



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 Sunshine Week!](#)

Upcoming Programs and Events:

- **20th Annual Municipal Law Conference 2022: TODAY! - Wednesday, March 16, 2022 (9am-5pm; Zoom).** Register on the [MCLE website](#) for the annual Municipal Law Conference covering the latest developments in municipal law. MMLA and MMA co-sponsor this annual program, which provides essential updates on recent developments from the Legislature, government regulators, and the courts on many areas of public sector law. This year's program will address new and evolving developments regarding the public records law, open meeting law, land use and zoning, environmental laws, public employment law, cybersecurity and data breaches, and 2nd Amendment, home rule and gun regulation. It will also feature a presentation on administrative law.
- **April Executive Board Meeting: Thursday, April 14, 2022 (12:30-2pm; Zoom).** MMLA members are welcome to attend monthly Executive Board meetings, held on the second **Thursday** of each month. To attend, please contact MMLA Executive Director/Secretary-Treasurer Jim Lampke (jlampke@massmunilaw.org).

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

- *Armstrong v. Theoharides* (Docket No. SJC-13210), argued March 7, 2022. Link to oral argument is available [here](#). This appeal is a consolidation of 2 challenges to the Downtown Water District Municipal Harbor Plan of the City of Boston. Before the Superior Court, the plaintiffs argued, and the Superior Court ruled, that sections of Waterways Regulations that allow substitution of generic standards by standards set forth in a duly approved Municipal Harbor Plan unlawfully cede the Department of

Environmental Protection's (DEP) exclusive authority over tidelands in a manner not specifically authorized by the General Court, and so DEP acting on its own does not have the power to relinquish said authority. Therefore, the Superior Court held that the delegation was invalid and ultra vires. The MMLA and Massachusetts Municipal Association (MMA) filed an amicus curiae brief, authored by the Amicus Committee and led on the brief by Matthew J. Thomas and Suzanne P. Egan. A copy of the MMLA/MMA's amicus curiae brief is available [here](#). The MMLA/MMA brief supported the Defendants' position that these municipal harbor plans are valid under Chapter 91. This appeal has the potential of impacting harbor management plans statewide if the plaintiffs' position is affirmed.

- *Tracer Lane II Realty, LLC v. City of Waltham* (Docket No. SJC-13195, argued March 7, 2022) – Link to oral argument is available [here](#). This case follows from a Land Court decision holding that enforcement of the Waltham Zoning Code, which resulted in denial of the use of residential property in Waltham as an access road to abutting commercial property in Lexington to build and maintain a solar energy facility, violated the protection for solar uses under Section 3, Paragraph 9, of the Zoning Act (M.G.L. c. 40A).
- [House Bill 4578](#) (H4578) – An Act making appropriations for fiscal year 2022 to provide for supplementing certain existing appropriations and for certain other activities and projects. The Massachusetts House passed H4578 on March 9, 2022. Of note, H4578 would extend beer, wine, and cocktails to-go in Massachusetts until April 1, 2023 (Sections 14 and 18). The measure was referred to the committee on Senate Ways and Means.
- [Smith v. Town of Bridgewater](#) (Rule 23.0 Decision, Massachusetts Appeals Court) – The Appeals Court affirmed the grant of summary judgment, holding that: (1) objections by the plaintiff, a former special police officer, did not qualify as protected conduct under the Massachusetts Whistleblower Act; and (2) the plaintiff could not show that his objections were causally related to his suspension or non-reappointment.
- [Khoshatefeh v. Board of Assessors of Newton](#) (Rule 23.0 Decision, Massachusetts Appeals Court) – The Appeals Court affirmed the decision of the board of assessors that denied an application for a water leak abatement on a water bill for rental property owned by the plaintiff.
- [Kelley v. City of Holyoke](#) (Rule 23.0 Decision, Massachusetts Appeals Court) – The Appeals Court affirmed dismissal of the plaintiff's complaint, which was based on disclosure of the plaintiff's confidential information to the press. The Appeals Court concluded that, whether the plaintiff's claim was articulated as negligent defamation or invasion of privacy, it was barred by the Section 10(c) immunity for intentional torts.
- [Board of Health of Saugus v. Department of Environmental Protection](#) (Rule 23.0 Decision, Massachusetts Appeals Court) – This appeal upheld DEP's decision to modify an operating permit for a landfill facility.

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.

Recent Additions to Members Library:

- A recording of the MMLA’s February 16, 2022 program involving the draft guidelines issued by the Department of Housing and Community Development (DHCD) for compliance under new Section 3A of the Massachusetts Zoning Act has been added to the members library. A link to the recording is [here](#).

Do you have any recent decisions, templates, forms, or other sample documents you would like to include in the MMLA Members Library? If so, please forward any materials or recent decisions by email to massmadmin@massmunilaw.org.

Other News and Reminders:

- A Special MMLA Executive Board Meeting was held on Friday, March 11, 2022 to discuss and vote on proposed changes to the MMLA Bylaws. The Bylaws Committee worked over the past 2 years to modernize the Bylaws to be consistent with best governance practices, to incorporate inclusive language and to reflect the MMLA’s existing practices; to clarify language that was confusing, cumbersome, or internally inconsistent; and to clean up the format to ensure conforming style in numbering, capitalization and punctuation. The revised MMLA Bylaws are scheduled for an upcoming final vote by the MMLA Executive Board and will be distributed to MMLA members in the near future.
- The Massachusetts Supreme Judicial Court (SJC) Standing Committee on Lawyer Well-Being focuses on ensuring that all Massachusetts lawyers achieve a healthy, positive, and productive balance of work, personal life, and health. The Standing Committee has released a voluntary, confidential Independent Survey of MA Attorney Wellbeing, which is available [here](#) and should take 10-15 minutes to complete. This survey should have also been separately emailed to you by the Standing Committee in early February. The survey will be closing in the next few weeks. For questions about the survey, please email MALawyerWellBeing@norc.org.
- In April, the SJC Standing Committee on Lawyer Well-Being is set to launch the second annual Statewide Legal Mentorship Program in April. The Standing Committee is seeking both mentors and mentees across the Commonwealth to participate. A flyer about this program is attached. The Standing Committee encourages attorneys to join the program as mentors and mentees (admission is rolling).

- The Department of Housing and Community Development (DHCD) issued draft guidelines for compliance under new Section 3A of the Massachusetts Zoning Act. These guidelines were recently submitted for public comment (comments due March 31, 2022) and address the requirement for as of right multi-family housing in at least one zoning district in so-called MBTA communities. The MMLA is working with the Massachusetts Municipal Association to draft comments on these guidelines. If you would like to participate in that process or have any comments on the guidelines that you would like included, please contact MMLA President Brandon Moss (brandonhmoss@gmail.com).
- The MMLA has new employment opportunities just posted on its website for:
 - Town of Weymouth, Town Solicitor ([Job Posting Notice](#) and [Job Description](#) - closes **today**)
 - [City of Cambridge, Assistant City Solicitor](#)

Do you have any news or other information that you would like to share with the MMLA membership? For example, do you have any recent achievements, MMLA members in the news, or promotions or career opportunities? If so, please send an email to massmadmin@massmunilaw.org.

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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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