

Minutes for February 5, 2013 meeting of the Board of Assessors

Present: Marion Clark, Michael Curtin, Timothy Taylor

Meeting opened at 6:20 P.M.

Approved the minutes of the last meeting (December).

Signed:

- Warrant for Motor Vehicle Excise, Commitment 6 of 2012
- Warrant for Motor Vehicle Excise, Commitment 7 of 2012
- Warrant for Motor Vehicle Excise, Commitment 1 of 2013
- Warrant for Real Estate Tax 2013, second billing
- Warrant for Personal Property Tax 2013, second billing
- Warrant for District Tax 2013
- Notice of Commitment for Real Estate and Personal Taxes
- Notice of Commitment for District Tax
- Notice of Commitment for Motor Vehicle Excise, 2012 #6
- Notice of Commitment for Motor Vehicle Excise, 2012 #7
- Notice of Commitment for Motor Vehicle Excise, 2013 #1
- Veterans Exemption application of Peter Risatti
- Monthly list of motor vehicle abatements for January 2013
- Bill cover letter in the amount of \$679.93

Mr. Taylor reminded Mr. Curtin to get his Conflict of Interest training certificate into the town office.

We now have high speed internet access in the office. Installation was nearly \$400, and the monthly charge is \$59.95. The town wants to make access available to citizens of the town in the school house. Mr. Taylor thinks the monthly charge should be paid by funds from other than the assessor's expense account, otherwise we have no objection.

The 2012 deeds and plans are ready for submission to Cartographic for the annual map update.

Berkshire Regional Planning Commission letter with annual assessment has been received.

Discussed the request for abatement, Union Church parsonage. We have not received a reply from DLS law to our request for opinion, but decided to proceed on our own. The reason given, non-receipt of rent on the property, has no bearing on exempt status. The deed for the Union Church property from 1926 is for both the church itself and the parsonage, treating the property as one parcel with a public right-of-way through the middle. After discussion, it was decided that the land the parsonage sits on should be treated as exempt. This left the question of the building itself. A parsonage is exempt under clause 11 of MGL Ch. 59 §5. The DLS brochure on charitable exemptions states:

"A parsonage (a) owned by, or held in irrevocable trust for the exclusive benefit of, a religious organization of any denomination, **and** (b) used and occupied as a residence for its clergy, is exempt" The part after the "and" does not appear in the wording of the law itself, which would indicate that it must come from case law to have been included. We reviewed opinions and cases available on-line. The most recent decision deals with clause 3 of section 5; Bridgewater State College Foundation v. Board of Assessors of Bridgewater. The ATB decision, reached in February 2010, blurred the ownership/occupancy test by holding that it does not matter which persons or entity uses the property, "so long as such inhabitation or use is consistent with the purpose of the charitable organization that owns the property." The ATB used a functional analysis to determine eligibility for exemption. Broadly reading the statute and prior court decisions, the ATB held that a parcel is exempt under Clause 3 "so long as it is used to further the organization's charitable purpose." In this case, the ATB believed denial of the charitable exemption would frustrate the purpose of Clause 3. The ATB decision was appealed, reversed by the appeals court (79 Mass. App. Ct. 637 (2011)), reviewed by the Supreme Judicial Court, which upheld the ATB decision (SJC-11031(2012)). The brochure regarding the parsonage exemption predates this decision. Applying the functional analysis, income from renting the parsonage is for keeping the Union Church open. The Assessors feel that having different definitions of occupancy for clause 11 than for clause 3 is unreasonable. On a vote of 2 to 0, the taxes on the parsonage were abated.

The Board has been asked if the fire house and pavilion should be taxable, as the Tyringham Volunteer Fire Company is the owner, not the Town. The Fire Company is a volunteer, nonprofit fire company within the meaning of the law and is exempt.

Meeting adjourned at 8:30 P.M.