

LBBS

TAXING ISSUES:

A Review of the Local Taxation of Scituate's
Largest Landowner: The City of Providence & the
Providence Water Supply Board

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I. INTRODUCTION

The relationship between the Town of Scituate and its largest taxpayer, the City of Providence, is unique among all municipalities in the state. Because Providence, through the Providence Water Supply Board (PWSB) owns approximately 42% of the total land within the Town of Scituate, the interactions between the two municipal governments often can be marked by tension, mistrust, and in good-times, mutual cooperation and benefit. This report is designed to compile an over-view of the trials and tribulations concerning just one aspect of this complex relationship-the taxation and assessment of PWSB's property within Scituate's borders.

II. THE RESERVOIR'S BEGINNINGS

Prior to the cutting of trees, the destruction of stonewalls, the relocation of gravesites, and the eventual flooding of the villages of Rockland, Richmond, Kent, Ponaganset, Ashland, and Saundersville to create what we now call the Scituate reservoir, it is important to recognize that no such action could have occurred without the passage of legislation at the Rhode Island General Assembly in 1915. It is that legislation, officially known as P.L. 1915, ch. 1278, and various amendments thereto, that governs the legal relationship between the Town of Scituate and the Providence Water Supply Board (PWSB), including issues related to taxation. *See*, Table of Authorities, hereinafter referenced as **TOA, No. 1**.

Contrary to popular myth or belief, there is nothing in the 1915 Act that mandates that the PWSB pay a certain percentage of the Town's total budget or a set tax rate. While Scituate has the legislative right to acquire water from the system, it must do so as any other municipal customer or water authority would. Just seven days after the Act's passage, the City of Providence organized the

first-seven member Providence Water Supply Board.¹ Thereafter, the property condemnation formally began in 1916 and within three years, 3600 acres of land had been taken for the purpose of siting a reservoir.² With completed blueprints in hand and World War I over, the reservoir was officially completed by 1927 at a total cost of \$20,963,538.33. *See TOA, No. 2, Ex. 1.* While the historic creation of the reservoir is beyond the scope of this report, it is worth noting that the physical landscape of Scituate was forever changed. As one local author noted:

By 1927, the reservoir had been completed. The people whose families had made the villages and farms of Scituate their homes for well over a hundred years, had now moved in all directions to new homes, some leaving Scituate still shocked by the thought of having been forced to leave their own homesteads. But what really hurt most was the fact that their old family burial grounds were dug up and moved to the New Rockland and other cemeteries. A few were allowed to remain provided they were not within several hundred yards of the water line.

...

The total number of building condemned in the reservoir area was 1,195. 375 dwellings; 7 schools; 6 churches; 6 large mills; an electric street railway system, several blacksmith and woodworking shops, several post offices, dance halls, a laundry, a pool hall, and numerous shops and taverns, about thirty large dairy farms and about ten general stores. Several main highways such as Plainfield Pike and Central Pike had to be re-routed.

Smith, Hedley, *The History of Scituate, RI* p. 190 (1976).

By 1960, the City of Providence had purchased or acquired 13,182 acres of land in the Town of Scituate. Since Scituate contains 35,379 acres, there were 22,197 acres that remained in other

¹ Hedley Smith, *The History of Scituate RI*, p. 187 (1976).

² *A History of Scituate, RI : Being an account of it's Early Settlnent & Events to the present,* p. 87 (1977).

private or public hands. *See, TOA, No. 2, p. 2.* With the physical landscape and emotional challenges now long completed, it was and continues to be the legal challenges, more particularly, the assessment and property tax obligations of PWSB owned land, that has continued to cause strife among the local government, its largest taxpayer, and the citizens of Scituate.

III. THE TAXES

A. THE HALL CHALLENGE

One year after its completion, Providence sought judicial relief from Scituate’s assessment and taxation of Providence’s owned land within town limits. The city claimed that the Town’s assessment of the land’s value was excessive and that other land that it owned should be exempt from taxation because it was being used for a public purpose– the supply of potable water. *See City of Providence v. Hall*, 49 R.I. 230 (1928). *See, TOA, No. 3.* At the time, the Scituate assessor had valued all of the land owned by Providence in Scituate at \$3,652,505. *Id.*, p.231. The City claimed that the Town had improperly placed a tax on \$1,538,200 worth of assessed land and argued that it should not have been taxed at all “because [it was being used] solely for public purposes of the City of Providence in connection with its water supply system.” *Id.*

While the case of excessive taxation was pending in the lower Rhode Island Superior Court, the Rhode Island Supreme Court was asked to answer the following legal question: “Is real estate and improvements thereon belonging to the City of Providence located in the Town of Scituate liable to taxation by the Town of Scituate. . . ?” *Id.*

The Court began its analysis by first reviewing the statutory basis that gave Scituate and all other municipalities the right to impose a property tax. That 1923 statute stated in part:

All real property in state, and all personal property belonging to the inhabitants thereof, whether individuals, copartnerships, or corporations . . . shall be liable to taxation unless otherwise specially provided.

Id., p. 237.

Because the enabling Act creating the Providence Water Supply Board did not specifically exempt the land acquired by them from taxation, Scituate argued it retained the legal right to do so under the 1923 Act. The City of Providence, citing case law and statutes from other jurisdictions, argued that there was an implied statutory exemption in the taxing statute that shielded from taxation property that was held for a public use or purpose. The Rhode Island Supreme Court noted:

Exemption is created by statute or is implied because some reason of public policy makes it imperative. In the case now before us it is admitted that there is no express statutory exemption and we are asked to find an implied exemption.

City of Providence v. Hall, 49 R.I. 230, 237 (1928).

After a thorough review of the legislative history and legislative changes made to the statute that allowed municipalities to tax real and personal property within its borders, the Court stated:

By the settled policy of the state, as seen in these statutes, property owned by municipal corporations never expressly has been exempted. Neither in practice has there been implied a broad exemption including generally property owned by a city and used for a public water system.

Id. 238.

Further relying on a provision of the Rhode Island Constitution that states that “the burdens of the state ought to be fairly distributed among its citizens³” and the undisputed fact that the City of Providence had been paying property taxes, without protest, to three other communities since 1872

³ R.I. Constitution, Article I, Section 2. *See*, **TOA, No. 4**.

where it also had reservoirs to supply water to its inhabitants, the Rhode Island Supreme Court stated:

Neither the original water act of 1866 nor the present act of 1915 has seen fit expressly to exempt the real estate from taxation. The legislature could hardly have failed to know of the existing practice. The town of Scituate had no voice in deciding whether the reservoir should be within its limits. The public welfare of the many inhabitants of Providence controlled legislative action. Even so, however, we ought not to assume that no consideration was given to the rights of the town and that property within its limits was deliberately removed from taxation with no compensating advantage. So carefully drafted a statute as that of 1915 we can not believe was passed with the view that an exemption of waterworks property outside the city limits should be implied and that the town of Scituate might later apply to the legislature for relief after removal of nearly half of its taxable property without advantage to the town. There can be no doubt of the hardship upon the town if the city's contention is sound.

Id. 239-40.

While the Hall decision conclusively settled the question of the ability of the Town of Scituate to tax land owned by the City of Providence within its limits, it left open to the Town's tax assessors, then and now, the question of the valuation of said property for taxation purposes.

The assessed value of the PWSB's pipelines, purification plant, and real property is the question that continues to challenge the Town and its largest taxpayer some 89 years after the Hall decision was decided.⁴

B. FIVE YEAR TAX AGREEMENTS

One year after the Hall decision and perhaps in light of the Rhode Island Supreme Court's ruling affirming the ability of the Town to assess and tax property owned by the PWSB, the Rhode Island General Assembly, in 1929, passed Chapter 1443, authorizing the "city of Providence and the

⁴ The Providence Building Authority is also authorized to acquire land within the Town of Scituate for watershed for protection.

town of Scituate to enter into an agreement fixing the amount of the ratable property of the city of Providence located in the town and fixing the values thereof for the purposes of taxation for the years 1929 to 1933 inclusive.” *See*, **TOA, No. 5**.

Thus, began the precedent of entering into tax treaties with Scituate’s largest taxpayer to avoid costly litigation over the assessed value of the property and to provide certainty and stability to the Town’s finances. In 1931, the law was amended to allow “city and towns owning ratable property devoted to a public use which is located within any city or town, and such other city or town where such property is located” to enter into agreements fixing the amount and value of such property for the purposes of taxation” in recognition that all municipalities, including Scituate, would benefit from such treaties.⁵ *See*, **TOA, No. 6**.

The Town and PWSB historically came to an agreement on the land, building, and tangible values of the subject property. (**Exhibit B**). At its high water mark in 1927, the Providence Water Supply Board paid 68.4% of the total taxes levied in Scituate. *See*, **TOA, No. 2**. That percentage remained above 60% through 1948 and by 1960, the percentage had dropped to 42.1%. By that time period, the average assessment of water supply property was \$46.05 per acre as compared to \$58.46 per acre for non-water supply property.

As Scituate developed after 1960 and the value of non-water supply board property naturally increased in assessment as a result of the growth of the Town, the percentage of water supply board assessed value naturally decreased. It was not until 1977 that their taxes exceeded \$1 million.

⁵ The following tax treaties or evidence of them are attached as an appendix to this report: 1929-1933; 1941-1945; 1946-1950; 1951-1955; 1956-1960; 1961-1965; 1966-1970; 1971-1975; 1976-1980; 1990-2000; 2009-2017. (**Exhibit A**).

(Exhibit B). In the current fiscal year (FY 18), taxes paid by the Providence Water Supply Board account for just about 21.7% of the total levy from the town or 17.35% of the total budget. **(Exhibit B).**

C. FARM, FORREST & OPEN SPACE

In 1980, the Rhode Island legislature declared in part:

[T]hat it is in the public interest to encourage the preservation of farm, forest and open space land in order to . . .conserve the state’s natural resources, and to provide for the welfare and happiness of the inhabitants of the state.

R.I.G.L. § 44-27-1(1). See, **TOA, No. 7.**

In setting up the legislative framework for the Act, the legislature further found:

[T]hat it is in the public interest to prevent the forced conversion of farm, forest and open space land to more intensive uses as the result of economic pressures caused by the assessment for purposes of taxation at values incompatible with their preservation . . .

R.I.G.L. § 44-27-1(2).

Under the provisions of the Farm, Forest, Open Space Land Act (FFOSLA), an owner of land that owns more than ten acres of forest land may file an application with the director of environmental management to designate the land as forest land⁶ under the definition as set forth in the Act.

If the director determines that the land contained in the owner’s application meets the Act’s forest land definition, the director is then is empowered to issue a certificate to the landowner

⁶The FFOSLA defines “Forest land” as follows: [A]ny tract or contiguous tracts of land, ten (10) acres or larger bearing a dense growth of trees, including any underbrush, and having either the quality of self perpetuation, or being dependent upon its development by the planting and replanting of trees in stands of closely growing timber, actively managed under a forest management plan approved by the director of environmental management. R.I.G.L § 44-27-2(2).

confirming its designation as farmland as well as file a copy of the certificate with the tax assessor where the land is located. R.I.G.L. § 44-27-4 (a).

With the certificate in hand, the landowner “may apply for its classification as forest land on any assessment list of the town where it is located” by submitting a written application for the forest and classification to the local assessor. R.I.G.L. §44-27-4 (c)(1).

Any landowner “aggrieved by . . .the denial of an application by the assessor of a . . .town for a classification of land as forest land or . . .the use value assessment placed on the land classified as forest land . . . has a right to appeal the denial or value assessment to the local board of assessment review.”⁷ R.I.G.L. § 44-27-4(f). During the appeal process, the Tax Assessor is “given the opportunity to explain either . . . her refusal to classify the land or the assessment placed on the classified land.” R.I.G.L. § 44-27-4(f).

In considering the appeal, the Board of Assessment Review is required to consider the testimony of the landowner, the local planning board and conservation commission. R.I.G.L § 44-27-4(f). Furthermore, the statute mandates that Board of Assessment Review also consider “the advise of the office of state planning, the department of environmental management, the dean of the college of resource development and the conservation district in which the city or town is located.” R.I.G.L. § 44-27-4(f).

The statute specifically notes that the Board of Assessment Review “shall not disturb the designation of the director [‘s]” certification of forest land “unless the tax assessor has shown by a preponderance of the evidence that the designation was erroneous.” R.I.G.L. § 44-27-4. The

⁷ In Scituate, the three member Board of Assessment Review are elected to six year terms. See P.L. 1958, Chpt. 111. *See, TOA, No. 8.*

decision of the Board of Assessment Review may be appealed to the Superior Court. R.I.G.L. § 44-27-4(g)(2).

Thus, once the certificate is granted by the Director of the Rhode Island Department of Environmental Management (RIDEM) and the local assessor disputes the granting of the certification, an assessor seeking to overturn the decision has a high burden to show the director of the Rhode Island DEM was wrong in issuing the certificate in the first instance.

Furthermore, any dispute over forest land classification because of the issuance of the certificate must be litigated and developed by the parties before the local Board of Assessment Review. While a losing party can appeal the Board's decision to the Superior Court, the parties do not get a new trial. Rather, the appeal is based on the record as developed at the Board of Assessment Review. Therefore, the litigation, factual record, and expert testimony before the local board becomes the critical focus of any dispute under the Farm, Forest Open Space Land Act (FFOSLA).

D. SCITUATE BOARD OF ASSESSMENT REVIEW

1. PWSB & FFOSLA (1985 - Part 1)

In 1985, the Providence Water Supply Board received a certification from RIDEM classifying 9,088 acres of its land as forest land under the FFOSLA. When it took its certification to the Scituate tax assessor Donald T. Gould, he denied the classification of its land. The PWSB appealed his denial to the Board of Assessment Review consistent with the appeals process as discussed above.

The Board of Assessment Review framed the issue of the appeal as follows: “Has the tax assessor shown by a preponderance of the evidence that the designation by the division of forest environment of 9,088 acres of land owned by the City of Providence was erroneous?” (**Exhibit C, p. 1**).

While finding that the acreage in question met the statutory definition of forest land as set forth in the Act, the Board took its analysis one step further by also requiring the PWSB to show that the land in question was under the threat of “forced conversion of . . .forest . . .to more intensive use as a result of economic pressures caused by the assessment for purposes of property taxation at values incompatible with their preservation as . . . forest ..” as set forth in the legislative declarations of the Act.⁸ *See*, R.I.G.L. 44-27-1 (2), **TOA, No. 7**.

In short, the Board of Assessment incorporated the necessity of meeting certain legislative findings or declarations given to justify the passage of the Act as a prerequisite to receiving the benefits of the Act even though it conceded that the land in question met the definition of forest land. A similar argument would be advanced by the Town in 2001 with far less successful results after judicial review by a Superior Court justice.

Without repeating all of the written findings of the Board of Assessment as set forth in its written decision, the Board ultimately upheld the decision of the tax assessor by concluding that the land was not under threat of “forced conversion” to a more valuable use because it was acquired, held, and needed for the protection of water in the first instance.⁹ The Board of Assessment review concluded:

The purposes to which the statute limits the use of the land [referring to the 1915 statute] together with the testimony of witnesses for both sides that the land is

⁸ *See*, **Exhibit C, p. 5**.

⁹ The complete transcript of the 1985 Board of Assessment Review hearing is attached as **Exhibit BB**.

necessary to protect the purity of the water and to some extent to help in its production, lead the Board to the finding of fact that the Tax Assessor has shown by a preponderance of the evidence that the designation by the division of forest environment was erroneous because there is no danger of forced conversion of the land to more intensive uses as a result of economic pressure caused by the assessment of the 9,088 acres, nor are said 9,088 acres assessed at values incompatible with their preservation as forest land.

(Exhibit C p. 5)

Soon after the issuance of the decision of the Board, however, the Town Solicitor, John Gorham, in a letter dated May 7, 1985, wrote to the Scituate Town Council President Robert A. Crowley, warning that an appeal by the PWSB could take several years to come to a conclusion.

(Exhibit D). Furthermore and somewhat contrary to the Board of Assessment Review's findings, Solicitor Gorham conceded that the City had raised what he characterized as "legitimate concerns" during the Board of Assessment hearings. These legitimate concerns included the town's rising property taxes and the Public Utility Commission's¹⁰ reluctance to approve water rates to account for the added tax burden. Most importantly, however, Solicitor Gorham acknowledged that "development in the town," including the new shopping center, was mentioned at the hearings by PWSB.

Thus, the private record and advice of the Town Solicitor, ran contrary to the very public position that its Board of Assessment Review was taking regarding the issue of forced conversion. Nevertheless, and fortunately for the Town, an appeal of the Board of Assessment's decision to the Rhode Island Superior Court was not actively pursued by the PWSB. **(Exhibit E).** Therefore, the decision of the Board of Assessment remained undisturbed.

¹⁰ As a public utility, the PWSB must get any increase in its water rates approved by the Public Utilities Commission.

In 1985, the value of the PWSB land retained an agreed assessment of \$24,393,250. That assessment continued until 1990 when the value of PWSB land's assessment was raised to \$60,330,600 or approximately \$8,600 and acre. **(Exhibit B)**.

Just two years after failing to appeal the Board's decision, Senator John Orabona (D-Providence) introduced a bill (S-799) that would classify the Providence Water Supply Board property as forest land for real estate tax purposes. The bill did not become law, but it served as an early indication that the forest land designation was an important and valuable classification that the PWSB desired because of its favorable tax effects. **(Exhibit F)**

2. THE JULY 11, 1990 AGREEMENT (1990 TO 2000)

Consistent with the authority granted to the Town and the PWSB in 1929 and 1931, Scituate and the City of Providence entered into a new five year tax treaty "fixing the value of the ratable property of the City of Providence and the Providence Buildings Authority." **(Exhibit G)**. Per that agreement, the Town and City agreed that value of the 14,030 acres of ratable property owned by the City and the Providence Public Building Authority at \$8,559.30 an acre for a total of \$120,651,360.74.

Buildings and improvements were valued at \$79,348,639.26 for a total land and building total of \$200,000,000. An appraisal completed by Keith White on behalf of the Town arrived at a real estate value of \$239,699,141. At the time, Scituate taxed all its property at 50% of assessed value which brought the assessed value to \$100,000,000. The agreed tangible property, which was valued at \$6,848,000 (at 100%) brought the total value of all PWSB assets to \$106,848,000. The land value of \$239,699,141 under this agreement allowed the PWSB to realize a 16.5% reduction of their assessment to \$200,000,000.

This total assessment was to continue for the entire five years of the agreement, and “the valuation established by [the] Agreement included any property which may be acquired by the City of Providence and any improvement to property by the City of Providence . . . as well as any property which may be acquired for the purpose of protecting the public water supply.” **(Exhibit G, p. 3).**

While the assessment was frozen at the \$106,848,000, the tax rate set by the town and assessed against all taxpayers would be applied on an annual basis. Thus, an increase in the tax rate necessarily translated into more revenue for the Town. However, an increase in PWSB holdings or any improvements during that same five year period would not be added to the assessed value essentially allowing Providence Water to acquire additional property without incurring any additional tax burden. The agreement was executed by Town Council President Richard Iverson and the Mayor of the City of Providence, Vincent A. Cianci, Jr. after the Town Council voted to approve it on July 11, 1991. **(Exhibit H).** By the end of the five year agreement, Providence’s tax bill, because of increases in the local property tax rate shared by all taxpayers in the Town, grew by \$525,692.16.

The 1990 agreement contained an automatic renewal period for an additional five-year term unless either party notified the other 120 days prior to December 31, 1995. Based on a review of the town council meeting minutes for the period, it appears that the agreement automatically renewed because of the lack of action by either party to terminate it.

By the end of 2000, the PWSB’s total tax liability to the town equaled \$3,368,917. Because this amount was based on an agreed frozen assessment dating back to 1990 at \$106,848,000, the town essentially forfeited any chance to increase the assessment due to additional land acquired and other improvements made by PWSB and its related entities.

In 1987, the Rhode Island General Assembly passed the Public Drinking Water Supply Board Protection Act. *See, TOA No. 9.* This Act allowed the imposition of a “water quality protection charge” funded in part by a .0292 per one hundred gallons of sale of water under the Act. “Not less than fifty-five percent (55%) shall be spent for the acquisition of land rights . . .to acquired [sic] to protect the quality of raw water of the water supply system. Expenditures for maintenance, administration, and payment of taxes on land acquired under this chapter shall be included within this subdivision.” R.I.G.L. § 46-15.3-11. The Act provided a steady and reliable source of income to the PWSB and other water agencies to acquire property in various watersheds throughout the state. With a steady stream of income from ratepayers, PWSB would use that money to acquire more land in the watershed.

IV. THE TROUBLED TIMES (2001 TO 2008)

A. REVALUATION

Consistent with the requirements of the state’s property revaluation statute, the Town of Scituate underwent a town-wide evaluation in 2000. *See, TOA, No. 10.* The previous tax agreement with the Providence Water Supply Board, negotiated in 1990 expired, as of December 31, 2001. (**Exhibit G**). Therefore, by 2001, the Town and PWSB were in the process of negotiating a new agreement. While the town sent a written notice of its new valuation to all taxpayers as of January 1, 2001 informing them of their individual assessment, the town’s largest taxpayer, the PWSB, was not sent such a notice. This fact would become a point of contention between the parties during the litigation and create somewhat of a distrustful tone between the Town and its largest taxpayer.

Nevertheless, the town did receive a recommended appraisal report from its valuation company, Vision Appraisal, on or about March 22, 2001. That report suggested the value of PWSB’s holdings at \$298,777,400. As a result, the 2001 PWSB’s assessed value increased to \$68,572,900, its

buildings/improvements to \$75,652,800, and its tangible property was valued at \$10,325,000 for a total value of \$154,550,700.

On June 7, 2001, Town Solicitor Bradford Gorham sent the attorney for the PWSB a proposed agreement concerning the tax assessments for the PWSB property. The agreement merely documented the town's then current assessment of their holdings (\$154,550,700) and included the standard language freezing the assessment, regardless of any real improvement or additional purchases made by the PWSB, during the five year period. **(Exhibit I)**. Recognizing that the assessment would be updated in 2003 as a result of a statistical evaluation, the agreement specifically provided that "the valuation for the December 31, 2003 and December 31, 2004 assessments shall be adjusted so that the tax assessed shall be in the same dollar amount as the tax assessed as of December 31, 2002." **(Exhibit I)**. There are no records to indicate whether the proposed agreement was a result of on-going negotiations or merely a unilateral offer from the Town to the PWSB.

Less than one month later, on July 1, 2001, the PWSB, along with every other taxpayer, received its new tax bill. According to their brief in support of Farm, Forest & Open Space designation and testimony from Karen Beattie, Scituate's total budget in 2001 was \$1.1 million more than the previous year, 2000. As a result, PWSB's percentage of total municipal support increased to 25% from the previous year percentage of 21%. Their total tax was \$4,288,781.93, an increase of \$919,864 which represented almost the total increase in Scituate's municipal spending of \$1.1 million. **(Exhibit J)**.

B. FARM, FOREST & OPEN SPACE (PART II)

Just twenty-six (26) days after receiving their tax bill, PWSB filed an application for designation of 9,088 of its 14,436 acres under the Farm, Forest and Open Space Act. A certificate issued by the

Rhode Island Department of Environmental Management certified 9,088 acres in accordance with the requirements of the Act. **(Exhibit K)** The certification was then submitted to Scituate's tax assessor, Karen Beattie, requesting that the subject acreage be classified as forest land.

Just as the previous Assessor had done in 1985, the request for certification was denied in a letter dated September 6, 2001. **(Exhibit L)** In denying the PWSB's request, the tax assessor noted:

The basis of this denial is that the intent of the Farm, Forest and Open Space Act is to limit development that may result from the economic pressures of property taxation. The PWSB does not appear unduly burdened by the property taxes for the subject property since tax payments are "pass through" expenses to the rate payers. The ratepayers do not appear to be unduly burdened by economic pressures resulting from the property tax assessment since the rate structure of the PWSB is one of the lowest within the region. The PWSB land within the Town of Scituate is zoned 'Watershed' which does not permit residential development and is therefore not under development pressures. To the contrary, PWSB acquisition of land within the watershed district are made to further protect the quality of water.

Letter of Karen S. Beattie, RICA, to City of Providence, Water Supply Board, dated September 6, 2001. **(Exhibit L)**.

This denial of forest classification was essentially a repeat of the denial made in 1985. The updated denial, however, did not mention the fact that the PWSB failed to appeal the Assessor's prior 1985 findings nor raise any issues related to the timing of the filing of this new application.

Nevertheless, the PWSB, with the denial in hand, would timely appeal the denial of the Farm, Forest and Open Space classification as well as the amount of the Town's overall assessment of its property. Similar to what occurred in 1915 where the PWSB claimed both excessive taxation and an exemption, in 2002 they would claim excessive valuation and misclassification of 9,088 acres of its land. While the requirements of the FFOSLA were the same as they were in 1985, a major shift in policy at the state level occurred as a result of the passage of R.I.G.L. § 2-4-3.1. In part, that legislation:

Established the Rhode Island Farm, Forest, and Open Space Land Value Committee to recommend the methodology and values of assessment of land for property taxation on the basis of current use for farm, forest and open space. The values recommended by the subcommittee, upon review and approval by the state conservation committee, shall be made available to local tax assessors and such value shall be the recommended maximum current use value per acre at which such land classifications can be assessed.

TOA, No. 11.

In 2001, the stakes for Scituate were higher because of this so-called recommended value. As a result of the formation of this committee, the recommended value for forest land was \$100.00 per acre. Importantly, the Scituate tax assessor, adopted and used this figure in setting this assessed value of four other Scituate taxpayer's who had obtained the Farm Forest Certification from RIDEM and submitted a similar application to the town.

C. BOARD OF ASSESSEMENT REVIEW

The first hearing of the Board of Assessment Review, composed of elected members Guy Angell, Chairman, Leonard Guglielmi and Warner Dauphinee, occurred on November 5, 2001. At that time, the Board was being represented by the town solicitor, Bradford Gorham. In the early stages of the proceedings, Solicitor Gorham filed a motion to dismiss the PWSB's forest land classification appeal on the ground that the PWSB did not timely file its application for forest land designation and that the prior 1985 decision was binding upon the PWSB under the legal doctrine of administrative finality and res judicata.

On October 25, 2001, Solicitor Gorham wrote to Scituate resident and Attorney Kenneth Borden¹¹ seeking his assistance in representing the tax assessor before the Board of Assessment Review. In a letter outlining the issues in the appeal, Mr. Gorham noted:

R.I.G.L. § 2-4-3.1 sets up a valuation committee which is to recommend valuations for farm, forest and open space land. The committee's valuation has been set at \$100 per acre. Even though this is a "recommended" valuation, it would give us a lot of trouble (to say the least) if the City is successful in getting the land classified as forest land.

Letter from Brad Gorham to Kenneth Borden, dated October 25, 2001. **(Exhibit M)**.

Once the motion to dismiss was filed, counsel for the PWSB, Michael McElroy, filed a motion to disqualify the law firm of Gorham & Gorham on the basis that it was a conflict for Mr. Gorham to seek the dismissal of the case by the Town (who was not technically a party to the proceedings) and represent Board of Assessment of Review at the same time. As a result, Gorham & Gorham withdrew from the matter and the Board appointed Attorney Larry Parks to serve as counsel for the Board while Scituate resident, Kenneth Borden, of Higgins Cavanagh & Cooney, was retained to represent the interests of the Tax Assessor.

D. OVER ASSESSMENT

In addition to seeking recognition for their forest land designation by the DEM, on September 26, 2001, the PWSB and the Providence Public Building Authority filed an appeal of the Town's overall assessment of their land and tangible property. **(Exhibits N & O)**.

¹¹ At the time, Mr. Borden practiced law as a partner at the Providence law firm of Higgins, Cavanaugh & Cooney and was also a member of the Town's Zoning Board which he currently chairs.

The PWSB filed a tax appeal challenging the assessment of its watershed land, buildings, and equipment. The Town's assessed valuation was \$151,537,780 which produced a tax bill of \$4,205,173.35. The PWSB's own opinion of fair market value was \$150,00,000 at full value. After application of the 50% ratio for land, building, and improvements, and equipment at 100%, the PWSB opined that the assessed value for tax purposes equaled \$76,150,000. The application specifically notes that the "assessments are too high and much of the land is DEM certified forest land." **(Exhibit N)**. The application also denotes various improvement projects since 1996 with an estimated value of \$15,000,000.

The Providence Building Authority challenged their assessed valuation of \$3,012,930 of watershed land that translated to an annual tax bill of \$83,608.81. The Building Authority asserted that their asset value should be \$317,150 which translated into a tax assessed value of \$158,575 at 50%. **(Exhibit O)**.

The tax assessor, Karen Beattie, denied both assessment appeals as of November 9, 2001, and these matters proceeded to the Board of Assessment Review. In a memorandum to the town council informing them of their status, Ms. Beattie wrote:

Their opinion of value totals \$150,317,150 for all land, building and equipment. This is unreasonably low, even lower than then 1990 valuation of \$206,848,000¹² that was agreed upon by both parties. No appraisal report has been submitted with the 2001 appeal yet. Our 12/31/2000 appraisal for all land, buildings and equipment was \$298,776,420.

Interoffice Memo from Karen Beattie to Town Council dated September 28, 2001.

(Exhibit P)

¹² This appears to be a typo. The 1990 agreed value was in fact \$106,848,000.

Based on these numbers, the parties were \$148,459,270 apart on the appraised value.

E. SCITUATE BOARD OF ASSESSEMENT REVIEW HEARINGS 2001-2002

At the first hearing of the Board of Assessment Review of November 5, 2001, all parties agreed to a 30 day continuance of the FFOSA matter to allow each side to “to try to come to some kind of settlement of the differences between them concerning their assessment.” (**Exhibit Q, Nov. 5, 2001 hearing, p. 3.**) The filings suggest that settlement negotiations were being handed by the Town Treasurer, Theodore Przybyla.

When a settlement could not be reached, the parties litigated what was essentially a rehash of the arguments that had been made in 1985. Unlike in 1985, however, the attorney for the tax assessor, Mr. Borden, stipulated or agreed, that the 9,088 acres of land in question met the statutory definition of “forest land” as set forth in the FFOSLA. However, the tax assessor, through her attorney Mr. Borden, continued to assert that the land in question was not under threat of forced conversion as set forth in the Act’s legislative declarations, and therefore, was not eligible for the forest land designation. As discussed previously, however, it remained the tax assessor’s burden to establish that granting of the forest land certificate by DEM was erroneous. Therefore, the development of the factual record at the Board of Assessment Review would be critically important.

In support of the Tax Assessor’s determination denying the classification, evidence was presented by the town’s Planning Board and Conservation Commission in the form of correspondence. To counter these letters, the PWSB produced letters of their own from the Rhode Island Office of State Planning, the Rhode Island Department of Environmental Management, and the Dean of the College of Resource Development at the University of Rhode Island.

In support of the PWSB's position, the PWSB also presented the testimony of the Chief of the Division of Forest Environment, Mr. Thomas Dupree, who signed the original certificate certifying the 9,088 acres under the FFOSLA. Ms. Nancy Hess, the principal environmental planner for the Statewide Planning Program, was also a witness for the PWSB.

The Scituate Tax Assessor, Karen Beattie, testified over a three day period. She confirmed that she rejected the forest land designation by DEM because she believed that the land was not under any danger of forced conversion to a higher use and therefore did not meet the intent of the FFOSLA. She admitted, however, as had been stipulated, that the land in question met the definition of forest land and that the Act's language was not ambiguous. She also testified that the other legislative declarations of the Act, including preservation of forest land close to the metropolitan areas, conserving the state's natural resources, and for providing for the welfare and happiness of the inhabitants of the state were also advanced by the PWSB's ownership of the land.

Mr. Neil Dupuis, the town's appraiser, also testified before the Board of Assessment Review in support of the Assessors denial. Mr. Dupuis had appraised all of the property in Scituate as part of the town-wide revaluation, but admitted that he presented a summary appraisal report, not a full appraisal, to the PWSB in March 2001.

On cross-examination, Mr. Dupuis admitted that he had never appraised a municipal or private water supply entity the size of the PWSB, and he was not a member of the Appraisal Institute or the Society of Real Estate Appraisers. He further stated, however, that his valuation was only "a recommendation to the assessor."

The Board also heard from Mr. Brian Carpenter, a local real estate broker. He admitted he was not testifying as to whether the DEM was correct in issuing a forest land certificate to the

PWSB. He agreed, however, that in determining whether the land in question qualified for FFOSA designation, the Assessor should apply the same criteria to all land owners.

Attorney Borden, counsel for the Tax Assessor, also presented the testimony of Dr. Stephen Swallow, a professor of environmental natural resource economics at the URI College of Environmental Life Sciences. Although he was retained by the Tax Assessor to support her determination that the land in question did not qualify for forest designation, he was unaware at the time that he was retained that the dean of his college had written a letter supporting DEM's position. Most damaging and in light of the high burden that the Tax Assessor was statutorily obligated to prove that the DEM classification was erroneous, he testified, "I am not making a judgment as to whether it fits all of the terms of Rhode Island law. I will say within my professional field that the land does seem to be forest land."

Mr. Paul Gagoury, the Director of Engineering at Providence Water, testified that he was responsible for the entire engineering department and all of the technical activities associated with the running of the water department. His primary testimony centered on the role that the 9,088 acres of land played in the filtration of water flowing into the reservoir, and whether that natural process could be replicated or replaced by a mechanical sand based filter system.

Mr. Godoury's testimony was followed by that of Boyce Spinelli who was the Deputy General Manager for Administration for Providence Water. He testified that the \$919,000 increase in the PWSB's 2001 tax liability was not reflected in the water rates, and that PWSB was trying to cut back in other areas to account for the tax increase. He also noted that the amount collected by the so-called penny surcharge to purchase land to protect the watershed could not be used to pay the taxes on any of the 9,800 acres because revenue from that surcharge could only be used to pay the taxes on land acquired from revenues obtained through the surcharge.

To counter the opinion of Mr. Dupuis, the town's appraiser, PWSB presented the testimony of Mr. Peter M. Scotti, an appraiser of Scotti & Associates. Mr. Scotti was a member of the Appraisal Institute, and a certified appraiser in Rhode Island and Massachusetts. He testified that the 9,088 acres in question was entitled to be classified as forest land, and that assessing the property at \$9,500 an acre rather than \$200 an acre resulted in an over assessment of \$84,518,400 in the land value alone.

Finally, the PWSB offered the testimony of Mr. Richard Blodgett, the manager of water resources for the Providence Water. He was a graduate of the Yale University with degrees in Environmental Studies and Forestry. He was primarily responsible for applying for the forest certificate from DEM and noted that approximately 3,500 acres of the total of 14,000 were left out of the original application that included dams, land around the treatment plant, wetlands, and other basins.¹³

By April 2002, both parties submitted post hearing briefs to the Board of Assessment Review (BOA) highlighting each side's position. On or about July 16, 2002, the Board of Assessment Review upheld the decision of the tax assessor denying PWSB's attempt to classify 9,088 as forestland under the Act. (**Exhibit R**).

Relying on the "appraisal" that was shared with the PWSB in March/April by Mr. Dupuis, the BOA initially found that its request for certification for forest land application was not timely submitted by the PWSB under the statute. Furthermore, the Board found that the 2001 application was substantially similar to the requested and litigated matter that occurred before the Board in 1985.

¹³ A complete transcript of the proceeding before the Board of Assessment Review is attached as **Exhibit Q**.

Therefore, the Board of Assessment Review found that it had no authority to reverse the denial of the relief requested under the legal doctrine of administrative finality. Lastly, and in spite of the two prior findings, the Board held that the DEM failed to address the legislative intent of the FFOSLA when it granted the designation of forest land to the PWSB. Therefore, the Board held that the land owned by PWSB and certified by the RIDEM did not qualify for the forest land designation under the statute.

F. PROVIDENCE WATER SUPPLY BOARD v. BEATTIE (2006)

With the denial of the Board of Assessment Review in hand, the PWSB, in 2002, filed a timely appeal to the Superior Court seeking a reversal of the Board's decision. After four years of litigation over the same issues that had been argued before the local Board of Assessment Review, the Superior Court reversed the Board's decision on several grounds. The Court specifically rejected the position of the Scituate tax assessor, advanced by her counsel Mr. Borden, that the PWSB had to show that it was under a threat of forced conversion of its land based on the legislative declaration or purpose of the FFOSLA to obtain the forest land classification. The court stated:

The Board's decision is affected by error of law because it construed § 44-27-1 et seq. in a manner inconsistent with the plain, unambiguous language therein. When a property owner, such as the Plaintiff, applies to the DEM for forest land certification, the plain language of § 44-27-4 instructs that "the Director shall examine the land and, if the Director determines that it is forest land, the Director shall issue a certificate." The only other instructive provision within the Act is that defining the meaning of the word "forest land," as described supra. With respect to the interpretation of definition provisions such as § 44-27-2(2), "[a] definition which declares what a term means . . . excludes any meaning that is not stated." 2A Sutherland Statutory Construction, § 47:07 at 232 (Norman J. Singer, 6th ed. 2000).

In this case, the Board found, as a fact, that the 9,088 acres "meets the requirements of the statutory definition" of forest land as set forth in § 44-27-2(2). (7/16/02 Decision at 3.) The plain language of the Open Space Act does not require the Director to refer to the financial status of the applicant; to weigh the economic burden that may result as a consequence of the forest land designation;

or, in fact, to refer to the condition of the landowner at all. Rather, the plain and unambiguous language of the Act mandates that the Director issue a forest land certificate if the land meets the specified definition; that the tax assessor classify the land as such; and that the Board affirm the designation and classification unless the tax assessor can show that it was erroneous from the outset. To read anything further into the Act would be to "imply that which the Legislature did not express." Orthopedic Specialists v. Great Atl. & Pac. Tea Co., 120 R.I. 378, 388, 388 A.2d 352, 357 (1978) (citation omitted).

Providence Water Supply Bd. v. Beattie, Nos. 02-5166, 03-2052, 04-0442, 05-1148, 2006 R.I. Super. LEXIS 13, at *36-37 (R.I. Super. Ct. Feb. 3, 2006).

TOA, No. 12.

Since the Assessor's counsel stipulated that the land in question met the statutory definition of forest land as contained in the Act, the Assessor was essentially prevented from arguing that that land was not forest land under the Act by relying on the legislative declarations and so-called intent of the law. The court squarely rejected the Assessor's argument under long-established rules of statutory construction. The Court stated:

In this case, both the tax assessor and the Board violated the well-established rules of statutory construction by attempting to determine the legislative intent behind a clear and unambiguous statute. The tax assessor's role was limited to determining whether the DEM Director correctly found that Plaintiff's property met the statutory definition of forest land as set forth in section 44-27-2(2). In accordance with the applicable standard of review, the Board was to determine whether the tax assessor met her burden of proof by showing by a preponderance of the evidence that the Director's designation was erroneous. (7/16/02 Decision at 3.) In reviewing the findings of the tax assessor, the Board emphasized that this issue "depends upon whether or not the land in question qualifies under the legislative declaration set forth in [section] 44-27-1." Id. The Board construed the legislative declarations as a "prerequisite" to forest land classification under the existing statutory scheme. See id. at 3-4.

Utilizing this interpretative methodology as a guideline, the Board found that the tax assessor did, in fact, show by a preponderance of evidence that the Director's designation was erroneous. Id. at 10. As support for its conclusion, the Board stated that it found the evidence before it tended to show that the Director "failed to address the question of whether or not the land is subject to the possibility of forced conversion to more intensive uses as a result of economic pressures caused by the assessment." Id. at 8. Had he done so, the Board concluded, he would have resolved that the forced conversion syndrome did not apply to the matter at hand

because "there are no definite plans to sell or convert any of the land to more intensive uses." Id. at 9. Moreover, "the land is necessary for the protection of the quality of water in the reservoir" and "other uses, such as forestry, production of electricity, etc. are minimal and merely incidental to the main purpose." Id. at 8-9. Consequently, the Board determined that the Plaintiff's application failed the standard set forth in § 44-27-1(2), and, as such, the Plaintiff was precluded from receiving forest land classification in this instance.

Relying on the language of the statute that required the Assessor to show the Director's decision to classify the land as forest land was erroneous by a preponderance of the evidence, the Court noted that in the hearing before the Board of Assessment Review:

The assessor agreed that the 9,088 acres was forest land as defined in [the Act]. Moreover, the Board found that "as a fact [] the land . . . meets the requirements of the statutory definition and the rules and regulations of the DEM.

Providence Water Supply Bd. v. Beattie, Nos. 02-5166, 03-2052, 04-0442, 05-1148, 2006 R.I. Super. LEXIS 13, at *34-36 (R.I. Super. Ct. Feb. 3, 2006)

After deciding the forest land issue, the Court further rejected the Assessor's position that the 1985 decision of the Board of Assessment Review was binding on the PWSB because of their failure to appeal it. In doing so the Court noted:

The Board incorrectly applied the doctrine of administrative finality to the case at bar. First, as a matter of law, "administrative action is not final . . . if the first decision was invalid." Nolan, 755 A.2d at 808 (citing Hester v. Timothy, 108 R.I. 376, 384, 275 A.2d 637, 641 (1971)) (declining to apply administrative finality when the first application was denied on a vote for which only four members of the zoning board were present, in violation of a statute requiring all five to be present). The 1985 decision by the Board was not valid because it was predicated on the mistaken presumption that the Open Space Act necessarily requires an inquiry into whether the legislative declarations have been satisfied. (4/25/85 Decision at 3-4.)

Providence Water Supply Bd. v. Beattie, Nos. 02-5166, 03-2052, 04-0442, 05-1148, 2006 R.I. Super. LEXIS 13, at *42-43 (R.I. Super. Ct. Feb. 3, 2006)

In short, since the 1985 Board based its ruling on an incorrect interpretation of the law, the Court ruled that it was not entitled to any deference under the doctrine of administrative finality. More importantly, however, the Court instructively stated that:

Even absent the aforementioned reasoning, the Court would resolve the issue of administrative finality in favor of Plaintiff. The Court is mindful of the fact that Plaintiff is a non-profit quasi-municipal entity which serves an important public purpose. To forever bar PWSB from re-litigating this issue would unduly burden a significant number of the states' taxpayers. Accordingly, after balancing the equities involved in this case, the Court finds that the doctrine of administrative finality does not apply.

Providence Water Supply Bd. v. Beattie, Nos. 02-5166, 03-2052, 04-0442, 05-1148, 2006 R.I. Super. LEXIS 13, at *49-50 (R.I. Super. Ct. Feb. 3, 2006)

Based on the above language, the Court recognized that the issues involved affected more than just the immediate parties, but ratepayers across that state. Finally, the Court rejected the Board's finding that the PWSB did not timely file its application for forest land classification within 30 days of receipt of the Dupuis appraisal.¹⁴ In doing so, the Court noted that the evidence in the record "shows that the Plaintiff reasonably construed the Dupuis appraisal as part of ongoing negotiations related to a new valuation agreement." It held that the "first proper written notice of the revaluation occurred on July 1, 2001 when it received the Town's tax bill." Since the application for FFOS certification was received on July 27, 2001, the Court found that it was timely filed within the thirty days as required by statute.

Thus, after five years of litigation which started before the local Board of Assessment and ended in Superior Court, the PWSB essentially won what it attempted to gain in 1985 – the right to have the Scituate tax assessor classify its 9,088 acres as forest land. Unlike in 1985, by 2006, a commission had determined that the recommend value for such classification was \$100.00 per acre which, as forewarned by the Council President Richard, would be a "disaster" for the Town.

¹⁴ This references the so-called March 2001 submission.

Thereafter, on August 19, 2006, Judge Vogel of the Superior Court mandated that the tax assessor classify the subject land as forest land and to determine the correct assessment for all the years in dispute. The tax assessor complied with the order on classification, but actually increased the assessment on the subject acreage to approximately \$11,000 an acre (\$5,500 at 50%) instead of using the maximum recommended value of \$100 to \$115 an acre as established by Farm, Forest & Open Space Land Subcommittee. **(Exhibit S.)**

Thus would ensue another potential legal fight over the propriety of the assessed value of the forest land given their Court victory on the forest land classification. In fact, by 2006, and with a favorable decision from the Court, PWSB would attempt to classify 10,031.6 acres of land as forest land under the FFOSLA.

The battle never fully materialized, however, as the Town and PWSB came to a settlement that in effect would quell any tax concerns for a total to 17 years. (Tax years 2001 to 2007) & (2008 to 2017).

V. MEDIATION/SETTLEMENT EFFORTS PRIOR TO THE R.I. SUPERIOR COURT'S 2006 DECISION

A. 2001-2008

While it took approximately six years to resolve the farm forest certification issue (2001 to 2007), there were some attempts to reach a resolution of the tax dispute regarding value along with the issue of forest land designation. The best record of these attempts at settlement are contained in the closed session minutes of the Scituate Town Council.

It is also significant to note that in 2003, the town's taxpayers underwent a statistical evaluation which further adjusted the value of PWSB's holdings. As a result of that re-assessment, the PWSB tax liability actually decreased by approximately \$1 million a year based on an

assessment of \$318,636,200. This only served to bolster the PWSB's assertion that they had been over-assessed for 2001 to 2003 without even considering the issue of forest land classification.

1. 2001

At a closed session of the Town Council on November 1, 2001, Town Treasurer Theodore Przybyla indicated that he had been in discussions with the PWSB and that both parties agreed to postpone the Board of Assessment hearing set for November 5, 2001 on the FFOS issue. He felt that a 45 day delay in the hearing would allow enough time for him to negotiate an agreement, and that he would come back to the Town Council for approval of the negotiated agreement.

2. 2003

In early 2003, Town officials apparently met with the Mayor of Providence to discuss resolution of the issue. (**Exhibit T**). The next executive session minutes that mention the dispute with the PWSB occur in August 25, 2003. At that time, the Town Council met with the Assessor's attorney, Kenneth Borden, to discuss the process of mediation as well as update the Town Council on the Farm, Forest & Open Space designation attempt. On September 13, 2003, Council President Theodore Richard updated that Town Council on the status of the mediation and reported that the mediator, Mr. William Poore, wanted a letter from each party outlining their bottom line offer of settlement. Three years before the Court would rule on the exact issue, the Council President also noted that "any changing of the designation to Farm/Forrest/Open Space would be a disaster to the residents of Scituate." The mediation occurred on August 26, 2003 with a follow-up on October 17, 2003. An outline of the issues presented at the first day of mediation is set forth in **Exhibit U**. Significantly, the memorandum contains the first admission by the PWSB as to why they were so intent on getting forest land classification of land held in Scituate – to establish a precedent that can be used in other communities where they also owned land. Most significantly, however, the memo

suggests that the PWSB was willing to off-set any loss in value of the land under forest designation by “shifting the burden to other PWSB assets.” Those other assets would include the physical plant and infrastructure. Thus, in 2003, a potential resolution appeared to be offered that would essentially shift the tax burden associated with the land value to PWSB’s physical plant assets. That did not occur, and the adverse ruling from the Superior Court in 2006, which would occur three years after the discussion, would forestall any value shifting from a legal perspective in the future.

3. 2004

On February 20, 2004, the Town Council met again for an executive session for an update on the PWSB negotiations. While the Town had submitted a best offer letter to the mediator, as of the date of the meeting, the PWSB had not. Council President Richard informed the Town Council that he had had a meeting with the new Chairman of the Providence Water Supply Board, Robert Walsh.

Based on the minutes of the meeting, PWSB proposed to pay the town \$3.9 million instead of the \$4.2 million that they were paying because they believed that they had been over-assessed and taxed approximately \$1 million a year from the period 2001 to 2003. They also requested a frozen assessment for ten years. For the first time, the Town mentioned legislation that would allow the Town to set a different tax rate for residential and commercial land owners. State Representative Carol Mumford had decided not to introduce legislation allowing the town to impose such a rate, and it was noted that the PWSB was pleased with the decision.

On June 10, 2004, the Town Council met again in executive session to update that body on the status of the case. This meeting of the Town Council occurred seven (7) days after an informal meeting with officials of the PWSB. **(Exhibit V)**. It was noted that the Town’s valuation 2003 resulted in a drop in the Providence Water Supply Board total tax from \$4.8 million to \$3.8 million.

As noted above, the PWSB, as early as 2001, had claimed that it have been over assessed and over taxed by approximately \$1 million.

Based on the executive session minutes, Council President Richard requested authority to offer \$4.4 million for five years with the assessment frozen for that period. The PWSB had requested a ten year agreement. After more deliberation, it was agreed that the Town would counter with a proposal of \$4.2 million for five years with a tax rate and assessment frozen for the same period.

On June 14, 2004, the Town Council met again to discuss the status of the settlement talks that had occurred on June 8, 2004 with the PWSB. A copy of the PWSB settlement offer is attached as **Exhibit V**. Based on the executive session minutes, PWSB offered to pay \$4.2 million for five years beginning in calendar year 2004 through 2009 with an option to renew for an additional ten years on the same terms. If either party did not want to renew, then the town would agree to pay the PWSB \$1 million which represented the alleged overpayment of \$200,000 in taxes per year for the prior five year period (2004 to 2009). Interestingly, while the town would agree to classify all of the PWSB land as forest land, it would not be required to separately value the land on its tax rolls as such. Furthermore, if an agreement could not be reached at the expiration of the agreement, either side had the right to argue the applicability (or not) of the forest land designation.

As a result of this offer, the Town's negotiating team, Council President Richard, Karen Beattie, and Representative Mumford left the meeting and indicated that the matter would have to proceed in Rhode Island Superior Court because the Town would not agree to a ten year freeze on both the assessment and tax rate. The Council President also advised the council that the legislation allowing for a two-tier tax rate would allow the Town to adjust the commercial rate if a court ruled against the town. This would allow the town to make-up any shortfall on the land value at the residential rate by

establishing, for the first time, a commercial tax rate applicable to all of Scituate's commercial property owners, including the PWSB.

The minutes of the same meeting suggest that the Town Council authorized the negotiation team the ability to make the following settlement offers:

OPTION #1: First three years, frozen assessment and rate; tax bill \$4.2 million. Years four, five, & six, frozen assessment, each year rate can go up by the amount of tax rate increase set by the Town with a legal cap of 5.5%.

OPTION #2: First three years, frozen assessment and rate, tax bill \$4.2 million. Years four, five & six, frozen assessment, each year rate can go up by the amount of tax rate increase set by the Town with a cap of 4%.

OPTION #3: First three years, frozen assessment and rate \$4.2. Year four, five and six, increase tied to the consumer price index.

It is important to note that the proposal was prospective in nature, and did not address the PWBS's concerns that they were over-taxed from 2001 to 2003. On July 1, 2004, the town council met again to discuss the status of settlement talks. Because of the new fiscal year, the tax bill was sent out which reflected a tax liability of approximately \$4.8 million. Based on the revised statistical re-evaluation which would have seen PWBS's assessment and tax bill drop because of the town's one residential rate, the Town adopted a two-tier tax rate (residential and commercial) that generated a greater tax liability had the town agreed to tax all property owners at a unitary residential rate.

The next meeting of the town council concerning the PWSB issue occurred on October 19, 2004 where the entire town council, the town treasurer, the tax assessor, town clerk, attorneys Nicholas Gorham and Kenneth Borden, and the town clerk met with representatives of the PWSB, including its chairman, Mr. Robert Walsh. The minutes reflect that the PWSB never responded to the Town's last proposal which was to freeze their assessment and tax rate for a five year period resulting in a tax liability of \$4.1 million a year for 5 years.

The Chairman of the PWSB noted that the on-going legal dispute centered on three inter-related issues: (1) the lack of certain certification's of the Town's appraiser Mr. Eric Dupuis; (2) the appraisal of the Gainer Dam, and (3) the Farm, Forest Open Space designation. The minutes reflect that the statistical re-evaluation that occurred in 2003 resulted in a tax decrease to PWSB of approximately \$3.5 million which the PWSB asserted bolstered their position that they had been over-taxed since 2001. The PWSB also informed the Town Council that they were seeking forest certification from Scituate as leverage with other communities where they also owed land. Mr. Walsh explained that 9 cents of every dollar that the PWSB collects goes to pay Scituate taxes, and that the PWSB had to raise water rates in the past on at least two occasions because of the increase in Scituate's tax rates. The attorney for the PWSB also noted that he believed that the PUC would agree to a rate increase if the taxes are frozen for a ten year period at \$4.2 million. At the end of this joint meeting, both sides indicated that they would reassess the issues.

4. 2005

Two and one-half months later, the Town Council met again in executive session on January 13, 2005 to discuss the issue of the assessment. Since one of the concerns raised by the PWSB related to the qualifications of Mr. Dupuis, it was recommended and decided that legal counsel, Mr. Kenneth Borden, should retain an appraiser with experience in valuing water supply utilities.

By March 10, 2005, the town met with their counsel who recommended that the town retain Webster A. Collins, Vice President and Partner of CB Richard Ellis/Whittier Partners for the sum of \$57,500 upon further verification of his experience in evaluating water shed properties.

On May 12, 2005, the Town Council met in executive session to get an update on the appraisal which was on-going as well as learn from the tax assessor that Superior Court would be hearing the matter regarding Farm, Forest & Open Space classification in mid-summer.

In June 9, 2005, it was reported that the PWSB had asked for an extension until the fall to submit briefs on the forest designation issue. The Town agreed to the extension. In addition, CB Richard Ellis requested permission to engage an engineer to help in the assessment of the plant as well as update the 2003 statistical- based PWSB assessment. The town agreed to retain an engineer for the additional cost of \$25,000.

On August 25, 2005, the Town Council again met in executive session to discuss the status of the litigation and settlement talks. The minutes reflect that Attorney Kenneth Borden advised the members that “this dispute is the most important issue in Town right now and will have long-term financial effects.” It was agreed to move forward with the appraisals while the issues of the Farm, Forrest & Open Space designation was being assigned to a Superior Court Judge for a decision. It was also reported that Council President Theodore Richard was meeting with Boyce Spinelli, Acting Director of the PWSB, to discuss a possible resolution of the matter.

On October 27, 2005, the council president reported to the Town Council that the PWSB had offered to settle the dispute by agreeing to pay \$4.0 million per year with the assessment and tax rate frozen for five years. The Council President suggested that he believed that they would come up on their offer to \$4.1 million, and that the City was willing to “take off the table” the Farm, Forest, Open Space classification. The proposal also would “take care of” the back taxes that the PWSB were owed for the over-assessment/taxation from 2001. (**Exhibit W**). The assessor believed that if the deal were agreed to, local property taxes would have to be raised 13.9% percent to balance the budget for the next fiscal year.

Internal records indicate that another mediation occurred on September 28, 2007 under the direction of Town Council President Robert Budway. It is significant to note that this mediation occurred after the Court’s adverse ruling against the Town on the forest land classification issue. An

outline of the issues and offers presented is contained in a memorandum dated October 4, 2007 from the Town's appraisal experts, Webster Collins to Attorney Kenneth Borden. **(Exhibit X)**. With a victory of the forest classification in hand, PWBS requested to fix the annual taxes back to 2001 at \$4.2 million dollars a year and to freeze them at that level until 2012. They also requested a freeze of the tax rates and assessment from 2007 to 2012. The total loss of revenue for the town would be \$13,000,000 over the five year period or \$2.6 million per year from 2001-2012.

The town's counter offer centered on a payment of \$300,000 to the PWSB for overpayment of taxes in 2007 accompanied by a 10% reduction in their overall assessed value. The total value of such offer was \$5.9 million of lost revenue to the town. In a worse case scenario and assuming that the Providence Water Supply Board prevailed on its belief that the assessment should be \$190,000,000, the total refund to them from years 2001 to 2007 would be \$14,964,981 in over payments. When added with an interest expense of \$5,738,376.12¹⁵ the total potential exposure to the town was \$20,703,357.12.

5. 2006

The town council met on January 26, 2006 for an PWSB update. The Town and their legal counsel were waiting for their expert appraisal to be completed. As of the date of the meeting, it had not been finished and there was no other information relayed concerning the case.

On February 9, 2006, the Town Council met again and was informed by their attorney, Kenneth Borden, that he "is very disappointed" with the Vogel decision, (referring to PWSB v.

¹⁵ Under Rhode Island law, a taxpayer who is successful in proving an overpayment of taxes based on an overassessment of value is entitled to 12% interest on any amounts overpaid.

Beattie) and that the town has a “good chance” of reversing her decision on appeal. He informed the town council that the next step concerned the valuation of the property at \$100 an acre as advocated by the PWSB which would allow the parties to assess the total damages or amounts due to PWSB based on the over-assessment of taxes. Once the damages were entered as a final judgement, an appeal of the entire decision could be taken to the Rhode Island Supreme Court. Attorney Borden suggested that the town hire a “good appellate attorney” to assist the town in preparing the case for an appeal.

Mr. Borden recommended Attorney’s Lauren Jones or John MacFadyen. Attorney Borden indicated that it was not the time to try to settle the case in light of the court’s decision. Mr. Borden also noted that he didn’t feel that this was a difficult case. The Council voted to appoint a subcommittee to interview three lawyers, Mark DiSisto, John McFadyen and Robert Flanders and to offer the job to the person that the committee believed was the “best choice.” At that same meeting, it was suggested that whomever the Town hired for preparation of a potential appeal should enter the current case before the Rhode Island Superior Court and serve as co-counsel with Mr. Kenneth Borden.

On April 12, 2006, the Town Council was informed by Kenneth Borden that Judge Vogel instructed the tax assessor to place a value on the PWSB land that is declared a farm, forest, and open space. Once a value is placed on the land, the PWSB can seek relief from the local Board of Assessment Review. Based on the minutes, Mr. Borden indicated that the Judge wanted the tax assessor to value the land at \$100 per acre.

On June 8, 2006, Attorney MacFadyen informed the Town Council that a final order based on Judge Vogel’s ruling was still being fine-tuned after two months of drafting. He explained that the order would require the tax assessor to put a value on the land designated as forest land under the

statute. Attorney MacFayden indicated that there were two issues that needed to be addressed in the suit on appeal: (1) What is the appropriate classification for the land and (2) if it is classified as forest land, how much is the land worth, and if it is used for more than timber, should the land be worth more per acre than the so-called recommended value. Mr. McFadyen indicated that he feels confident that the Town will win on appeal.

On June 22, 2006, the town council met in executive session to get an update on the status of negotiations. The next day, Council President Richard, Karen Beattie, and Kenneth Borden were to meet with the representatives of the PWSB, at their request, to continue negotiations.

Mr. Borden wanted guidance as to a potential settlement number that the Town was willing to offer and/or accept. It was also reported that the Town's appraisal was almost finished. It was further reported that a final order had not been entered by the Superior Court on the forest land classification issue. Ms. Beattie noted that the last offer from the PWSB was to pay \$4.2 million a year for ten years with both the assessment and tax rate frozen. The Town's last final offer was \$4.4 million for five years with the assessment and tax rate frozen. Council President Richard relayed that PWSB believes that they have been over-taxed [since 2001] and that they are owed "a lot of money." At the time of the meeting, PWSB was paying \$5.1 million in property taxes. It was suggested that the negotiating team sit back and listen to what the PWSB has to offer before making any counter-proposal.

The Town Council met on October 12, 2006 and learned that the two parties could not agree on the language of the final order based on the judge's decision. Each side presented their own proposed language and the court would decide on the appropriate order. It was also disclosed that the appraisal was complete, and that the PWSB would be sharing their appraisal with the town.

6. 2007

The new town council members who were elected in 2006 met in executive session on February 8, 2007 for the purpose of bringing the members up to date with the status of the Providence Water Supply Board issues. Former Council President Richard gave an overview of the history of the dispute. After a meeting with the Mayor of Providence, it was disclosed that the City was exploring all its avenues including a sale of the PWSB. Mr. Richard suggested that if the two sides could not come to an agreement on the value of the PWSB property after exchanging the appraisals, the town should let the court decide the outcome.

Other options available to the Town included that the Town purchase the PWSB properties and operate the reservoir, and/or purchase the land and partner with another entity to sell the water. Councilman Salisbury suggested that the Narragansett Bay Commission (NBC) might be interested in a partnership with the Town. He suggested that the Town sit down with that entity and its chairman, Vincent Mesoella. Mr. Richard also suggested that if the Town negotiates again with the PWSB, there should be a funding formula that makes it automatic so that future negotiations would be unnecessary.

It was agreed that letters would be sent out to the NBC, the Governor, and Mayor Ciciline concerning the Town's interest in purchasing the Scituate Reservoir. On March 8, 2007, the Council was informed by its president, Robert Budway, that responses regarding the Town's letter of interest concerning the reservoir had been received and that a meeting had been scheduled with the Governor's chief of staff, state representative Carol Mumford, Theodore Richard, Leo Thompson and Wayne Salisbury to make a brief presentation about the Town's interest and concerns.

It was also reported that Theodore Richard and Wayne Salisbury had been in contact with the NBC and that they discussed different partnership options if the PWSB is offered up for sale. Mr.

Richard suggested that if the Town was really serious about purchasing or partnering with NBC, the Town needed to hire an accounting firm and a public relations firm to lobby at the General Assembly. From the Town's perspective, the biggest concern would be a sale to the state since the state would not be obligated to pay property taxes to the municipality.

The next reported meeting on the PWSB issue in executive session occurred on June 14, 2007. The Town had received a copy of the PWSB's appraisal, but it did not contain the land values. Negotiations continued to be suspended until each party's appraisal could be analyzed. Mr. Borden indicated that he did not believe that Judge Vogel had the authority to set land values at \$100 per acre, and that the PWSB would have to appear before the Board of Assessment Review if they continued to disagree with the assessed value in light of the forest land designation. On August 30, 2007, the town council met in executive session to review the competing appraisals. The difference between the appraisals was about \$100 million. It was re-iterated that the Town had offered to "split the difference" on the appraisal value (i.e. \$50 million), but that offer was rejected by the PWSB.

Mr. Borden indicated that a final decision on the FFOSA by the Rhode Island Supreme Court, if appealed, would be at least three to four years in the future. The town council met to be briefed on October 11, 2007 after Mr. Borden, tax assessor Karen Beattie, Theodore Richard, and Terry MacFadyen, and members of the PWSB had a negotiating session at the Marriott Hotel in Providence.

Mr. Borden indicated that the PWSB appraisal "is bogus" and that since the two sides are so far apart, there is no room to negotiate. Mr. Richard indicated that he felt that the PWSB is interested in a settlement, but that it will probably not be what the Town wants. Mr. Borden concurred that a settlement was possible, but that the Town may not be able to "live with the numbers." Mr. Richard indicated that in the past the Town has gotten an appraisal for the PWSB

properties, and then discounted it by about 16%. If that formula was used on the last appraisal, the Town would have overcharged the City by about \$5 million dollars to date.

Mr. Salisbury indicated that he felt that the PWSB didn't want to settle, and he feels better "to have the court give our Town away instead of the Council doing it." The Town's appraiser indicated that he believed the value of land should be what they [the PWSB] could sell it for. The appraisal expert and our lawyers conceded that the PWSB appraisal was very low, but that the Town would not get everything that they wanted because of unspecified problems with our appraisal.

On November 8, 2007, the Council was briefed on a meeting with Pamela Marchant, Jean Bondarevski, Boyce Spinelli from the PWSB and Town Treasurer Theodore Przybyla, Robert Budway, Karen Beattie, and Ted Richard with no attorneys present. It was disclosed that at the meeting, Councilman Budway suggested that if the Town had to refund the PWSB any money for the overpayment of taxes, the Town wanted to re-capture it so that it would not go into the PWSB's general fund. It was suggested that a restricted account would be set up that would be used to purchase land within the Town of Scituate for sensitive properties in the watershed.

PWSB suggested that such a plan would need to be approved by the Public Utilities Commission. Boyce Spinelli indicated that the PSWB had several million dollars to buy land, but did not know there was land available. The Town negotiating team told them there was plenty of land available. It was suggested that some land could be held by the PWSB and taxed, some could be held jointly with the land trust and the City of Providence, and some land could be held by the land trust and taken off the tax rolls.

The Town Treasurer suggested that the Town should get as much for Scituate as possible, and that some of this money should be used for infrastructure. The Town Treasurer indicated that PWSB was looking to reduce the Town's assessment by about 15%. Mr. Przybyla told Boyce

Spinelli that this is not going to happen, and that he felt that the reduction would be somewhere between 5% and 15%. The town treasurer suggested 7.5%. It was also disclosed that the PWSB was looking for a ten-year tax stabilization agreement.

Based on the reduction of 7.5% in the assessment, Councilman Winfield suggested that if the town was moving forward with an agreement, that the Town needed to hire a good public relations person to sell it to the taxpayers. Councilman Budway indicated that if the agreement settles, the best thing would be to hold a joint press conference with PWSB to “control the publicity” from the beginning.

On December 12, 2007, the Town Council met to be briefed by Ted Richard, Robert Budway, and Ted Przybyla who had met with representative of the PWSB with no lawyers. The parties discussed a proposed agreement where the PWSB assessment would be frozen for ten years, but their taxes would not be. It was noted that since their assessment had not been reduced since 2001, the Town could owe them \$4.8 million in overpaid taxes.

The parties discussed using this “refund” by putting it in a restricted account to allow the PWSB to purchase land within the Town. The Land Trust and Scituate Conservation Commission had identified several parcels that would allow for additional watershed protections.

Councilman Farrar asked that if the agreement was reached, would the FFOS case be dropped? Mr. Richard replied that that would be part of the agreement. It was also suggested that some of the money the Town would pay back to the PWSB would go to infrastructure repairs. The Town treasurer indicated that a bond would cost about \$621,622 a year, but this amount would not be figured into the state’s mandatory tax cap.

7. 2008

The Council met on January 10, 2008 to get an update on the negotiations. The Town offered the PWSB a ten-year agreement. The Town would owe the PWSB \$4.8 million as a refund for overpaid taxes which would then be placed into an account for purchasing land, development rights, and repairs.

The town treasurer reported that PWSB was looking for a 12.5% reduction in their assessment which would translate into between a \$4.8 million to \$5.3 million in refund. The town treasurer suggested that once the land was purchased, it should be deeded to the land trust. Councilman Salisbury reminded the other members that if the land is owned by the land trust, it would be off the Town's tax rolls

The town treasurer indicated that the two main issues related to any agreement are the length of the agreement (ten years) and the amount of the so-called refund. (\$4.8 million v. \$5.3 million). On February 21, 2008, the town council met with members of the public Tim McCormick, David Durfee, Michael Marcello, John Tessitore, Don Stinchfield and George Kuzmowycz. The purpose of the meeting with non-elected officials was to try to build support among community and political leaders for any future agreement.

In a review of the history of the proceedings to date, the town leaders disclosed that in 2000, they had never had a meeting with the PWSB before the tax bill went out (without any reduction in its assessment) with the hope that the bill would prompt a meeting with the town officials. The council outlined a potential ten-year agreement, based on a repayment of \$5 million funded by a local bond. The debt service on the bond would purportedly not be included in the tax cap. The community leaders stressed the need to educate voters about any agreement prior to a vote, and Mr.

Marcello suggested that any vote for approval of the bond should be at an all-day referendum rather than at a special financial town meeting.

On February 14, 2008, former council president Theodore Richard, who continued to negotiate with some of the other elected leaders of the Town, reported that PWSB wanted a ten year agreement with a \$5 million bond repayment. Council President Budway informed the council that if the Town agreed to the proposal, the FFOSLA lawsuit “would go away.” Mr. Richard noted that the specifics of the agreement needed to be handled by the attorneys. Because both sides have said some things that made the other angry, he suggested it might be a good idea to hire new lawyers to draft the final agreement.

On March 13, 2008, Theodore Richard informed the Town Council that the Town’s proposal outlined in the previous meeting had been offered to the PWSB’s representative, Mr. Boyce Spinelli. Mr. Spinelli countered that the PWSB wants the forest land designation, as granted to the PWSB in Superior Court, accepted by the Town and doesn’t want the value of their holdings based on the Town’s assessment. The town treasurer indicated that the Town did not want to accept the forest land classification.

The first draft of the tax treaty was sent on March 29, 2008 to be reviewed by the town council. The agreement specifically stated that, “for the duration of the agreement, Scituate will classify PWSB DEM certified land as forest land. Upon the expiration of the agreement, and that point on, Scituate reserves all rights to deny forest land classification and PWSB reserves all rights to object to the lack of classification in the future.”

The agreement also contemplated that a final judgment would enter on Judge Vogel’s decision confirming that the PWSB met the requirement of the FFOSLA statute. Councilman

Salisbury cautioned that the FFOSLA designation can not go to final judgment, and the classification of the land under the FFOSLA act must be “off the table.”

A follow-up meeting on April 24, 2008 revealed that the PWSB had a concern about the value of the assessed property being in the agreement, and that they preferred to have the agreement contain a specific dollar amount to be paid in taxes. This was based on their position that the assessed value of the property remained high. It was also revealed that state legislation would be necessary to allow the parties to enter into a ten-year agreement.¹⁶ Approximately three months later, on June 5, 2008, Attorney Borden indicated that he had met the previous night with three lawyers regarding the agreement, and reported that the numbers (i.e. taxes) were agreed to. The open issue remained the forest land classification under the FFOSLA. Attorney Borden suggested that a Memorandum of Agreement be signed withdrawing without prejudice the litigation, and further agreeing that neither side could rely or revisit it until the expiration of the ten year agreement. Attorney Borden did not want the decision by Judge Vogel to become a judgment against the Town.

He explained in essence, the proposed agreement puts everything on hold for a period of ten years. It was further reported that the Town had already identified \$5 million worth of property to be purchased with the bond monies. The town council met again in executive session on August 14, 2008 to explain further revisions to the agreement with particular regard to the use of the bond money. Mr. Richard also explained that nothing will happen with the Farm Forest Open Space law suit for ten years. Councilman Salisbury requested that the amount of tax payments be adjusted so

¹⁶ The legislation was eventually enacted and codified as R.I.G.L. § 45-2-2.1 (**T.O.A. No. 13**).

that the next two fiscal years would not be so bad for the Town. By August 19, 2008, the town council met to review the final agreement before submission to the Public Utilities Commission. The town solicitor, Nicholas Gorham, stated that “the most important part of this agreement is that we will be able to preserve more land.”

VI. THE APRAISERS

As previously noted, in addition to the forest land designation, there was an over-all disagreement on the valuation of the PWSB holding in general. Obviously, the designation of 9,088 acres as forest land, based on the recommended value of \$100 per acre, would have an effect on the total assessment and therefore the issue of classification and value were very much inter-related. Because PWSB had raised the issue of the qualifications of the town’s appraiser, Eric Dupuis, the Town would retain the services of CB Richard Ellis to appraise their holdings. The PWSB retained Peter Scotti and an engineer, Sansoucy, to counter the Town’s experts. The following table summarizes the valuation of the competing appraisers:

<i>Dec 31</i>	<i>CBRE for Scituate</i>	<i>SANSOUCY for PWSB</i>	<i>DIFFERENCE</i>
2000	297,700,000	127,000,000	\$170,000,000
2001	-	140,000,000	
2002	-	125,000,000	
2003	330,800,000	140,000,000	190,800,000
2004	-	117,000,000	
2005	-	117,000,000	
2006	-	127,000,000	

The average difference in the appraisal for the fair market value is \$180,750,000. Applying the 50% assessment, the two sides remained approximately \$90,375,000 dollars apart on their value. Using a tax rate of approximately \$29.00 per thousand, the difference in the tax liability was approximately \$1.5 million a year.

VII. THE RESOLUTION

A. THE MAY 2009 AGREEMENT

Three years after a Superior Court ruled that the PWSB land was entitled to forest land classification under the FFOSLA, the Town and the PWSB finally reached an agreement on the then nine year tax dispute. (**EXHIBIT Y**). With the prospect of a \$100 an acre assessment on 9,088 of its acres and the potential loss of revenues as a result of the Court's ruling, the Town of Scituate's bargaining position was significantly weakened. Mr. Boyce Spinelli testified before the Public Utility Commission that the ruling of the Superior Court was a "breakthrough" after several years of negotiation and mediation sessions.

As a result, the Town agreed to "re-calculate the Water Supply Board's real estate taxes for the years 2001 to 2007" by granting them a 12.5% reduction in the taxes they actually paid along with interest calculated at 6%. This would result in a base refund of \$4,297,516. With interest, the total amount approximated \$5,300,000. As a compromise, the PWSB accepted the payment of \$5,000,000 from the Town, to be bonded and placed in a fund to be used by the PWSB for "the purchase of land (together with any buildings thereon) located in Scituate which will provide watershed protection . . .".

In addition, the Town agreed to freeze the PWSB assessment for the period of 2008 through 2017 with an understanding that the PWSB would be entitled to an additional refund for an

overpayment of taxes in 2008 and 2009. The overpayment would reduce the future taxes to be paid in 2010, 2011, and 2012. During the period of the agreement, any land purchases in Scituate or building improvements would not affect the agreed assessment value of their property nor would any improvements to their plant. Thus, the PWSB would use the \$5 million in tax refund to be funded by the taxpayers of Scituate via a bond to purchase more land in the watershed further reducing the tax base of the Town.

For the duration of the agreement, “Scituate agrees to classify as forest land . . . all land owned by the Water Supply Board that the RIDEM certifies now or in the future as forest land.” At the termination of the agreement, Scituate shall be entitled to take any actions with respect to the forest land classification of the Water Supply Board’s land as if this Agreement, the Court actions and the Appeals never occurred . . .” Likewise, the PWSB “expressly reserve and will be entitled to exercise any and all appeal right’s with respect to” any action taken by the Town. **(Exhibit Y)**

In essence, the agreement contemplates a complete re-set of the forest classification issue between the parties. How a Superior Court would treat the topic, given the fact that there is already a reported decision on the very issue of forest land classification, remains unknown.

B. POST 2009 AGREEMENT EVENTS

With the agreement signed, Scituate voters approved the \$5 million dollar bond which was then used by the PWSB to purchase 276 acres of land in Scituate. Per the 2009 agreement, the purchase would not generate any additional taxes from the PWSB. In addition, 196 acres of development rights were purchased which would reduce the tax liability of the owner. **Exhibit Z** shows the acreage and parcels purchased by the PWSB from the \$5 million dollar proceeds. The total amount spent to acquire this land and development rights equals \$4,757,900.00. In addition,

the PWSB, also purchased an additional 124 acres of land and 278 acres of development rights for \$3,817,750.00 from the period of 2010 to 2016. (**Exhibit AA**).

VIII. THE COSTS

All litigation is expensive and that expense is often a factor in reaching resolution of any dispute. As noted in the report, the taxpayers had to support attorney's for the members of the Board of Assessment Review and the Tax Assessor. Once the Beattie decision was issued, the Town also retained counsel to help assist in an appeal if necessary. The total attorney fees equaled \$239,701. In addition, expert fees (i.e. appraisers and engineers) totaled \$242,769. When added to other miscellaneous fees, the total cost of the almost decades long dispute to Scituate's taxpayers equaled just under one-half of a million dollar or \$491,310. (**See Exhibit CC**). This figure does not include any costs incurred by the firm of Gorham & Gorham who served as town solicitor throughout the proceedings.

IX. CONCLUSION

At the expiration of the 2009 agreement, the Town, after litigating the matter for over seven years at a cost of just under \$500,000.00, finds itself almost in the same exact position that it was in at the conclusion of 2001. While the 2009 agreement allows the Town to essentially re-litigate the issue of forest land classification, it will be up to the town council and its legal advisors to determine whether doing so is in the best interests of the Town and its taxpayers.

There is no doubt that the Beattie decision effectively undercut the Town's ability to negotiate from a position of strength. It is not surprising that the PWSB considered it a "breakthrough" moment that enabled the parties to settle on terms that has been offered in whole or in part since the beginning of the litigation in 2001. The 2009 Agreement essentially deferred action

for eight years, froze the assessments of the Town's largest taxpayer, allowed it to buy more land tax free, and bought the tax peace without resolving the fundamental issue – the fair valuation and taxation of forest land owned by the PWSB.

Obviously, the purchase of additional land and purification plant improvements made since the 2009 agreement offers the Town an opportunity to re-coup some of the assessment and revenue that was 'frozen' as a result of the settlement. The bigger issue, however, remains almost the same as it did in 1928 when the Rhode Island Supreme Court ruled in favor of the Town's ability to tax PWSB land. What is a fair share of taxation for PWSB given the amount of its landholding with the municipality and the on-going suppression of residential and non-residential development by Scituate to protect what is really its largest and most precious product? Potable water that supplies more than 60% of the state's residents. That decision, just as it did in 1928, rests with the Town's elected leaders to now determine.