entered a final judgment according to the agreement and issued the special permit. Timothy Fondakowski, a party in interest, intervened, opposing the special permit and seeking to appeal the judgment. Fondakowski also filed a separate action against the board, Cotton Tree, Dodge Maple Grove Farm, LLC, and the Hampshire Superior Court. After a trial of the consolidated matters, the judge concluded that Fondakowski failed to demonstrate that he was "aggrieved" pursuant to G. L. c. 40A, § 17, and thus lacked standing to challenge the special permit. The judge also concluded that there was no constructive approval of the special permit by the board. Both parties now appeal The judge placed appropriate weight on the testimony presented by Cotton Tree, ultimately finding that it rebutted any of the concerns raised by Fondakowski. Fondakowski then failed to present any evidence other than speculative concerns. Thus, the judge's finding that Fondakowski lacked standing is not clearly erroneous Given these findings, this case does not provide the appropriate circumstances for the application of our warning in Kenrick. Cotton Tree's constructive approval notice was filed after the board's final continuance, one which we have already concluded was reasonable under the circumstances. Although the process was lengthy and flawed, the judge did not err in concluding that the continuance at issue was

reasonable and appropriate, the board's decision was timely filed, and thus, no constructive approval occurred.”

- [*Amaral v. City of Fall River*](#) (Appeals Court, November 8, 2022; Rule 23.0 Decision): “The complaint in this matter alleges that plaintiff Amaral suffered serious personal injury following a collision between her motor vehicle and an ambulance, owned by the City of Fall River (city), operated by Cynthia Rodriguez within the course and scope of her employment. The case was dismissed by a judge of the Superior Court who allowed the defendant city's motion for judgment on the pleadings on the grounds that Amaral failed to comply with the pre-suit presentment requirement of the Massachusetts Tort Claims Act, G. L. c. 258, §§ 1. Under the first paragraph of G. L. c. 258, § 4, prior to suing a public employer presentment of the claim must be made in writing ‘to the executive officer of such public employer within two years after the date upon which the cause of action arose.’ The Legislature, however, in 1988 amended the statute to add a paragraph providing that, ‘Notwithstanding the provisions of the preceding paragraph,’ under which presentment must be made to the mayor, “in the case of a city or town, presentment of a claim pursuant to this section shall be deemed sufficient if presented to any of the following: mayor, . . . corporation counsel, city solicitor.’ In this case, the presentment letter was sent within three months of the collision at issue by fax to ‘City of Fall River -- Law Department,’ which the city itself describes in its briefing before us and on its website as its ‘Office of Corporation Counsel.’ The salutation on the presentment letter was ‘Dear Sir/Ma'am.’ This letter was sent twenty-one months prior to the deadline for sending a presentment letter. Subsequent to its being sent, counsel for the plaintiff received correspondence from someone named Brooke Wilson, Glatfelter Claims Management Inc., indicating that she was ‘handling [the claim] on behalf of American Alternative Insurance Corporation, the automobile carrier for the City of Fall River.’ Ms. Wilson and counsel for Amaral engaged in lengthy settlement negotiations. Suit, however, ultimately was filed almost two years later, following which the city filed its motion to dismiss on the ground that the presentment letter was inadequate. The presentment was clearly timely, and, although the statute does not specify what content must be included in such a letter, the letter was certainly adequate to put the city on notice and to provide the city with “the opportunity to investigate and settle claims and to prevent future claims.’ We conclude, addressing what is fundamentally at issue here, that a letter addressed to the office of an official to whom presentment may be made, with the salutation ‘Dear Sir or Madam,’ is adequate to meet the presentment requirement in the statute. Although there is no case squarely stating this, it appears from the case law that letters addressed to the office of the relevant official have been used to meet the presentment requirement.”

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.

Other News and Reminders:

- The MMLA is recruiting members to help staff the MMLA’s booth at the upcoming Massachusetts Municipal Association Annual Meeting and Trade Show (January 20-21, 2023). This is a great opportunity to network with colleagues and municipal officials. If interested, please email MMLA President Matthew Feher (mfeher@k-plaw.com) with the day(s) and time(s) you are available.

- The MMLA has new employment opportunities posted on its website for:
 - [Massachusetts Water Resources Authority – Associate General Counsel – Labor and Employment](#)

 - [Massachusetts Water Resources Authority - Associate General Counsel – Litigation](#)

 - [City of Holyoke – City Solicitor’s Office and Board of Health – Outside Legal Counsel for “Problem Properties”](#) (Due November 30, 2022)

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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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