

TOWN HALL 3 EAST MAIN ROAD PERU, MA 01235

SELECT BOARD MEETING MINUTES: September 16, 2024 @ 6:00 P.M.

Town Hall Meeting Room

Verne Leach, Chair Selectman/ACO

Ed Munch, Selectman

Sam Haupt, Selectman

Public Attendees: Jay Jewell, Nanette Moning

Item 1: Call to order: 6:00 P.M.

Item 2: Roll Call: Chair Leach present, Selectman Haupt present, Selectman Munch present

Item 3: State Recording status: Selectman Leach recording for personal reasons under exemption E

Item 4: Pledge of Allegiance to the Flag: Led by Selectman Leach

Item 5: Review and Approve BOS Meeting Minutes for 9/3/2024.

Item tabled.

Item 6: Update of Departments:

On behalf of the Board of Health (BOH) Nanette Mone reported that pursuant to the updated BOH regulations, the Board sent letters to property owners in Town giving finite periods of time to do various things. She also noted that information regarding the various upcoming vaccination clinics was posted on the Town website.

Ed Munch provided information from his recent attendance at the NBSWD meeting, recounting that the District plans to purchase new recycling bins and is presently negotiating to send recycling to Springfield, MA v. New York. He noted that if a load is rejected, the Town will be charged the full tipping rate for the bin. Accordingly, residents need to be more aware of what they are throwing in the bin, including items like plastic bags and other items which are not appropriate. The Board discussed improved signage and ways of better educating the public about separating their waste. Mr. Munch also explained that pizza boxes are no longer eligible for paper recycling. He explained that a new contract with Casella is being negotiated; hopefully which will be at level rates.

Police Chief Cullett submitted a written report in lieu of his attendance, the contents of which are incorporated by reference herein. The Board agreed to discuss the matter of compensation for police officers at the State primary held on 9/3/24 at a future meeting.

Item 7: Discussion and Possible Vote on the Designer Selection Procedures in Accordance with the Designer Selection Law, M.G.L. c.7C, Sec: 44-58

Jay Jewell presented on behalf of the Building Committee. The proposed Selection Procedures were drafted based on a Model provided by the Commonwealth. Mr. Leach moved to approve the "Designer Selection Procedures." Mr. Haupt seconded. Voted 3-0.

Item 8: Discussion on the New Tax Foreclosure Law:

Tax Collector Caryn Wendling informed the Board that the notification from KP Law was basically just a “heads up” at this time although there are a number of substantive changes that are outlined in the documents. Further guidance from Mass DOR and KP Law is needed before the Town considers any additional mandatory actions it needs to take to be in compliance.

Item 9: Update on the Community Center Moisture:

Mr. Haupt stated that Mass DPH had yet to forward the full report, but he has reached out to the department.

Item 10: Discussion and Possible Vote on the Town Hall Entrance:

The Board and Jay Jewell had a continuing conversation about options for the front entry given the objective of eliminating the causes of the water issues in the basement of the Town Hall. At the prior meeting on 9/3/24, the Board asked Mr. Jewell to provide a quote that included extending the front entry roof, a gutter system and proposed concrete work. After further discussion, Mr. Leach moved to approve the new quote of \$14,110.00, the funds to be sourced through the ARRA balance. Mr. Haupt seconded. Voted 3-0.

Item 11: Discussion and Possible Vote on Administrative Assistant Description: (Item misnumbered as Item 14)

The Board had a lengthy discussion mostly about how to compensate an individual for this position noting that interest from one individual had been received. The Board agreed to interview Brian Fogue at the next meeting but struggled to find consensus on a compensation structure. Previously, there was an agreement to pay \$100.00 per set of minutes; however, Mr. Haupt opined that it wasn't workable given the variation in the length of meetings, including very short meetings with limited discussion. Mr. Haupt and Mr. Leach favored a graduated rate, based on the number of hours worked. Given some limited research from surrounding towns, it was learned that towns are paying \$20-\$25 per hour for meeting minutes. It was anticipated that a typical Select Board meeting would involve an hour meeting with an hour for the minute taker to revise the minutes for presentation to the Board, thus generally equaling \$50.00 per meeting on average. This would then leave funds in the operating budget to potentially have the individual available to other Boards. Mr. Munch was concerned that the Board wasn't putting enough structure around the position. Mr. Haupt stated that both sides in this case would be learning how to go forward, and we could make a hire as a probationary period for 90 days to see how things progressed. He stressed that it was critical to get someone in the role and there needed to be appreciation for the skills needed to be a competent minute taker. The Board did reach consensus that the position name be changed to “Recording Secretary” as everybody had previously agreed that the other admin responsibilities had been stripped out of the position. After further discussion, Mr. Haupt moved to set the position of Recording Secretary to \$25.00 per hour with a cap of 4 hours for a probationary period of 90 days, while the Board continues to research other methods and or procedures utilized by other organizations. Mr. Leach seconded. Vote: Mr. Leach – Aye; Mr. Haupt – Aye; Mr. Munch – Abstain. Motion carried.

Item 12: Review and Approve Accounts Payable, Treasury Warrant and Payroll Warrant: (Misnumbered as Item 15)

As noted above the Board agreed to discuss the State Primary salary request for the PD at a future meeting.

Item 13: Public Input: (Misnumbered as Item 16)

None

Item 14: Adjourn: (Misnumbered as item 17)

Mr. Leach moved to adjourn the meeting; Mr. Munch seconded; Voted 3-0. The 9/16/2024 BOS Meeting adjourned at 7:45 P.M.

Articles used:

Bruce Cullett update dated 9/12/2024
Model Designer Selection Procedures for Municipalities
Town of Peru Draft Designer Selection Procedures
KP Law update and email re: Changes in Tax Foreclosure Procedures
Jay Jewell Quote
Administrative Assistant Posting

Respectfully submitted:

Sam Haupt

Verne Leach, Chairperson

Sam Haupt, Selectman

Ed Munch, Selectman

Date Approved:

10-15-24

Received October 15, 2024
Kim Leach , Town Clerk



Model Designer Selection Procedures for Municipalities and Other Local Public Agencies

The designer selection law requires municipalities and other local public agencies to adopt written designer selection procedures.

The designer selection law, [M.G.L. c. 7C, §§ 44-](#)

[58 \(https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter7c/Section44\)](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter7c/Section44) (formerly M.G.L. c. 7, §§ 38A½-O) ("Designer Selection Law"), requires municipalities and other local public agencies to adopt written designer selection procedures, which must be used when contracting for design services for any building construction, reconstruction, alteration, remodeling or repair project that has an estimated design fee of \$30,000 or more and an estimated construction cost of \$300,000 or more. Design services include the preparation of master plans, feasibility and other studies, surveys, soil tests, cost estimates and programs; preparation of drawings, plans, and specifications, including schematic drawings and preliminary plans and specifications; supervision or administration of a construction contract; and construction management and scheduling. [M.G.L. c. 7C, § 44]. These procedures must comply with the "purposes and intent" of the Designer Selection Law and must include certain required provisions. [M.G.L. c. 7C, § 54(a)]

The Office of the Inspector General has drafted these model procedures to assist municipalities and local public agencies in developing their own designer selection procedures. These procedures closely track the statutory language in the Designer Selection Law and incorporate appellate court opinions.¹ The Office of the Inspector General recommends that municipalities and local public agencies also consult the Office's manual [Designing and Constructing Public Facilities \(/doc/designing-and-constructing-public-facilities-0/download\)](#), for further guidance on how to implement these procedures.

Model Procedures

_____ ("Awarding Authority")

Designer Selection Procedures

(Adopted [date])

1. These procedures govern the selection of designers for any municipality or local public agency building project subject to the state designer selection law, M.G.L. c. 7C, §§ 44-58. Any other local law governing the procurement of services will be inapplicable to these procurements.
2. The [name of authorized governmental unit, e.g. Board of Selectmen, City Council] ("Approving Body") has the authority to conduct the designer selection process for the Awarding Authority. The Approving Body may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Approving Body shall designate the individual or group of individuals (hereinafter referred to as "the Committee") who will conduct the designer selection process. No member of the Committee shall participate in the selection of a designer for any project if the member, or any of the member's immediate family:
 - a. has a direct or indirect financial interest in the award of the design contract to any applicant;
 - b. is currently employed by, or is a consultant to or under contract to, any applicant;
 - c. is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
 - d. has an ownership interest in, or is an officer or director of, any applicant.
4. A Request for Qualifications (RFQ) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in the locality of the building project, in the *Central Register* published by the Secretary of the Commonwealth, and in any other place required by the Approving Body, at least two weeks before the deadline for filing applications.
5. The advertisement shall contain the following information:
 - a. a description of the project, including the specific designer services sought, the time period within which the project is to be completed, and, if available, the estimated construction cost;
 - b. if there is a program for the building project, a statement of when and where the program will be available for inspection by applicants;
 - c. when and where a briefing session (if any) will be held;
 - d. the qualifications required of applicants;
 - e. the categories of designers' consultants, if any, for which applicants must list names of consultants they may use;
 - f. whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be listed in the advertisement;
 - g. when and where the RFQ can be obtained and the applications must be delivered.
6. The RFQ shall include the current "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction," which is available for download from the Massachusetts Designer Selection Board website at [Procedures for Municipalities and Public Agencies not within DSB Jurisdiction](#). ([/procedures-for-municipalities-and-public-agencies](#))The Application Form may be amended to include additional information on a project-specific basis.
7. The Committee shall evaluate applicants based on the following criteria:
 - a. prior similar experience;

- b. past performance on public and private projects;
 - c. financial stability;
 - d. identity and qualifications of the consultants who will work with the applicants on the project; and
 - e. any other criteria that the Committee considers relevant to the project.
8. The Committee shall select at least three finalists. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so.
9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Approving Body.² No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, § 44C, shall be included as a finalist on the list.
The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation and recorded vote, if any, shall be public records and shall be maintained in the contract file.
10. If the fee was set prior to the selection process, the Approving Body shall select a designer from the list of finalists. If the Approving Body selects a designer other than the one ranked first by the Committee, the Approving Body shall file a written justification for the selection with the Committee and maintain a copy in the contract file.
11. If the fee is to be negotiated, the Approving Body shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Approving Body shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Approving Body is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Approving Body prior to selection of finalists.
12. If the Approving Body is unable to negotiate a satisfactory fee with any of the finalists, the Approving Body shall recommend that the Committee select additional finalists.
13. The Approving Authority may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Approving Authority may commission, at its discretion, an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility of the designer's work to insure its reasonableness and its adequacy before allowing the designer to continue on the project, *provided* the Approving Authority otherwise complies with the statutory requirements for selecting a designer under Chapter 7C of the General Laws, including those set forth in M.G.L. c. 7C, § 54(a)(i).
14. Every contract for design services shall include the following:
 - a. certification that the designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of the contract for design services;

- b. certification that no consultant to, or subcontractor for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;
- c. certification that no person, corporation, or other entity, other than a bona-fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and
- d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, § 39R(c), and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, § 39R(d).

All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

15. The Awarding Authority shall not enter into a contract for design services unless the Awarding Authority or the designer has obtained professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the Awarding Authority may require, for the applicable period of limitations. A designer required by the Awarding Authority to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the Awarding Authority prior to the award of the contract.
16. Every contract for design services shall include a provision that the designer or its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as reasonably determined by the individual responsible for administering the design contract.
17. In the event of an emergency that precludes the normal use of these designer selection procedures, the Approving Body may elect to authorize expedited procedures to address the emergency. The Approving Body shall document in writing the reasons for the emergency declaration; the proposed scope of work, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.

The Approving Body may select three finalists from any standing list of designers who have applied for projects of a similar nature, or may otherwise select three designers to be considered as finalists for the project. The Approving Body shall rank the finalists in order of qualification and select the designer for the emergency work.

18. The Awarding Authority shall publish the name of any designer awarded a contract in the *Central Register*.
19. The following records shall be kept by the Awarding Authority:
 - a. all information supplied by or obtained about each applicant;
 - b. all actions taken relating to the project; and
 - c. any other records related to designer selection.

All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

20. The Awarding Authority shall evaluate designers' performance on contracts using the Designer Selection Board evaluation form(s) in accordance with M.G.L. c. 7C, § 48(h), and file completed evaluations with the Board and any other agency named in M.G.L. c. 7C, § 48(h).
21. Nothing in these Procedures shall be interpreted to require the establishment of a board or waive or reduce the requirements of any other applicable law or regulation.
22. For any municipal design or construction project *that includes funding provided by the Commonwealth, in whole or in part* (such as reimbursements, grants and the like), cities and towns must incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Awarding Authority shall take steps to assure that it complies with all Supplier Diversity Office (</service-details/learn-about-the-municipal-construction-affirmative-marketing-program>) requirements.

ENDNOTES

1. *LeClair v. Norwell*, 430 Mass. 328 (1999); *Cape Ann Citizens Assn. v. Gloucester*, 47 Mass. App. Ct. 17 (1999).
2. Alternatively, local procedures could require that the Committee select the designer and negotiate the fee, if necessary, and transmit its recommendation to the Approving Body.

Contact

Office of the Inspector General Contact Information

Phone

Main Office (617) 727-9140 (tel:6177279140)

Open from 9:00 a.m. to 5:00 p.m., M-F

We welcome non-English speakers to contact us. Confidential translation services are available in most languages.

(tel:)

Address

One Ashburton Place, Room 1311, Boston, MA 02108

Directions (<https://maps.google.com/?q=One+Ashburton+Place%2C+Room+1311%2C+Boston%2C+MA+02108>)

RELATED

[Designer Selection Board \(/orgs/designer-selection-board\)](/orgs/designer-selection-board)

[Public Design and Construction Procurement \(/public-design-and-construction-procurement\)](/public-design-and-construction-procurement)



All

[Topics \(/topics/massachusetts-topics\)](/topics/massachusetts-topics)

Site

[Policies \(/massgov-site-policies\)](/massgov-site-policies)

Public Records

[Requests \(/topics/public-records-requests\)](/topics/public-records-requests)

© 2024 Commonwealth of Massachusetts.

Mass.gov® is a registered service mark of the Commonwealth of Massachusetts. [Mass.gov Privacy Policy \(/privacy-policy\)](/privacy-policy)

Town of Peru

Designer Selection Procedures

Adopted this 16th day of September, 2024

1. These procedures govern the selection of designers for any municipality or local public agency building project subject to the state designer selection law, M.G.L. c. 7C, §§ 44-58. Any other local law governing the procurement of services will be inapplicable to these procurements.
2. The Board of Selectmen (Approving Body) of the Town of Peru (Awarding Authority) has the authority to conduct the designer selection process for the Awarding Authority. The Town of Peru Board of Selectmen may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Approving Body shall designate the individual or group of individuals (hereinafter referred to as "the Committee") who will conduct the designer selection process. No member of the Committee shall participate in the selection of a designer for any project if the member, or any of the member's immediate family:
 - a. has a direct or indirect financial interest in the award of the design contract to any applicant;
 - b. is currently employed by, or is a consultant to or under contract to, any applicant;
 - c. is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
 - d. has an ownership interest in, or is an officer or director of, any applicant.
4. A Request for Qualifications (RFQ) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in the locality of the building project, in the Central Register published by the Secretary of the Commonwealth, and in any other place required by the Approving Body, at least two weeks before the deadline for filing applications.
5. The advertisement shall contain the following information:
 - a. a description of the project, including the specific designer services sought, the time period within which the project is to be completed, and, if available, the estimated construction cost;

- b. if there is a scope of work for the building project, a statement of when and where the scope of work will be available for inspection by applicants;
 - c. when and where a briefing session (if any) will be held;
 - d. the qualifications required of applicants;
 - e. the categories of designers' consultants, if any, for which applicants must list names of consultants they may use;
 - f. whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be listed in the advertisement;
 - g. when and where the RFQ can be obtained and the applications must be delivered.
6. The RFQ shall include the current "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction," which is available for download from the Massachusetts Designer Selection Board website at Procedures for Municipalities and Public Agencies not within DSB Jurisdiction. The Application Form may be amended to include additional information on a project-specific basis.
7. The Committee shall evaluate applicants based on the following criteria:
 - a. prior similar experience;
 - b. past performance on public and private projects;
 - c. financial stability;
 - d. identity and qualifications of the consultants who will work with the applicants on the project; and
 - e. any other criteria that the Committee considers relevant to the project.
8. The Committee shall select at least three finalists. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so.
9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Approving Body. No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, § 44C, shall be included as a finalist on the list. The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation and recorded vote, if any, shall be public records and shall be maintained in the contract file.
10. If the fee was set prior to the selection process, the Approving Body shall select a designer from the list of finalists. If the Approving Body selects a designer other than the one ranked first by the Committee, the Approving Body shall file a written justification for the selection with the Committee and maintain a copy in the contract file.

11. If the fee is to be negotiated, the Approving Body shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Approving Body shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Approving Body is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Approving Body prior to selection of finalists.
12. If the Approving Body is unable to negotiate a satisfactory fee with any of the finalists, the Approving Body shall recommend that the Committee select additional finalists.
13. The Approving Authority may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Approving Authority may commission, at its discretion, an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility of the designer's work to insure its reasonableness and its adequacy before allowing the designer to continue on the project, provided the Approving Authority otherwise complies with the statutory requirements for selecting a designer under Chapter 7C of the General Laws, including those set forth in M.G.L. c. 7C, § 54(a)(i).
14. Every contract for design services shall include the following:
 - a. certification that the designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
 - b. certification that no consultant to, or subcontractor for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;
 - c. certification that no person, corporation, or other entity, other than a bona-fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and

- d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, § 39R(c), and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, § 39R(d).
15. All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.
16. The Awarding Authority shall not enter into a contract for design services unless the Awarding Authority or the designer has obtained professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the Awarding Authority may require, for the applicable period of limitations. A designer required by the Awarding Authority to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the Awarding Authority prior to the award of the contract.
17. Every contract for design services shall include a provision that the designer or its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as reasonably determined by the individual responsible for administering the design contract.
18. In the event of an emergency that precludes the normal use of these designer selection procedures, the Approving Body may elect to authorize expedited procedures to address the emergency. The Approving Body shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.
19. The Approving Body may select three finalists from any standing list of designers who have applied for projects of a similar nature, or may otherwise select three designers to be considered as finalists for the project. The Approving Body shall rank the finalists in order of qualification and select the designer for the emergency work.
20. The Awarding Authority shall publish the name of any designer awarded a contract in the Central Register.
21. The following records shall be kept by the Awarding Authority:
 - a. all information supplied by or obtained about each applicant;

- b. all actions taken relating to the project; and
- c. any other records related to designer selection.
- d. All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

22. The Awarding Authority shall evaluate designers' performance on contracts using the Designer Selection Board evaluation form(s) in accordance with M.G.L. c. 7C, § 48(h), and file completed evaluations with the Board and any other agency named in M.G.L. c. 7C, § 48(h).

23. Nothing in these Procedures shall be interpreted to require the establishment of a board or waive or reduce the requirements of any other applicable law or regulation.

24. For any municipal design or construction project that includes funding provided by the Commonwealth, in whole or in part (such as reimbursements, grants and the like), cities and towns must incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Awarding Authority shall take steps to assure that it complies with all Supplier Diversity Office requirements.

Verne Leach, Chairman

Edward Munch, Selectman

Samuel Haupt, Selectman

Date: September 16, 2024

Tax Collector

From: KP Law, P.C. <KPLAW@k-plaw.com>
Sent: Monday, August 26, 2024 2:39 PM
To: KP Law, P.C.
Subject: [External Sender]KP Law, P.C. eUpdate - Recent Changes in Tax Title Foreclosure Procedures
Attachments: KP eUpdate_-_Recent_Changes_in_Tax_Title_Foreclosure_Procedures.pdf

On July 29, 2024, the Governor signed into law the General Appropriations Act for Fiscal Year 2025, which in part amended portions of General Laws Chapter 60 relevant to the municipal tax title foreclosure process. These amendments are intended to directly address the U.S. Supreme Court's 2023 decision in Tyler v. Hennepin County, Minnesota, in which the Court found that "strict foreclosure" statutes, such as Massachusetts' tax title foreclosure statutory scheme, are unconstitutional. Our prior guidance on the Tyler case and its implications can be found here. The 2024 amendments to General Laws Chapter 60, which generally take effect on November 1, 2024, impose new requirements on municipalities in the tax title foreclosure process and make significant changes to the process to dispose of property following foreclosure, as well as the treatment of excess equity. We have summarized the amendments and new procedure to dispose of or retain tax title property in the attached eUpdate.

Please contact Attorney Lauren F. Goldberg (lgoldberg@k-plaw.com), Attorney Thomas W. McEnaney (tmcenaney@k-plaw.com), Chair of our Tax Title Practice Group, or Attorney Jonathan G. Murray (jmurray@k-plaw.com) if you have any further questions. In the meantime, from all of the staff and attorneys at KP Law, take good care.

KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
(617) 556 0007
www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

Recent Changes in Tax Title Foreclosure Procedures

August 26, 2024

On July 29, 2024, the Governor signed into law the General Appropriations Act for Fiscal Year 2025, which in part amended portions of General Laws Chapter 60 relevant to the municipal tax title foreclosure process. These amendments are intended to directly address the U.S. Supreme Court's 2023 decision in Tyler v. Hennepin County, Minnesota, in which the Court found that "strict foreclosure" statutes, such as Massachusetts' tax title foreclosure statutory scheme, are unconstitutional. Our prior guidance on the Tyler case and its implications can be found [here](#). The 2024 amendments to General Laws Chapter 60 impose new requirements on municipalities in the tax title foreclosure process and make significant changes to the process to dispose of property following foreclosure, as well as the treatment of excess equity. These provisions, which generally take effect on November 1, 2024, include:

- G.L. c. 60, §65: The time period that a municipality must wait before filing a petition for foreclosure with the Land Court has been increased from 6 months to 12 months following the recording of an Instrument of Taking.
- G.L. c. 60, §62: The interest rate for balances held in the tax title account has been reduced from 16% to 8%. It is important to note, however, that the interest rate applicable to unpaid tax balances prior to being certified to the tax title account remains unchanged at 14%.
- G.L. c. 60, §62A: Payment agreements, which are currently capped at 5 years with a minimum down payment of 25%, can now be expanded to 10 years with a minimum 10% initial payment. Further, municipalities may waive any accrued interest. However, it should be noted that a municipality must adopt a bylaw or ordinance in order to implement these changes, as that requirement in G.L. c. 60, §62A was not changed by the new legislation.
- Demands and Notices for Residential Property: The amendments impose additional requirements for demands and certain notices under G.L. c. 60 for residential properties. Specifically, demands and notices must be prepared "in language understandable by a least sophisticated consumer" and in the seven (7) most commonly spoken languages in the Commonwealth. The Department of Revenue is tasked with developing standardized forms, which have not yet been released. Additionally, for residential properties, G.L. c. 60, §53 was amended to require mailing to the taxpayer at their last known residence or usual abode or place of business, posting at the property and publication on the municipal website, instead of newspaper publication. Newspaper publication now appears to only apply to non-Class One residential properties. Moreover, the notice for residential properties must also include specific information, including, but not limited to: the outstanding taxes and other municipal costs; that the taxpayer has a right to redeem; that a foreclosure complaint may be filed on or after a specific date; that the tax title

THE LEADER IN PUBLIC SECTOR LAW

617.556.0007 | 1.800.548.3522 | www.k-plaw.com | ©2024 KP Law, P.C.

may be sold; that non-response may lead to a default judgment; and that the property owner may be entitled to excess equity.

Most significantly, the amendments alter the procedure to dispose of or retain tax title property following entry of judgment. Specifically, following entry of judgment, a municipality will have 14 days to determine whether it wishes to dispose of the property or retain it. Given the short time frame to determine what the municipality wants to do with the property, we recommend that you carefully consider your options before judgment enters so that you are able to meet this deadline.

Selling Property After Foreclosure. If a municipality elects to sell the property following foreclosure, it will no longer proceed with an auction, at least initially. Instead, the municipality must list the property with a licensed real estate agent or broker within 180 days of the issuance of a final judgment. If after 12 months the property has not sold, the municipality must then seek to sell the property by public auction. A municipality cannot accept a bid that is less than 2/3 of the appraised value of the property. Therefore, while an appraisal is not required in order to list the property with a broker, municipalities will be required to obtain an appraisal from an independent, licensed appraiser prior to proceeding with an auction.

In conformance with Tyler, the new legislation bars municipalities from retaining any “excess equity” beyond what is owed in unpaid taxes, interest, and fees following foreclosure. “Excess equity” does not include any “taxes, interest, fees and charges of keeping, as reflected in the tax title account balance as of the date of the foreclosure judgment, and the fees, expenses, charges and costs actually and reasonably incurred in selling or appraising the property.” When a property is sold, excess equity is calculated by subtracting from the gross sale proceeds:

- The tax title balance as of the date of foreclosure judgment;
- Any unpaid taxes or fees, such as water and sewer charges, insurance or condominium fees, accruing from the date of foreclosure; and
- Any documented post-judgment costs incurred, including but not limited to:
 - Attorneys’ fees
 - Real estate agent or broker fees and commissions
 - Listing fees
 - Appraisal fees
 - Cost of notifications and publication
 - Property management

Retaining Property After Foreclosure. If, instead of selling the property, a municipality elects to retain it following foreclosure, the municipality must use “reasonable best efforts” to have the property appraised within 120 days of the court’s issuance of final judgment. The appraisal must be performed by an independent, licensed real estate appraiser and must be based on the highest and best use of the property as of the date of final judgment. We understand this raises issues, as the value based on highest and best use may not be consistent with the assessed value of the property, which is typically based on the actual use of the property. Excess equity is then calculated by subtracting from the appraised value the tax title balance as of the date of foreclosure judgment and any documented post-judgment costs of the appraisal.

Treatment of Excess Equity Following Sale or Appraisal. Once the property has been sold or appraised, any excess equity must be placed in escrow in a segregated interest-bearing account. The municipality must provide a written itemized accounting of the excess equity and how it was calculated to any parties entitled to claim excess equity. If the identity and mailing address of a party entitled to claim excess equity is not known, the municipality is required to “provide a notice.” The statute does not define what form of notice is acceptable if the identity and mailing addresses of interested parties are unknown, but presumably, notice by publication would be sufficient. Parties eligible to claim excess equity have 18 months from receiving the municipality’s accounting to claim any excess equity. The amendments do not address how funds are to be paid out or what procedure should be followed if there are multiple claimants. If funds are not claimed within 19 months, the funds must be transferred to the Unclaimed Property Division of the State Office of the Treasurer and Receiver General pursuant to G.L. c.200A.

****Warning**** *If your municipality holds a judgment issued by the Land Court after May 25, 2021, former owners may seek the return of excess equity. Under Section 212 of the Act, a former owner or successor in interest may file a complaint in Superior Court within 12 months of the effective date of the Act. It should be noted that certain provisions of the Act are effective as of July 1, 2024, but the majority of the provisions become effective as of November 1, 2024. Therefore, it is not entirely clear whether claims must be filed in Superior Court by June 30, 2025 or October 31, 2025. What is clear, however, is that claims for excess equity based on judgments that entered on or before May 24, 2021 are time barred.*

Disputes and Challenges. The Superior Court has jurisdiction to hear any disputes that arise between any party who at the time of final judgment held an interest in the property and a right to redeem, including judgment holders, former owners, mortgagees, lienholders and heirs. These disputes and challenges may include, but are not limited to, the sale of the property, valuation, calculation of excess equity, and the distribution of excess equity. Any suit must be filed in the Superior Court within 12 months of the date of notice of the municipality’s itemized accounting of excess equity following sale or appraisal of the property. Parties bringing such suit in the Superior Court have the right to a jury trial, unless this right is waived by all parties.

If you have any questions regarding the amendments to Chapter 60, pending tax title foreclosure sales, or other tax title issues, please contact Attorney Lauren F. Goldberg (lgoldberg@k-plaw.com) Attorney Thomas W. McEnaney (tmcenaney@k-plaw.com), Chair of our Tax Title Practice Group.

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.

THE LEADER IN PUBLIC SECTOR LAW

617.556.0007 | 1.800.548.3522 | www.k-plaw.com | ©2024 KP Law, P.C.

Recent Changes in Tax Title Foreclosure Procedures

August 26, 2024

On July 29, 2024, the Governor signed into law the General Appropriations Act for Fiscal Year 2025, which in part amended portions of General Laws Chapter 60 relevant to the municipal tax title foreclosure process. These amendments are intended to directly address the U.S. Supreme Court's 2023 decision in Tyler v. Hennepin County, Minnesota, in which the Court found that "strict foreclosure" statutes, such as Massachusetts' tax title foreclosure statutory scheme, are unconstitutional. Our prior guidance on the Tyler case and its implications can be found here. The 2024 amendments to General Laws Chapter 60 impose new requirements on municipalities in the tax title foreclosure process and make significant changes to the process to dispose of property following foreclosure, as well as the treatment of excess equity. These provisions, which generally take effect on November 1, 2024, include:

- G.L. c. 60, §65: The time period that a municipality must wait before filing a petition for foreclosure with the Land Court has been increased from 6 months to 12 months following the recording of an Instrument of Taking.
- G.L. c. 60, §62: The interest rate for balances held in the tax title account has been reduced from 16% to 8%. It is important to note, however, that the interest rate applicable to unpaid tax balances prior to being certified to the tax title account remains unchanged at 14%.
- G.L. c. 60, §62A: Payment agreements, which are currently capped at 5 years with a minimum down payment of 25%, can now be expanded to 10 years with a minimum 10% initial payment. Further, municipalities may waive any accrued interest. However, it should be noted that a municipality must adopt a bylaw or ordinance in order to implement these changes, as that requirement in G.L. c. 60, §62A was not changed by the new legislation.
- Demands and Notices for Residential Property: The amendments impose additional requirements for demands and certain notices under G.L. c. 60 for residential properties. Specifically, demands and notices must be prepared "in language understandable by a least sophisticated consumer" and in the seven (7) most commonly spoken languages in the Commonwealth. The Department of Revenue is tasked with developing standardized forms, which have not yet been released. Additionally, for residential properties, G.L. c. 60, §53 was amended to require mailing to the taxpayer at their last known residence or usual abode or place of business, posting at the property and publication on the municipal website, instead of newspaper publication. Newspaper publication now appears to only apply to non-Class One residential properties. Moreover, the notice for residential properties must also include specific information, including, but not limited to: the outstanding taxes and other municipal costs; that the taxpayer has a right to redeem; that a foreclosure complaint may be filed on or after a specific date; that the tax title

may be sold; that non-response may lead to a default judgment; and that the property owner may be entitled to excess equity.

Most significantly, the amendments alter the procedure to dispose of or retain tax title property following entry of judgment. Specifically, following entry of judgment, a municipality will have 14 days to determine whether it wishes to dispose of the property or retain it. Given the short time frame to determine what the municipality wants to do with the property, we recommend that you carefully consider your options before judgment enters so that you are able to meet this deadline.

Selling Property After Foreclosure. If a municipality elects to sell the property following foreclosure, it will no longer proceed with an auction, at least initially. Instead, the municipality must list the property with a licensed real estate agent or broker within 180 days of the issuance of a final judgment. If after 12 months the property has not sold, the municipality must then seek to sell the property by public auction. A municipality cannot accept a bid that is less than 2/3 of the appraised value of the property. Therefore, while an appraisal is not required in order to list the property with a broker, municipalities will be required to obtain an appraisal from an independent, licensed appraiser prior to proceeding with an auction.

In conformance with Tyler, the new legislation bars municipalities from retaining any “excess equity” beyond what is owed in unpaid taxes, interest, and fees following foreclosure. “Excess equity” does not include any “taxes, interest, fees and charges of keeping, as reflected in the tax title account balance as of the date of the foreclosure judgment, and the fees, expenses, charges and costs actually and reasonably incurred in selling or appraising the property.” When a property is sold, excess equity is calculated by subtracting from the gross sale proceeds:

- The tax title balance as of the date of foreclosure judgment;
- Any unpaid taxes or fees, such as water and sewer charges, insurance or condominium fees, accruing from the date of foreclosure; and
- Any documented post-judgment costs incurred, including but not limited to:
 - Attorneys’ fees
 - Real estate agent or broker fees and commissions
 - Listing fees
 - Appraisal fees
 - Cost of notifications and publication
 - Property management

Retaining Property After Foreclosure. If, instead of selling the property, a municipality elects to retain it following foreclosure, the municipality must use “reasonable best efforts” to have the property appraised within 120 days of the court’s issuance of final judgment. The appraisal must be performed by an independent, licensed real estate appraiser and must be based on the highest and best use of the property as of the date of final judgment. We understand this raises issues, as the value based on highest and best use may not be consistent with the assessed value of the property, which is typically based on the actual use of the property. Excess equity is then calculated by subtracting from the appraised value the tax title balance as of the date of foreclosure judgment and any documented post-judgment costs of the appraisal.

Treatment of Excess Equity Following Sale or Appraisal. Once the property has been sold or appraised, any excess equity must be placed in escrow in a segregated interest-bearing account. The municipality must provide a written itemized accounting of the excess equity and how it was calculated to any parties entitled to claim excess equity. If the identity and mailing address of a party entitled to claim excess equity is not known, the municipality is required to “provide a notice.” The statute does not define what form of notice is acceptable if the identity and mailing addresses of interested parties are unknown, but presumably, notice by publication would be sufficient. Parties eligible to claim excess equity have 18 months from receiving the municipality’s accounting to claim any excess equity. The amendments do not address how funds are to be paid out or what procedure should be followed if there are multiple claimants. If funds are not claimed within 19 months, the funds must be transferred to the Unclaimed Property Division of the State Office of the Treasurer and Receiver General pursuant to G.L. c.200A.

****Warning* If your municipality holds a judgment issued by the Land Court after May 25, 2021, former owners may seek the return of excess equity. Under Section 212 of the Act, a former owner or successor in interest may file a complaint in Superior Court within 12 months of the effective date of the Act. It should be noted that certain provisions of the Act are effective as of July 1, 2024, but the majority of the provisions become effective as of November 1, 2024. Therefore, it is not entirely clear whether claims must be filed in Superior Court by June 30, 2025 or October 31, 2025. What is clear, however, is that claims for excess equity based on judgments that entered on or before May 24, 2021 are time barred.***

Disputes and Challenges. The Superior Court has jurisdiction to hear any disputes that arise between any party who at the time of final judgment held an interest in the property and a right to redeem, including judgment holders, former owners, mortgagees, lienholders and heirs. These disputes and challenges may include, but are not limited to, the sale of the property, valuation, calculation of excess equity, and the distribution of excess equity. Any suit must be filed in the Superior Court within 12 months of the date of notice of the municipality’s itemized accounting of excess equity following sale or appraisal of the property. Parties bringing such suit in the Superior Court have the right to a jury trial, unless this right is waived by all parties.

If you have any questions regarding the amendments to Chapter 60, pending tax title foreclosure sales, or other tax title issues, please contact Attorney Lauren F. Goldberg (lgoldberg@k-plaw.com) Attorney Thomas W. McEnaney (tmcenaney@k-plaw.com), Chair of our Tax Title Practice Group.

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.

Proposal

Jay A. Jewell

13 Causeway Road

Peru, MA 01235-9818

413-329-9959

Gmcm11@live.com

Town of Peru
Peru, MA 01243

The following work is quoted as follows for the front entry

Remove the existing wooden ramp
Remove the existing siding
Form the underside of the ramp area to accept the new concrete
Form and pour concrete in four separate areas
Install new framing to extend the front entrance
Install white vinyl siding to match the existing
Install new roofing shingles similar to the existing
Install 6" white aluminum gutters to the front side of the building

The concrete supplier has a minimum yardage load, instead of wasting or returning the extra material we will form and pour four areas.

The corner where the Clerks mailbox sits and an area on the backside of the garage for a shed pad also a pad for the clothes container at the transfer station

No painting or staining

**Amount: \$14,110.00 % down, interim payments and Balance
upon completion payable to Jay A. Jewell to be discussed**

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alterations or deviations from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control, Owner to carry fire, tornado, and other necessary insurance.

Authorized Jay A. Jewell

Signature: Jay A Jewell

Note: This proposal may be
Withdrawn by us if not accepted within
30 days.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of acceptance: _____ Signature: _____

Town of Peru Job Opportunity

Town Hall

Administrative Assistant

The Administrative Assistant reports to the Select Board and Town Administrator and is responsible for recording meeting minutes with variable hours.

Job Duties include:

- Attend Select Board Meetings
- Record minutes at Select Board Meetings
- Distribute minutes to Select Board for approval
- Make changes per direction of Select Board
- Perform other related duties as required

Requirements:

- Excellent organizational as well as verbal and written communication skills
- Ability to work effectively to meet time constraints and deadlines
- Proficient in word processing and spread sheet software
- Use of computer and operation of standard office equipment
- Ability to work independently with minimal supervision

Send Resume, Application and Cover letter to: Town Administrator, 3 East main Road, Suite 100, Peru, MA 01235 or call 413-655-8312 x 100, or email townadmin@townofperuma.com

The Town of Peru is an equal opportunity employer.