

WHAT HAPPENS WHEN THE TAX BILL DOES NOT MATCH THE TAX MAP

“Tax Maps”, also known as “Assessors Maps”, are “used to determine the location of the property, indicate the size and shape of each parcel, and show its relation to features that affect value.”¹ The Massachusetts Supreme Judicial Court has ruled that “there is no statutory definition of the lot or parcel of land that is the lawful unit for the creation of a tax.”² In fact, assessors have great discretion as to whether contiguous parcels owned by the same owner should be assessed together or separately.³ Regardless of how the parcel is assessed, the description of the assessed parcel must be substantially accurate in order to fairly identify the property being assessed.⁴

However, what is the result when contiguous parcels are merged for billing purposes only and still shown separately on the Tax Map? Since the tax collection process flows from the tax assessment process, an invalid assessment could result in an invalid taking. The following discussion sets forth some of the factors to be considered in determining whether the result is an invalid assessment.

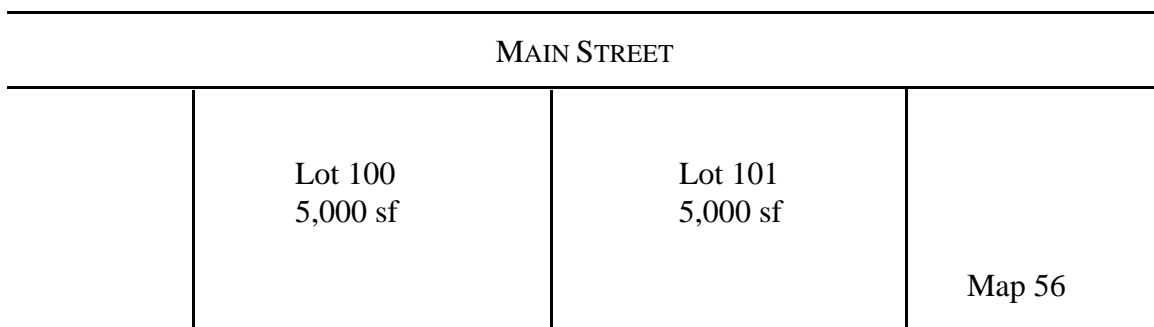
¹Commonwealth of Massachusetts, Department of Revenue Municipal Finance Glossary, December 2007 <<http://www.mass.gov>>.

² *City of Boston v. Boston Port Development Co.*, 308 Mass 72; 30 N.E.2d 896 (1941).

³See Letter of Kathleen Colleary, Chief of Bureau of Municipal Finance Law to Westford Board of Assessors dated May 18, 2006.

⁴*City of Boston v. Boston Port Development Co.*, 308 Mass 72; 30 N.E.2d 896 (1941).

The following example will help illustrate potential challenges which result when the description of the assessed parcel in the tax bill does not match the description of the assessed parcel on the tax map.



In the above example Lot 100 and Lot 101 are both owned by Joe Taxpayer. Although the tax map shows the parcels as separate but contiguous, Joe Taxpayer's FY07 tax bill describes the assessed parcel as "Map 56, Lot 100, Main Street, Anytown, MA - Area = 10,000 sf" and assessed a tax of \$3,000.00. Unfortunately Joe Taxpayer did not pay his FY07 Real Estate taxes and so on August 30, 2007, the Anytown Tax Collector recorded a taking at the Bristol County Registry of Deeds that described the parcel being taken as:

Map 56, Lot 100
62 Main Street, Anytown, MA

While the Anytown Assessors have great discretion in determining whether to assess Lot 100 & Lot 101 together or separately, they must be consistent. The Massachusetts Department of Revenue Assessment Administration Course Handbook for 2007 states that

tax maps “must accurately delineate every parcel and display its land area” and further states that tax maps must contain “accurate measures of market value, such as square footage, front footage and site.”⁵ Tax Map 56 clearly identifies the respective square footage of Lot 100 and Lot 101. However, the FY07 Tax Bill described the square footage of Lot 100 as 10,000 square feet. Further, no FY07 Tax Bill was issued for Lot 101 since the square footage of Lot 101 was included in the square footage of Lot 100 for billing purposes.

The August 30 Taking of Lot 100 by the Anytown Tax Collector could be attacked as an invalid taking since it did not accurately describe the parcel being taken. The Supreme Judicial Court has ruled that a tax must be assessed upon a parcel before a lien can attach to the parcel.⁶ Further, the right to sell land for nonpayment of taxes rests solely upon the existence of a valid lien, which is a creature of statute.⁷ In the foregoing example, there was never a tax assessed to Lot 101 and so a lien never attached to Lot 101. Additionally, the assessment on Lot 100 was based on 10,000 sf which was double the actual size of the lot. Such a assessment could be attacked as invalid since the square footage of the assessed parcel was clearly incorrect.

Chapter 60, Section 37 recognizes that not all errors or irregularities in the tax assessment and collection process will cause invalidation of a lien. However if the error or irregularity is “substantial” or “misleading” then the tax title or an item contained in the tax title account will most likely be invalidated. The central issue is really to what degree the error adversely affected the ability of the taxpayer to have notice of the assessment or subsequent taking.

⁵Assessment Administration: Law, Procedures and Valuation, Course Handbook 2007, p.2-6, Commonwealth of Massachusetts (Spring 2007).

⁶*Shruhan v. Revere*, 298 Mass 12 (1937)

⁷*Shruhan v. Revere* at 14.

The title that vests in the municipality is determined by the lien that was created pursuant to Chapter 60, Section 37 when the tax bill was issued. The Supreme Judicial Court has stated that the question of whether the method of assessment is reasonable is to be determined by the trier of fact on a case by case basis.⁸ This would normally occur during a hearing before the Land Court on a Petition to Foreclose the Tax Title. Unfortunately, the discrepancy between the description of a parcel on the tax map and the description in the tax bill may not have been identified until the title was examined by a Land Court Examiner during the foreclosure process. Therefore, if the original assessment is substantially incorrect or invalid, it is possible that a municipality could proceed halfway through a foreclosure of the tax title only to realize that it must begin the process all over. Since the ultimate success of the tax collection process is significantly affected by the validity of the underlying assessment, it is prudent to err on the side of caution..

As with any such matter, Treasurers & Collectors should discuss the issues raised by this paper with their Tax Title Attorney and Town Counsel or City Solicitor.

⁸*City of Boston v. Boston Port Development Co.* at 899.