



Finance Committee Report

City of Newton In City Council

Monday, February 27, 2023

Present: Councilors Grossman (Chair), Kalis, Oliver, Malakie, Gentile, Noel, Humphrey, and Norton

Also: Councilor Laredo

City staff present: Chief Financial Officer Maureen Lemieux, Comptroller Steve Curley, Treasurer Ron Mendes, Senior Financial Analyst Perry Rosenfield, Senior Financial Analyst Connor Roach, Chief Operating Officer Jonathan Yeo, Commissioner of Inspectional Services John Lojek

For more information regarding this meeting, a video recording can be found at the following link:
[Finance Committee February 27, 2023 \(newtv.org\)](https://www.newtv.org/finance-committee-february-27-2023)

#31-23 Requesting a discussion regarding delinquent property tax policy and procedure
COUNCILORS GENTILE, LAREDO, MALAKIE, and RYAN request a discussion with the City Treasurer regarding current policies and procedures designed to collect delinquent property tax payments and to further discuss possible new policies and procedures to help collect these delinquent accounts.

Action: **Finance Held 8-0**

Note: The co-docketers introduced this item. They explained that they are looking for updated information regarding how the City manages delinquent property taxes and whether there are any State or City laws that dictate when the City puts a lien on a property. They added that the 91 Newtonville Ave situation, where tax delinquency grew to over \$600,000, is what prompted this discussion. One co-docketer added that he feels that it's important for the City Council and particularly the Finance Committee to understand why the City does not take legal action to collect delinquent taxes when there is a substantial amount of money owed to the City. Another co-docketer explained that she would like to learn more about what triggers a property to move from the Multi-Year Delinquent status to Tax Title status, as well as how to avoid a situation like 91 Newtonville Ave in the future, where the City is almost sure to lose money.

Councilors asked the following questions:

Q: Are there any State laws, City ordinances, or guidance from the Department of Revenue (DOR) that dictate when the City should file tax liens or foreclosures?

A: Treasurer Mendes explained that at the beginning of every fiscal year, a tax lien is filed against every taxable parcel in order to guarantee the collection of property taxes that are assessed. 3 years and 6

months after the end of the fiscal year, the tax lien expires, and it becomes the Treasurer's job to replace the expired lien with a Tax Title before its expiration date. Treasurer Mendes noted that his department plans to have any outstanding properties in Tax Title well before the deadline. Treasurer Mendes explained that his department aims to have FY21's Tax Title by April 1st of 2023, adding that he anticipates the list of Tax Titles to increase by roughly 30 properties, which will decrease over time as people pay.

Q: What safeguards are in place to ensure a property doesn't fall through the cracks in the Tax Title process?

A: Treasurer Mendes stated that every property that is delinquent on taxes is put into the Treasury department's accounts receivable software regardless of how much they owe. He added that the Treasury department reconciles its receivables with the Comptroller's office as well. Treasurer Mendes noted that the only taxes that are outstanding but not in Tax Title yet are properties that owe taxes from FY2021 and FY2022.

Q: Is there a way to see how many years certain properties have been delinquent on taxes?

A: Treasurer Mendes referenced a version of the Tax Title list that was distributed to the City Council that shows how many fiscal years back a given property's tax delinquency went.

Q: When a property in Tax Title changes hands, will the delinquent taxes be paid off before the owner receives any payment for the property?

A: Treasurer Mendes explained that closing attorneys for the transaction submit a request for a municipal lien certificate, which outlines everything that's due for the property, including the current fiscal year. He added that as of closing, the Treasury department typically receives a check from the attorney's office to cover the entire outstanding balance.

Q: How often is the City's municipal lien in excess of the value of the property?

A: Treasurer Mendes explained that it would take quite a long time for that to happen. He added that a municipal lien is superior to a mortgage lien, so if there's a mortgage foreclosure, the bank would still pay the City what it's owed.

Q: Is there a process by which the City can force someone out of a property after a certain amount of delinquent taxes?

A: Treasurer Mendes stated that the State permits municipalities to exercise prosecutorial discretion regarding foreclosing on a property due to delinquent taxes. He added that if the City were to foreclose on a property, the City becomes the owner and inherits any of its liabilities. In some cases, it may be a better financial move for the City to not foreclose, even if there are significant taxes owed.

Q: How long do these tax liens last?

A: Treasurer Mendes explained that liens last until the City releases the property after being paid in full or the City forecloses on the property.

Q: How is the money from delinquent property taxes accounted for in the budget?

A: Chief Financial Officer Lemieux stated that it would be counted as additional revenue, since it cannot be reliably counted on. She added that the City operates on the assumption that 100% of the owed revenue will be collected by the City in a given year. Chief Financial Officer Lemieux noted that some years the City exceeds 100% expected revenue due to people paying taxes from previous years.

Q: Is a tax lien prioritized over any mortgage in terms of being repaid?

A: Treasurer Mendes confirmed that a tax lien is prioritized over a mortgage, adding that the only liens that supersede a municipal tax lien are funds owed to the Internal Revenue Service (IRS) or the Massachusetts DOR, if applicable.

Q: If the City goes through the foreclosure process and takes the title of the property, can the City sell the property or use it for itself?

A: Treasurer Mendes confirmed that the City would be entitled to sell the property or use it as it sees fit if it takes title through foreclosure.

Q: Has there ever been a time when the property owner owed so much to higher priority creditors like the IRS that the City did not receive the tax money it was owed?

A: Treasurer Mendes stated that the only circumstance in which that could occur is if the property owner files for bankruptcy protection. In that situation, the Bankruptcy Court would sell the property and pay creditors according to a priority list.

Q: How would the City qualify for the Attorney General's Distressed Property program? Could this program have been used for the Newtonville Ave property?

A: Treasurer Mendes explained that the Attorney General has a program where they will take receivership of distressed properties, rehabilitate and sell them, and then send the money back to the owner after their rehabilitation costs are covered. This program is intended to prevent abandoned properties from staying abandoned forever. Treasurer Mendes added that the cost of demolition for the Newtonville Ave property was unusually high, which did not make it a good candidate for this program. However, this program could be applicable for a number of other properties on the Tax Title list.

Q: Is the 16% interest rate on delinquent taxes mandated by law?

A: Treasurer Mendes confirmed that the 16% rate was mandated by statute.

Q: How often has the City historically taken title to properties?

A: Treasurer Mendes stated that the last time the City foreclosed on properties was in the early 1990s, according to his research. He estimated that there was some sort of policy change regarding foreclosures in the mid-1990s that has been in effect until now.

Councilors made the following comments:

Chief Financial Officer Lemieux explained that anyone who has not paid property taxes through FY2020 will go into Tax Title, noting that there is a two-year period of delinquency before a property goes to Tax Title. She added that there are only 79 properties in the City in Tax Title, which accounts for roughly 0.3% of Newton's properties, which indicates that property tax collection is a strength for the City. Chief Financial Officer Lemieux continued by suggesting that the primary focus of the City's tax collection efforts should be on the 44 properties on the Tax Title list that owe more than \$50,000, noting that these properties account for approximately 85% of the money that the City is owed.

Treasurer Mendes stated that the 91 Newtonville Ave lot was assessed at \$610,000 by Jim Shaughnessy of the Assessor's Office. He added that Mr. Shaughnessy also explained that the property is zoned for a duplex, and each unit of a potential duplex could be sold for roughly \$1.5 million, which presents an opportunity for the City to recoup its costs from the property. Treasurer Mendes cautioned that this process would take some time, as the foreclosure process is complex. It was noted that people who are significantly behind in their property taxes tend to also have large obligations to the IRS, so the City should exercise caution when foreclosing on these properties.

The idea was posed that when a property's delinquent taxes reach a certain percentage of the property's value, the City could automatically begin to foreclose on the property in an effort to recoup its lost tax revenue. It was noted that this percentage should be in the 20-25% range, as there may be other tax liens on the property that would be paid out before the City. It was added that a process based on property value percentage owed in back taxes, rather than amount of years delinquent on property taxes, gives the City the best chance at recovering lost revenue.

It was agreed that 967-979 Washington St should not have been issued a Special Permit since there were delinquent taxes owed on the property. To prevent this in the future, it was suggested that the Planning department add a property search for delinquent taxes when considering a Special Permit application.

It was expressed that the co-docketers would like to meet with Treasurer Mendes to craft policy solutions to present to the Finance Committee that would help standardize the tax lien and foreclosure process.

By initiating foreclosure proceedings, the City could show tax delinquent property owners that tax collection is taken seriously and may improve the City's tax collection rate.

Treasurer Mendes noted that the Treasury department is now going to be a part of the online permitting system. The department will be notified of any new Special Permits or other permits being considered. He added that while the Treasury department does not have the authority to stop the permit, they can provide tax delinquency information to the permit granting authority.

Councilor Gentile motioned to hold the item, which passed unanimously.

The meeting adjourned at 7:56 PM

Respectfully submitted,

Rebecca Walker Grossman, Chair