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Real Estate Law: Taxation of condominium development rights

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Our courts in 2000 held that assessors are prevented from taxing condominium development rights. Unfortunately, there is now proposed legislation that would allow assessors to tax condominium development rights.

This proposed change could not have come at a worse time. There is no way that the additional costs in the form of taxes paid on condominium development rights can be passed on to the buyers of condominium units. The market will not allow it.

Our courts back in 2000 got it right in deciding that development rights should not be taxed.

The court pointed out that expansion land is common area and therefore is taxed "pro rata to the current owners in the condominium..."

Under Section 14 of the Mass. Condominium Act (Mass. General Laws, Chapter 183A), the common areas can not be taxed separately.

The court correctly determined that "as the unit owners have already been taxed for their interest in the common area land, the assessors may not tax another slice of the same real property to others." (First Main Street Corporation v. Board of Assessors of Acton.)

For many developers, a tax on condominium development rights would be the straw that breaks the camel's back.

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