



Massachusetts Municipal Lawyers Association

MMLA MUNICIPAL MINUTE

VOLUME II, ISSUE 1 –JANUARY 18, 2023

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.

Upcoming Programs and Events:

- The MMLA is recruiting members to help staff the MMLA’s booth at the upcoming Massachusetts Municipal Association (MMA) Annual Meeting and Trade Show (**Friday, January 20 (10:30am-5pm) and Saturday, January 21 (9:30am-2pm)**). **In particular, there is a specific need for members to volunteer at the booth on Saturday, January 21.** 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. In addition, the MMLA welcomes any materials that you or your firm may have to distribute to attendees at the MMLA’s booth. Please email MMLA Executive Director/Secretary-Treasurer James Lampke with a copy of any materials that the MMLA can make available to MMA Trade Show attendees (james.lampke@lampkelaw.com).

- **Save the Date for Upcoming Programs:**
 - **Workshop: Hot Topics in Municipal Law (Massachusetts Municipal Association Annual Meeting), Friday, January 20, 2-3:15, Room 200, Hynes Convention Center.** This program will cover significant developments in municipal law and their impact on cities and towns, including in the areas of land use and municipal finance. The panelists are Donna Brewer (Partner, Miyares & Harrington), Kathleen Colleary (former Municipal Finance Law Bureau Chief, Division of Local Services, Massachusetts Department of Revenue), and Susan Murphy (Attorney, Dain Torpy). This program will be moderated by MMLA President Matthew Feher (Partner, KP | Law). Further details can be found on the MMA’s website at <https://www.mma.org/annual-meeting/>.

- **A two-part “Labor Basics” program** in February (virtual program) and April (in-person). Dates, registration information and further program details will be coming soon.
- **MCLE Municipal Law 2023 Annual Conference** – March 22, 2023 (registration information and further details coming soon on the MCLE website, <http://www.mcle.org>).
- For any MMLA members who are members of the Real Estate Bar Association (REBA), MMLA Member Gregor I. McGregor is presenting “Regulatory Takings Update: Where Are We After a Century of Supreme Court, Appeals Court and SJC Cases?” This webcast program will be held on Tuesday, January 24, 2023 (12-1:30pm). Attendance is free and open to all REBA members. To register, RSVP to Audrey Stewart (stewart@reba.net).
- **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 James Lampke with a copy of any materials (james.lampke@lampkelaw.com).

If you are speaking at any upcoming programs or events, please let us know (massadmin@massmunilaw.org) so we can include it in an upcoming Municipal Minute.

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

- [*City of Fitchburg v. Volk*](#) (Appeals Court, January 17, 2023; Rule 23.0 Decision): “This case arises out of an action filed by the city of Fitchburg (city) in June 2016 to enforce the sanitary code on a multifamily property owned by the defendant, Ruediger Volk. On October 25, 2016, a judge in the Worcester Division of the Housing Court Department appointed a receiver, Ted Construction, to enforce the sanitary code (2016 judgment). In 2018, an order entered allowing the receiver's motion to foreclose on its lien. Since its inception, this case has been fully litigated as the defendant has filed numerous appeals both while represented by counsel and while acting pro se. In this pro se appeal, the defendant purports to appeal from the 2016 judgment, and also appeals from an order entered on March 8, 2019, extending the time for the receiver to complete the work; an order entered on March 14, 2019, denying the defendant's motions to reconsider the certification of the accounting filed by the receiver; and an order entered on April 26, 2019, allowing the receiver's motions to deposit funds and for additional attorneys' fees. We affirm.”
- [*Gatehouse Media, LLC v. City of Worcester*](#) (Appeals Court, January 11, 2023; Rule 23.0 Decision): “In June of 2018, the plaintiff, Gatehouse Media, LLC (Gatehouse), which owns the Worcester Telegram and Gazette newspaper, filed two public records requests seeking documents from the city of Worcester (city) relating to alleged misconduct by its police officers. After the city claimed that the documents were protected from disclosure

by various exemptions to the Public Records Law, Gateway brought the current action. Following three years of litigation, including a four-day trial, the city eventually turned over the requested records (subject to limited redactions that Gatehouse does not contest). Accordingly, the case-in-chief has been resolved. What remains is a dispute over the amount of attorney's fees and costs to which Gatehouse is entitled. The judge who presided at trial and oversaw some of the pretrial proceedings awarded Gatehouse approximately \$98,000 out of the approximately \$214,000 that Gatehouse had requested. She arrived at that figure using a lodestar method that applied a "blended rate" of \$365 per hour. On appeal, Gatehouse accepts this blended rate, but challenges three aspects of what the judge did. First, Gatehouse argues that the judge erred in excluding from recovery all time spent in propounding a pretrial motion to expedite the case. Second, Gatehouse similarly argues that the judge erred in precluding from recovery all time spent in assembling the fees petition. Third, Gatehouse argues that the judge abused her discretion in applying an across-the-board fifty percent fee reduction to the remaining hours With these concerns in mind, we vacate so much of the judgment that (1) denied in its entirety Gatehouse's request for fees connected to the petition for fees, and (2) reduced the compensable time by fifty percent, and remand those matters for reconsideration. In all other respects, the judgment is affirmed."

- [*Marengi v. 6 Forest Road LLC*](#) (SJC, December 14, 2022): "In a recent amendment to G. L. c. 40A, § 17, enacted through legislation designed to promote economic growth and the construction of housing in the Commonwealth, the Legislature provided that "[t]he court, in its discretion, may require a plaintiff in an action under this section appealing a decision to approve a special permit, variance or site plan to post a surety or cash bond in an amount of not more than \$50,000 to secure the payment of costs" (bond provision). St. 2020, c. 358, § 25. At issue is whether the bond provision set out in G. L. c. 40A, § 17, applies to comprehensive permits issued under G. L. c. 40B, § 21, to promote low and moderate income housing. We conclude that it does, as such permits are reviewed pursuant to G. L. c. 40A, § 17, and necessarily include, as in this case, site plans, which are referenced explicitly in the provision. Also at issue are what costs are recoverable under the bond provision and the standard for awarding such costs. We conclude that the costs recoverable extend beyond "taxable costs" but do not include attorney's fees or delay damages, as they are not ordinarily considered "costs" and are not expressly referenced in the statute. As for the standard for awarding costs, it is defined, at least in part, by its purpose. As the bond provision exists "to secure the payment of costs," and costs ultimately cannot be awarded in the absence of bad faith or malice, the bond provision requires a preliminary determination regarding the "relative merits of the appeal." G. L. c. 40A, § 17, third par. Unless such preliminary determination demonstrates that the appeal appears so devoid of merit as to support an ultimate determination of bad faith or malice, no such bond should be imposed. Finally, on the limited record before us, we are unable to determine whether the Superior Court judge in this case, who did not have the benefit of this opinion explicating the statutory requirements, abused his discretion in ordering the plaintiffs to post a \$35,000 bond. We therefore vacate the order and remand for further proceedings consistent with this opinion."

Other Information:

- Discussion with DHCD Regarding Section 3A Compliance for MBTA Communities: For members who could not attend (or want to rewatch) yesterday's webinar, a copy of the program materials are available [here](#) (and also available under the Members Library on the MMLA website).
- Thank you to Attorney Gregor I. McGregor for sharing the following articles authored by his firm (McGregor Legere & Stevens PC):
 - [EPA Updates CERCLA Regulations to Include ASTM Phase I Standards for Due Diligence](#) by Luke H. Legere.
 - [Supreme Judicial Court Rules When and How to Require Plaintiffs to Post Bonds in Zoning and Comprehensive Permit Appeals](#) by Nathaniel Stevens.
- Congratulations to Ivria G. Fried, who has been elevated to the partnership at Miyares and Harrington effective January 1, 2023.

The Municipal Minute welcomes your submissions, such as client advisories/alerts, notable decisions, promotions, achievements, and other content. To submit, please send an email to massmadmin@massmunilaw.org.

* * *

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](#).

Please do not reply to this email as it is sent from an unmonitored email account.

The information provided in this newsletter does not, and is not intended to, constitute legal advice. All information, content, and materials available in this newsletter is for general informational purposes only. Information in this newsletter may not constitute the most up-to-date legal or other information.

This newsletter may contain links to various third-party websites, which are only for the convenience of the reader. The MMLA does not recommend or endorse the contents of any third-party party websites. The content of this newsletter is provided "as is" and no representations are made that the content is error-free. All liability with respect to actions taken or not taken based on the contents of this newsletter are hereby expressly disclaimed.

If necessary, readers of this newsletter should contact their attorney to obtain advice with respect to any particular legal matter. No reader of this newsletter should act or refrain from acting on the basis of information contained in or referenced by this

newsletter without first seeking legal advice from counsel. Access to this newsletter does not create an attorney-client relationship between the reader and the newsletter's authors, contributors, or contributing law firms and their respective employers.