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February 28, 2025

Shara Costa, Town Clerk
Town of Dighton
979 Somerset Avenue
Dighton, MA 02715

**Re: Dighton Special Town Meeting of November 14, 2024 -- Case # 11637
Warrant Articles # 23, 24, and 25 (General)**

Dear Ms. Costa:

Article 23, 24, and 25 - We approve Articles 23, 24, and 25 from the Dighton November 14, 2024, Special Town Meeting. Our comments on Articles 23 and 25 are provided below.

Article 23 - Under Article 23 the Town voted to amend its general by-laws by adding a new “Tax Title Payment Agreement Bylaw” that authorizes payment agreements between the Town Treasurer (Treasurer) and persons entitled to redeem parcels in tax title. We approve Article 23 because it does not conflict with state law, including G.L. c. 60, the state’s Tax Lien Foreclosure law. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). However, the Town must apply the new by-law consistent with G.L. c. 60’s municipal tax foreclosure process, including the recent amendments to Chapter 60 adopted under Chapter 140 of the Acts of 2024 (“The Act”), as discussed in more detail below.

General Laws Chapter 60, Section 62A authorizes municipalities to adopt by-laws allowing for payment agreements between the Treasurer and person entitled to redeem parcels in tax title and requires specific information including the term applicable to all agreements and the percentage of accrued interest on the amount of the tax title account that is waived. In addition, the statute requires that the by-law treat each class of tax title in a uniform manner to ensure that similarly situated taxpayers are treated the same. The Department of Revenue, Division of Local Services (DOR/DLS) has published an Informational Guideline Release (“IGR”) explaining the requirements of G.L. c. 60, § 62A which can be found at: <https://www.mass.gov/doc/igr05-208/download>. While we approve Article 23, we encourage the Town to consult with Town Counsel regarding the tax title foreclosure process (as amended by the Act and discussed in more detail below), in particular the process that the Town must follow when selling property acquired through foreclosure or by conveyance of a deed, including the process for returning any “excess

equity” that may be due to a party entitled to claim the “excess equity.”

General Laws Chapter 60 includes the process municipalities must follow when they seek to foreclose on a property where an owner fails to pay local real estate taxes or water and sewer charges. See Tallage Lincoln, LLC v. Williams, 485 Mass. 449, 451-453 (2020) (providing a detailed discussion of the state’s tax lien foreclosure law). On July 29, 2024, Governor Healey signed into law Chapter 140 of the Acts of 2024 (the “Act”) that included amendments to Chapter 60’s municipal tax foreclosure process. These statutory amendments were enacted to address the recent Supreme Court decision in Tyler v. Hennepin County, 598 U.S. 631 (2023), in which the Court held that sections of Minnesota’s tax lien foreclosure law violated the Takings Clause of the Fifth Amendment and were unconstitutional.¹ The Tyler decision is significant to our analysis because the Minnesota statutory scheme was similar to G.L. c. 60’s tax lien foreclosure process and led to the recent changes to Chapter 60.²

The Act’s amendments to Chapter 60 add new requirements to the tax foreclosure process and make changes to the process for disposal of foreclosed property.³ See, e.g., Section 82 of the Act (regarding the information that must be provided as part of a demand notice); Section 84 (regarding the mailing and posting of notices for title transfers that are part of a public auction); Section 85-87 (regarding the process that must be followed if a real estate tax bill is not paid after the demand is sent); Section 88 (reducing the tax title interest rate from sixteen percent to eight percent); Section 89-91 (allowing tax title agreements for up to ten years and allowing up to 100% of the interest to be waived in a tax title agreement); and Section 94 (requiring the Town Treasurer to wait twelve months before filing a petition in the Land Court to foreclose all rights of redemption).

Of most importance is Section 93 of the Act, which imposes significant changes to G.L. c. 60 by adding a new Section 64A regarding “excess equity.” Under the new Section 64A, a municipality cannot keep any “excess equity” beyond what is owed to the municipality for unpaid taxes, interest, and fees following the foreclosure. Section 64A establishes the process for calculating and returning any “excess equity,” including the processes that must be followed regardless of whether the municipality retains the foreclosed property or if the Town elects to sell the foreclosed property.⁴

¹ The Attorney General issued guidance discussing the Tyler decision, which can be found at: (https://www.mass.gov/files/documents/2023/10/18/Tax%20Lien%20Foreclosure%20Guidance_FINAL.pdf)

² See also Mills v. City of Springfield, No. 2379CV00545 (Hampden Superior Ct. April 18, 2024) (“the retention of owners’ surplus equity when real property is taken pursuant to G.L. c. 60 to satisfy debts to municipalities violates the takings clause of art. 10 of the Massachusetts Declaration of Rights and the 5th Amendment.”)

³ Section 250 of the Act states that the amendments to Chapter 60 adopted under Sections 80 through 99 took effect on November 1, 2024.

⁴ Section 80 of the Act amends G.L. c. 60, § 1, “Definitions” to add a definition for “Excess Equity” as follows:

DOA/DLS has published guidance regarding the statutory changes to G.L. c. 60, which can be found at: <https://www.mass.gov/info-details/ask-dls-tax-title-reform> and <https://www.mass.gov/info-details/ask-dls-tax-title-reform-part-2>. In addition, DOA/DLS has published “Bulletin 2024-6” that provides a detailed summary of the new changes to G.L. c. 60. <https://dlsgateway.dor.state.ma.us/gateway/DLSPublic/BulletinMaintenance/Index/530>. The Town should consult with DOA/DLS and Town Counsel with any questions.

Article 25 – Under Article 25 the Town voted to add a new by-law that designates the area around the Bristol County Agricultural High School as a “school zone” and imposes a speed limit of twenty miles per hour within the school zone. We approve Article 25 because it does not conflict with state law. See Amherst, 398 Mass. at 795-96. However, the Town must apply the new by-law consistent with G.L. c. 85, § 2 requiring prior written authorization from MassDOT before certain by-laws regulating signage and school zones take effect.

The new by-law creates a school zone around the Bristol County Agricultural High School for the purpose of imposing speed limits and installing signage and other safety measures to protect the safety of the students, staff, and public. Section 1 “Purpose and Intent.” Section 2 defines terms used in the by-law, including a definition for “School Zone” defined as “any designated area on a public road within 300 feet of school property where traffic regulations are established to ensure safety.” Section 3 of the by-laws creates a school zone around the Bristol County Agricultural High School located at 135 Center Street that extends from the “intersection of Center Street and 138 to the Dighton/Berkley Town line or as determined by the Dighton Highway Department based on proximity to the school property and student crossing patterns. Sections 3 (1) and (2). Section 3 (3) authorizes the expansion, modification, or removal of the school zone after “assessment and approval by the Board of Selectmen.” Section 4 imposes a twenty mile an hour speed limit, authorizes the installation of signage, road markings, and other safety measures,

“any remaining surplus amount above the 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 in accordance with section 64A following a final judgment of foreclosure; provided, however, that where the property is sold in accordance with said section 64A, the excess equity shall be determined by deducting from the gross sale proceeds: (i) the tax title balance as of the date of the foreclosure judgment; (ii) any unpaid property tax, assessments for unpaid water and sewer charges, property insurance and homeowners' association or condominium fees accruing from the date of foreclosure; and (iii) any documented, post-judgment costs incurred by the judgment holder from the sale of the property including, but not limited to, broker or real estate agent fees or commissions, listing fees, marketing and advertising costs, legal fees, litigation fees and costs, closing costs, transfer fees, auctioneer fees, notice to property owner, appraisal fees, publication costs, property management, emergency demolition, environmental fees and other fees, charges or costs directly or indirectly related to the maintenance, marketing and sale of the property; provided further, that where the property is retained by the judgment holder in accordance with said section 64A, the excess equity shall be determined by deducting the tax title account balance as of the date of the foreclosure judgment and any documented post-judgment costs of appraisal incurred by the judgment holder from the appraised highest and best use value of the property as of the date of the final judgment of foreclosure.

including crosswalks in the School Zone. Section 5 authorizes the Town's Police to enforce the by-law. Lastly, Section 7, "Effective Date," provides that the by-law will take effect after G.L. c. 40, § 32's approval and notice requirements are satisfied and "upon approval by [the] Board of Selectmen."

We approve Article 25; however, the Town must apply it consistent with G.L. c. 85, § 2, which pertains to the placement of traffic signs and devices and school zones and provided in pertinent part as follows:

Except as hereinafter provided, any rule, regulation, order, . . . by-law of a . . . town hereafter made or promulgated relative to or in connection with the erection or maintenance of signs, traffic control signals, traffic devices, school zones, parking meters or markings on any way within its control shall take effect without department approval provided such signs, traffic control signals, traffic devices, parking meters, school zones or markings are in conformance with the department's current manual on uniform traffic control devices and the department's sample regulation for a standard municipal traffic code; provided, however, that such rule, regulation, order, ordinance or by-law shall not take effect until approved in writing by the department, or be effective after such approval is revoked, if made or promulgated relative to or in connection with the following: (1) any way at its intersection or junction with a state highway; (2) any project which is or was federally aided, in whole or in part; (3) any traffic control signal or flasher in any city or town which does not employ a registered professional engineer in the commonwealth to design, redesign or change the timing and sequence of signal or flasher; . . . If any . . . town installs and maintains any of the aforesaid traffic control devices without either requesting or obtaining the required approval or after being notified of such disapproval, or in noncompliance with said manual, the department shall withhold or withdraw the unexpended balance of any funds assigned to the said . . . town under the provisions of section thirty-four of chapter ninety or sections twenty-five and twenty-six of chapter eighty-one. Any traffic control device which has not been erected or maintained in accordance with the foregoing provisions may be removed by or under the direction of the department and be stored by the department until claimed by the owner or, if not claimed within sixty days after written notice to said owner, may be disposed of at the discretion of the department.

General Laws Chapter 85, Section 2 gives Towns the authority to adopt by-laws regarding traffic control devices and school zones on town ways without Massachusetts Department of Transportation (MassDOT) approval so long as such traffic control devices are consistent with MassDOT's current Manual on Uniform Traffic Control Devices ("MUTCD"). The Town may wish to consult with Town Counsel regarding whether the requirements of the new school zone by-law is consistent with the current edition of the MUTCD and whether it needs approval of MassDOT.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute.

Very truly yours,
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cc: Town Counsel Matthew Costa