

2017 Spring Congruous Cooperative County Conference

A Joint Meeting the Treasurer/Collector
and Assessors Associations of Plymouth
& Bristol Counties

April 12, 2017



During the past year there have been significant developments in the areas of:

- Public Records Law;
- Assessment & Collection of Taxes on property formerly owned by deceased individuals ;
- Phased Condominiums & Commercial Condominiums; and
- Solar Arrays;

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**“An Act To Improve Public Records”
was signed into law by Governor Baker
on June 3, 2016**

**Chapter 121 of the
Acts of 2016**

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An Act to Improve Public Records

- Amends the definition of “record” in C. 66, § 3 to expressly include electronic records,
 - e-mails.
- Requires municipalities and agencies to designate one or more employees as “Records Access Officers”.

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An Act to Improve Public Records

- Records Access Officers:
 - Coordinate the municipality's response to requests for access to public records;
 - Assist persons seeking public records to identify the records;
 - Assist the custodian of records in preserving records in accordance with law;
 - Prepare guidelines to enhance informed requests.

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An Act to Improve Public Records

- Municipality must post the name, title, and contact information of each Records Access Officer.
- Records Access Officer shall provide the public record by electronic means unless it is not available in electronic form.

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An Act to Improve Public Records

- Records Access Officer does not have to create a new public record to comply with a request, but may be required to segregate a record.
- Changes response time from 10 calendar days to 10 business days.

Just a Few Reminders...

- Applications for Abatements and Exemptions are not public records (c. 59, § 60), but the Taxpayer's Name, FY of tax, amount of total tax, date of the abatement or exemption granted, amount of the abatement or statutory authority for the exemption are public records (c. 59, § 60).
- Affidavits of Address are not public records (c. 59, § 57D).

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Just a Few Reminders...

- What about Tax Collection Records of the Collectors & Treasurers?

“As long as records of a tax delinquent do not disclose such private information as a person's income or his financial relationship with other private persons they only disclose whether an owner is meeting his public responsibilities.”

Attorney General v. Collector of Lynn
377 Mass. 151, 157 (1979)

Assessing Real Estate of Deceased Persons

- Chapter 59, § 12D provides in relevant part:

“the undivided real estate of a deceased person may be assessed to his heirs or devisees, without designating any of them by name, until the names of such heirs or devisees appear in the probate court records in the county in which said real estate lies...”

Assessing Real Estate of Deceased Persons

- As discussed last year in the “Don’t Drop the Baton” presentation, the Assessors run the first leg of the tax collection relay.
- Assessments to deceased persons or their estates are regularly questioned by the Land Court during Hearings for Findings or Decrees.
- It is an issue of Due Process.

Assessing Real Estate of Deceased Persons

- Chapter 59, § 12E provides in relevant part:

“the real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased, or the validity thereof, may be assessed in general terms to his estate...”

“An Act to Modernize Municipal Finance
And Government” was signed into law by
Governor Baker on August 9, 2016

Chapter 218 of the
Acts of 2016

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Municipal Modernization Act

- §§ 231 & 252 of the Act amended G.L. c. 217 by adding a new §16A that requires Registers of Probate to provide Assessors upon written request with copies of Petitions for Formal & Informal Probate for the Probate of a Will, Appointment of a Personal Representative or Adjudication of Intestacy.

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Municipal Modernization Act

- The new §16A also provides that Registers of Probate may provide Assessors with a list of said Petitions that includes:
 - the Name of Decedent;
 - the Decedent's Date of Death;
 - the Decedent's last address as set forth in the Petition;
 - the Docket Number & Filing Date of the Petition.

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Municipal Modernization Act

- The Registers of Probate throughout the Commonwealth have been meeting to formulate a process to comply with this new provision of the law.
- There is currently an opportunity for municipalities to advocate to insure that the process is timely, efficient and accurate.

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Recent Trends in Condo Development

- Appeals Court & Supreme Judicial Court rulings in *R. I. Seekonk Holdings, LLC v. Board of Assessors of Seekonk*, 15-P-1722, 2017 Mass. App. Unpub. LEXIS 119 (2017).
- Increased use of “exclusive common elements” to try and reduce real estate taxation.

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Recent Trends in Condo Development

R. I. Seekonk Holdings, LLC. v. Board of Assessors of Seekonk

- “unexercised development right could be converted into a present interest by initiating affirmative actions such as “build[ing] the additional buildings and facilities...”
- “where actual construction has taken place and [the developer] has taken full possession of the property...[the developer] had a present interest...”

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Recent Trends in Condo Development

R. I. Seekonk Holdings, LLC. v. Board of Assessors of Seekonk

- “the assessors were warranted in assessing the subject properties to [the developer]...”
- “the ‘partially constructed structures’ were in fact mostly completed at the time of the assessments and therefore a taxable present interest...”
- SJC denied Request for Further Appellate Review.

Recent Trends in Condo Development

So...what does this mean?

- Municipal Modernization Act amended G.L. c. 59, § 11 to remove requirement to obtain DOR permission to assess a present interest.
- Appeals Court was asked to provide a “bright line rule” but declined to do so.
- Therefore, it is up to the Assessors to decide whether the actions are such to convert the future development right to a present interest.

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Recent Trends in Condo Development

Some Suggestions Post R.I. Seekonk

- Treat the partially constructed or totally constructed structures the same way you would any other new construction;
- Save supporting documentation (building permit, municipal approvals, photos, CO, etc) in the file;
- Develop and use a Condominium Present Interest Assessment Checklist.

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Recent Trends in Condo Development

- Real Estate Developers are starting to use “exclusive use common elements” to better manage common costs and to attempt to reduce real estate taxation
- Let’s take a look at the definition of “exclusive use common elements” and a couple of recent examples of their use.

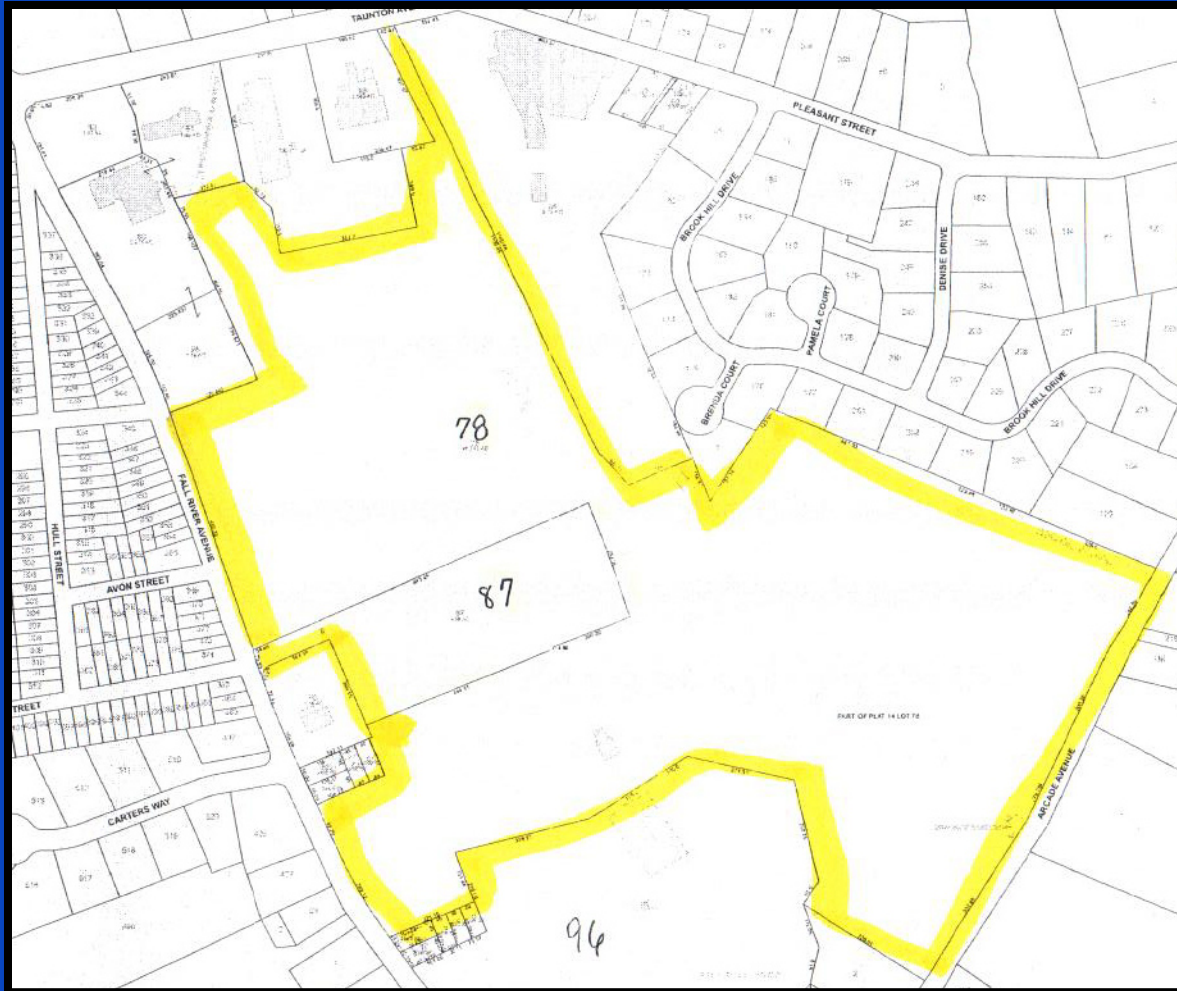
Recent Trends in Condo Development

- What is an Exclusive-Use Common Element?
 - It is that part of the Common Elements of the Condominium that has been designated for the exclusive use of a specified condo unit.
 - Examples include balconies, roof top decks, loading areas, parking spaces or signage areas, just to name a few.
 - They are set forth in the Master Deed.

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Recent Trends in Condo Development

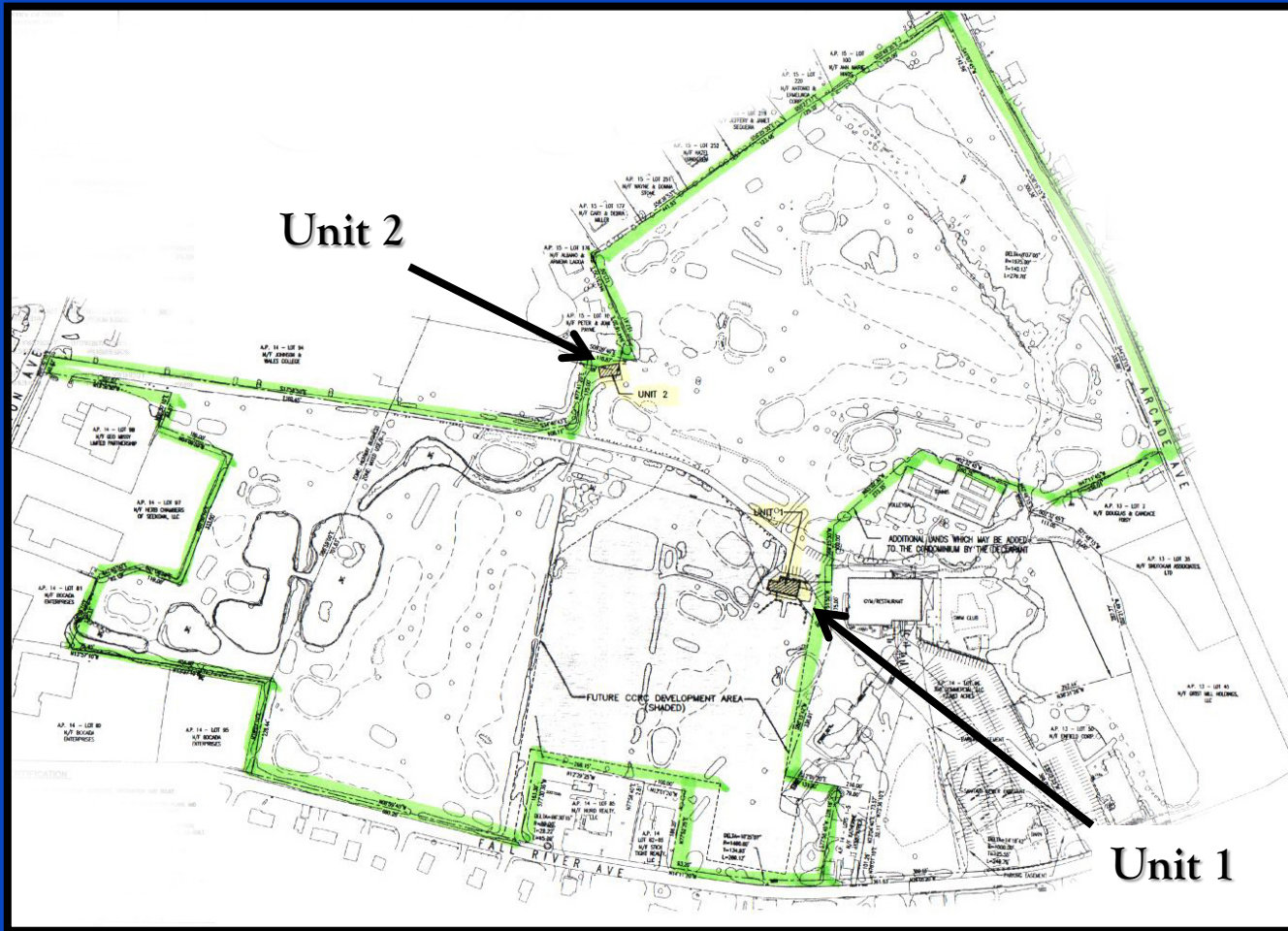


A golf course in a town in Bristol County consisted of Lots 78 & 87.

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Recent Trends in Condo Development



In December of 2014, it became a condominium and all the land became an Exclusive Use Common Element to Unit 1.

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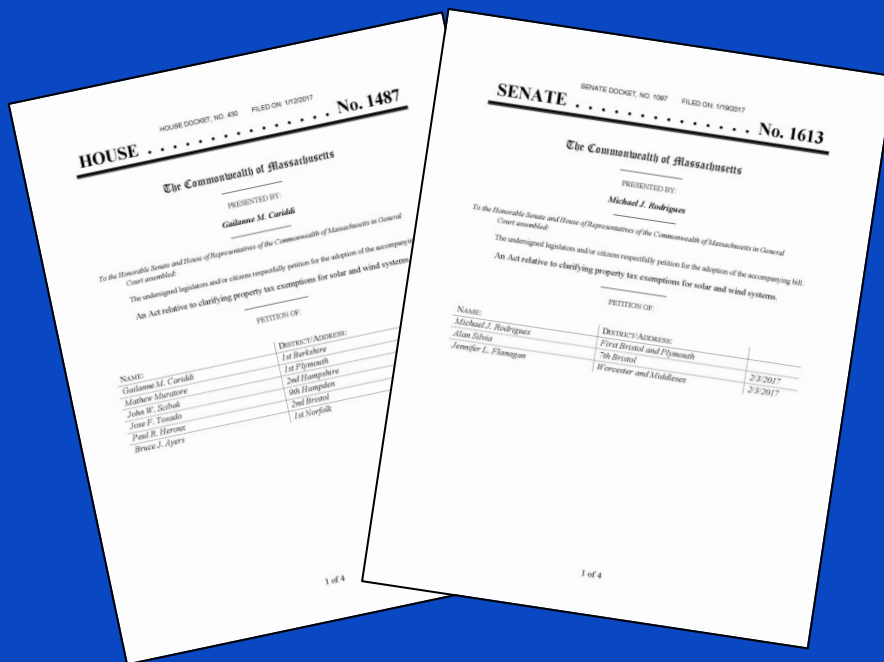
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Recent Trends in Condo Development

- Exclusive-Use Common Elements can also have implications on TIFs.
- If the TIF provides a 100% exemption on a newly constructed building, and the building is a commercial condominium unit, then the parking areas which are an Exclusive Use Common Element to that building will also be exempt unless the TIF provides otherwise.

Pending Solar Power Assessment Bills

H.1487 & S.1613 are identical bills



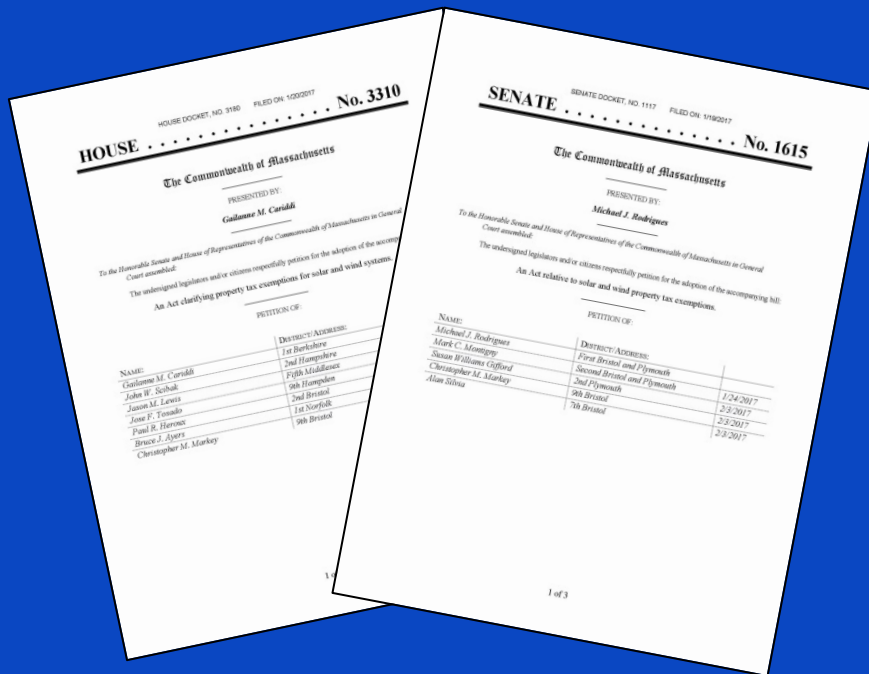
Basic Provisions

- $\leq 125\%$ of energy needs of property on which located, contiguous or non-contiguous same owner;
- Others exempt if PILOT;
- Commercial or Residential;
- PILOT signed by “officer authorized by legislative body.”

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Pending Solar Power Assessment Bills

H.3310 & S.1615 are identical bills



Basic Provisions

- $\leq 125\%$ of energy needs of residential property on which located;
- Others taxable unless PILOT;
- PILOT signed by Executive Officer as defined by G.L. c 4, § 7;
- No Legislative Approval.

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Thank You!

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