

Kittery Housing Committee **AGENDA**

Thursday, October 5, 2023 1PM Town Hall Conference Room A

- 1. Update on Existing Initiatives
 - A. LD2003 Compliance Zoning Amendment Status
 - B. 42 44 Old Post Road Project Update
 - C. ADU Grant Program Status
- 2. Accessory Dwelling Unit Grant
 - A. Share lessons learned
 - B. Discuss doing a second round of grants
 - C. Discuss potential changes to program rules
- 3. Housing Reserve Funding
 - A. Discuss future funding challenges and opportunities
- 4. Update on Existing Initiatives
 - A. LD2003 Compliance Zoning Amendment Status
 - B. 42 44 Old Post Road Project Update
 - C. ADU Grant Program Status

Next Meeting - November 2, 1PM

Materials:

- ADU Grant Rules
- MMA Guidance on New Foreclosed Property Laws and Rules

This meeting will be held in person. The public may attend in person or view the meeting via Zoom webinar. Register in advance for the webinar by clicking <u>here</u>.



ACCESSORY DWELLING UNIT GRANT APPLICATION

Deadline: August 1, 2022

The Accessory Dwelling Unit Grant program is a locally offered pilot program developed to increase the availability for affordable residential units in the Town of Kittery. The grant is funded by the American Rescue Plan Act (ARPA).

A pre-application meeting with the Planning Department staff is required prior to submitting this application. The pre-application meeting will help identify zoning code requirements and options for creating a new ADU on the proposed parcel. Program Rules are on page 5 of this application. To setup a pre-application meeting and/or for questions, please contact the Department of Planning and Development at 207-475-1304.

Applicant Information		
Name:		
Property Address:		
Mailing Address (if different fi	rom above):	
Phone Number:	Email address:	
How did you hear about this p	program?	
	☐ Town Council Meeting	
• •	☐ Social Media (FB, Twitter, etc.)	•
☐ Word of Mouth	Other:	
Property Information		
Map and Lot number as it app	ears on Tax Bill: Map	Lot
Zoning District:		
Square footage of existing pri	mary residence:	
Is the property connected to p	oublic sewer and water? 🗖 Yes 🗖 No	
If No, describe water a	and wastewater systems:	
Is the property on a public roa	ad? □ Yes □ No	

If No, provide road access a	nd name:	
Is the property subject to any deed or Home Owners Association? Y		
If yes, explain:		
Accessory Dwelling Unit (ADU) Info	ormation_	
Square footage of proposed ADU: _		
ADU type: 🗖 Attached 🗖 Detached	b	
Will the ADU be rented to: ☐ Tena	nt 🚨 Family member 🛭	☐ Unsure/Don't know
Are there completed design plans for If Yes, please attach plans.	or the ADU? 🗖 Yes 🗖 N	lo
Do you require funds for planning 8	& design? ☐ Yes ☐ No	
Are you using a contractor? ☐ Yes ☐	No	
If Yes, list contractor contact info:		
Household Income		
Enter the combined annual househouse 2020 Federal Income Tax Retur		
If you <i>do not</i> file a Federal Income Treceived in 2020:	Tax Return, please comp	lete the following for amounts
Social Security Benefits:	\$	
Retirement Plan Benefits:	\$	(pensions, annuities, IRAs)
All Other Income:	\$	
Description of Other Income	::	
Do you currently have a mortgage?	☐ Yes ☐ No	
Do you currently have home owner	s' insurance?	⊐ No

Certifications

By submitting this application,	I agree to or	certify the	following:
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- All information provided is accurate to the best of my knowledge;
- Applicant is the owner of record for the subject property;
- Applicant is current on all taxes and fees owed to the Town;
- There are no outstanding zoning or code violations on the subject property;
- This grant program requires certain income restrictions for the property owner and any tenants;
- Applicant agrees to a one-time, initial income verification for the primary residence household and agrees to facilitate an annual income verification for the tenant household;
- Any rents charged must remain at or below the voucher payment standard as defined by Maine Housing for the York-Kittery-South Berwick HMFA, as adjusted periodically;
- Rent restrictions will remain in place for 10 years from the date of initial ADU occupancy;
- A pre-application zoning verification meeting is required prior to submitting this application.

Applicant Signature	 Date

The Town of Kittery does not discriminate on the basis of race, color, age, disability, national origin, gender, sexual orientation, or religion. To better develop and articulate the Town's goals and expectations for a diverse, equitable, and inclusive community, the Town is including the following **optional** questions for applicant. **You are not obligated to complete this section** and your participation has no bearing on the selection of applications.

Which of the following BEST DESCRIBES YOU ☐ Native American ☐ Asian or Pacific Islander ☐ Black or African American ☐ Prefer not to answer	☐ Hispanic or Latino ☐ White or Caucasian ☐ Multiracial or biracial ☐ Other
To which GENDER do you MOST IDENTIFY? Female Male Gender Nonconforming Prefer not to answer	☐ Gender Fluid☐ Other
Do you identify as a person with a DISABILIT Yes Prefer not to answer	Y or ACCESSIBILITY NEEDS? ☐ No
Which of the following BEST DESCRIBES YOU ☐ 18 to 30 years old ☐ 31 to 45 years old ☐ Prefer not to answer	IR AGE? ☐ 46 to 60 years old ☐ Over 60 years old
Which of the following BEST DESCRIBES YOU ☐ Enlisted ☐ Civilian ☐ Prefer not to answer	IR MILITARY STATUS? ☐ Veteran
What is the HIGHEST DEGREE or LEVEL OF EI ☐ Some High School ☐ High School ☐ Bachelor's Degree ☐ Prefer not to answer	DUCATION you have COMPLETED? Trade School Master's Degree Ph.D. or higher

ADU Grant Pilot Program Rules

Grant Stipulations:

- Homeowner applicant (grantee)
 - Homeowner must be a resident of the property.
 - Household must be at 80% of Area Median Income (AMI), or less, as defined by
 MaineHousing for the York-Kittery-South Berwick HMFA and as adjusted periodically.
 - o The Town will verify income qualification at the time of application.
 - The applicant must be able to build a code complaint ADU on their property, as verified by the Kittery Planning Staff prior to application.

ADU Tenants

- Tenant household must be at 80% of AMI, or less, as defined by MaineHousing for the York-Kittery-South Berwick HMFA and as adjusted periodically.
- Tenants' household income may increase to a maximum of 110% of AMI over the course of their tenancy, at which time they will be given one-year to find an alternative housing placement.
- Town will verify tenant household income on a yearly basis. The grantee is responsible for assisting in the verification process by providing information for this purpose. If the grantee does not comply with this stipulation, they will be responsible for paying back a pro-rated portion of the grant.
- o Every initial lease with a tenant must be for a minimum of 1-year, but may transition to a month-to-month thereafter.

Rents

- Rent must remain at or below the voucher payment standard, as defined by
 MaineHousing for the York-Kittery-South Berwick HMFA and as adjusted periodically.
- Town must confirm each new lease is in compliance with the grant stipulations for income qualifications and duration.

Finding a tenant

- o Grantees may advertise their rental unit as they see fit, but must include information on income restrictions.
- Local social service agencies may also assist the homeowner in identifying potential tenants.
- o The homeowner is the sole decision maker on who they choose as tenant, so long as the tenant meets the income stipulations outlined above.
- If the homeowner chooses to rent to a household with a voucher, they will benefit from additional incentives through Fair Tide's Landlord Engagement Initiative.
- All stipulations will be in place for 10 years and enforced through a deed restriction executed and recorded with the grant award, and municipal liens (as may be allowed by State Law).

Use of Funds:

• Grant up to \$50,000 per applicant for design, permitting and construction costs to create an

- Accessory Dwelling Unit on their property.
- There will be two grants available in the pilot year, for a total allocation of up to \$100,000.
- The newly created ADU can be inside the existing structure, attached to the existing structure, or a separate structure on the property.
- The ADU must comply with Title 16 and all other zoning regulations.
- The grantee must comply with all town inspection and code enforcement regulations and processes.

Funding Award:

- The initial pilot program will be awarded via a random lottery process.
- Applicants may only have one entry per eligible property.
- After the application deadline, staff will hold a drawing to randomly select two separate properties to be awarded grant funds from all completed and eligible applications.

Proposed timeline and process for distributing funds:

- The grantee must have the ADU design completed and a contract with a builder within 6 months of grant notification and/or obtain a building permit (if performing the work on their own).
- The grantee must have all permits, and construction must begin within 1-year of the grant award.
- The ADU must be completed within 2-years of the grant award.
- Grant funds will be disbursed as direct payments to the designer and/or contractor.
- 10% of funds may be paid up front for materials costs, with itemized bill from contractor.

**TOWN OF KITTERY USE ONLY **

Town Manager Date	
Pre-application zoning verification meeting held:	(date)
Type: Federal Tax Return Other	
Income Verification: ☐ Yes ☐ No	
Outstanding taxes or fees owed by property owner: Yes No	
Outstanding zoning violations or code enforcement actions: \square Yes \square No	
Property is applicant's Primary Residence: ☐ Yes ☐ No	



MAJOR CHANGES REQUIRED FOR SALES OF TAX-ACQUIRED PROPERTY

MMA Legal Services Guidance

Updated August 31, 2023

A recent U.S. Supreme Court decision and a new Maine law will immediately require municipalities to implement major changes to tax-acquired property sale procedures.

What did the U.S. Supreme Court hold?

In <u>Tyler v. Hennepin County, Minnesota</u>, 598 U.S. 631, decided May 25, 2023, the U.S. Supreme Court unanimously held that a government violates the Takings Clause of the U.S. Constitution's Fifth Amendment when it sells tax-acquired property and keeps more sales proceeds than are owed in delinquent taxes, interest, costs.

In *Tyler*, a Minnesota County foreclosed on Geraldine Tyler's condo for unpaid property taxes, later selling the property for more than she owed in back taxes. Minnesota law allows the government to keep all proceeds from sales of tax-acquired property -- which it did in Tyler's case. Tyler sued, claiming the County's action violated the takings clause of the U.S. Constitution's Fifth Amendment, which prohibits the government from taking property for public use without just compensation. Lower courts dismissed her suit for lack of standing on the grounds that she did not have a property interest in the sale proceeds because she did not own the property at the time of sale; full title had previously passed to the government.

The U.S. Supreme Court reversed, holding that Tyler did state a valid claim. The Court held that property owners like Tyler have a property interest in "excess" equity from the sale of tax-acquired property. Although Hennepin County had the right to foreclose on, seize and sell the property, it violated the Constitution when it retained more in sale proceeds than the amount Tyler owed.

Why does the *Tyler* decision matter to Maine municipalities?

The decision is significant because the Minnesota law challenged in *Tyler* is similar to Maine's tax lien mortgage foreclosure law ($36 \text{ M.R.S.} \ \S 942 - 943$), which vests full title in the municipality upon lien foreclosure and allows the municipality to keep all sale proceeds received from the sale of tax-acquired property.



As a result of the *Tyler* decision, it is likely unconstitutional for Maine municipalities to retain all proceeds of tax-acquired property sales.

The same principles likely also apply to sale proceeds connected to sale of property acquired through other municipal lien forfeitures, for example, lien foreclosures based on unpaid sewer or stormwater charges.

Does this decision invalidate Maine's tax lien mortgage foreclosure process?

No. The *Tyler* decision does <u>not</u> invalidate Maine's tax lien mortgage foreclosure statute or any past or present municipal tax lien mortgage foreclosure proceeding. The Court's decision only impacts post-foreclosure sale procedures.

Have changes to Maine law resulted?

Yes. Immediately after the *Tyler* decision was issued, Maine's Legislature enacted emergency legislation (PL 2023, c. 358), effective June 30, 2023, that independently requires municipalities to return "excess" sale proceeds. The new legislation, "Chapter 358" has:

- Repealed the special sale process for tax-acquired homestead property formerly owned by senior low-income persons (36 M.R.S. § 943-C);
- Reformulated 36 M.R.S. § 943-C to instead establish sale procedures applicable to virtually all sales of real estate acquired via the tax lien mortgage foreclosure process in 36 M.R.S. §§ 942 943; and
- **Defined** excess sale proceeds and required their return to the former owner.

What sale procedures are now required? (updated 8/31/23)

Effective June 30, 2023, if tax-acquired real estate will be sold to someone other than the former owner:

- (1) At least 90 days prior to listing property for sale the municipal officers or their designee must send a written notice to the last known address of the "former owner" by U.S. Postal Service certified mail return receipt requested and first-class mail, of the right to require the sale process in 36 M.R.S. § 943-C. (This Maine Revenue Services form must be used to provide notice to the former owner(s)).
- (2) If the former owner files a written demand within 90 days after notice, the municipal officers or their designee must list the property for sale with a real estate



broker licensed in Maine. The broker may not hold an elected or appointed office in the municipality nor be employed by the municipality.

- (3) The municipal officers must sell the property via quitclaim deed to the successful buyer at the highest price at which the property is able to sell or the price at which the real estate broker anticipates it to sell within 6 months after listing.
- (4) Any excess sale proceeds must be paid to the former owner (see below).
- (5) If the municipal officers are (a) unable to list or sell the property as required above or (b) if the former owner does not file a request for the special sale process, the municipal officers may sell the property in any manner authorized by the municipality's legislative body, provided that the former owner must still receive any excess sales proceeds.

Who is the "former owner"?

"Former owner" is defined in the new law as the "owner or owners of record at the time of foreclosure and if deceased, the former owner's heirs, devisees, or personal representative."

What if the property was owned by more than one owner when the lien foreclosed? (updated 8/31/23)

If tax-acquired property was co-owned by more than one person at the time the lien foreclosed (e.g., by one or more tenants in common or joint tenants), MMA Legal Services recommends that the required notice of special sale process be sent to each co-owner at least 90 days before the tax-acquired property is listed for sale. The special sale process should be used if one of the former co-owners requests the special sale process.

How is the amount of "excess sale proceeds" determined?

The excess proceeds to be returned to the former owner is the amount of sale proceeds remaining after the municipality deducts the following amounts (see new § 943-C(3)(C)):

- (1) All taxes owed on the property;
- (2) Property taxes that would have been assessed on the property after foreclosure while the property was owned by the municipality;
- (3) All accrued interest;



(4) Fees, including property listing and real estate broker's fees;

- (5) Any other expenses incurred by the municipality in selling or maintaining the property, including, but not limited to, an administrative fee equal to 10% of the property taxes owed and reasonable attorney's fees;
- (6) The municipality's lien and foreclosure process costs, including but not limited to, reasonable attorneys' fees; and
- (7) Unpaid sewer, water or other utility charges and fees imposed by the municipality.

Are special forms required to provide notice to the former owner? (updated 8/31/23)

Yes. Chapter 358 requires municipalities to use application forms, notices and instructions provided by the State Tax Assessor, Maine Revenue Services (MRS). A "Notice of Intent to Sell Foreclosed Property" is currently available on the Maine Revenue Services website:

https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/foreclosure_notice.pdf. At this time, it is not clear whether MRS plans to issue an application form for the former owner to request the special sale process. Municipalities may contact MRS at (207) 624-5600 with questions about the forms.

Which sales are covered by the new sale procedure?

Chapter 358 applies to sales of tax-acquired real estate made after June 30, 2023 regardless of when the underlying lien foreclosed.

Is updated local authority needed to implement the new law?

Possibly. Although Chapter 358 requires specific sale procedures, it does not actually *authorize* any sale of tax-acquired property – only the municipal legislative body has that authority.

Unfortunately, existing warrant articles, ordinances or charters may not authorize (or may conflict with) the sale procedures now required. For instance, a warrant article or ordinance may require all sales to be conducted by sealed bid, which does not comply with or authorize procedures under the new law (Chapter 358 requires that most properties be listed with a licensed real estate broker).

Some existing municipal articles or ordinances may be consistent with the new law; for example, an article broadly allowing sales within the municipal officers' discretion would remain valid, assuming the municipal officers do comply with the new law. However, it



may be better for an article to specifically address the required process and the municipality's duty to return excess proceeds.

Before proceeding with the sale of tax-acquired property, the municipal officers should review any articles, ordinances, charter provisions or internal policies addressing disposition of tax-acquired real estate for compliance with the new law. In many cases, a special town meeting or council action to revise articles or ordinances may be necessary. Charter municipalities should seek legal advice if the charter addresses tax-acquired property sales.

What immediate steps should municipalities take? (updated 8/31/23)

Because the law immediately limits tax-acquired property sale procedures, we strongly advise municipalities to:

- (1) Review and update existing warrant articles, ordinances, charter provisions or policies addressing disposition of tax-acquired property to ensure consistency with the law's new sale requirements;
- (2) Delay all sales of tax-acquired property until the municipal officers can confirm there is sufficient authority from the town's legislative body to use the special sales process in 36 M.R.S. § 943-C; and
- (3) Obtain required Maine Revenue Services form(s) to notify the former owner(s) 90 days before the date of an intended sale (to anyone other than the former owner) as required in 36 M.R.S. § 943-C.

Does MMA have sample warrant articles that comply with the law?

The following basic templates are offered as examples of articles that would be consistent with Chapter 358's new requirements. We also recommend review by the municipality's attorney before an article is presented to the town meeting for approval.

Art. ___. To see if the Town will vote to authorize the municipal officers to dispose of tax-acquired property as they deem in the best interests of the Town, except that the municipal officers shall first use the sale process in 36 M.R.S. § 943-C if they choose to sell property to anyone other than the former owner. For sales to someone other than the former owner, excess sale proceeds, as defined in 36 M.R.S. § 943-C, shall be returned to the former owner.



MMA Legal Services

Art To see if the Town will vote to require the municipal officers to provide the
former owner(s) of tax-acquired property, or if deceased his/her/their heirs, personal
representative or devisees months to repurchase the property on terms the board
deems in the best interests of the Town; if the former owner does not repurchase the
property the municipal officers may sell the property through the sale process in 36
M.R.S. § 943-C, provided that if the former owner does not timely request that process or
the board is unable to list or sell the property as required by § 943-C(3), the board may
sell the property in any manner it deems in the best interests of the Town. For sales to
someone other than the former owner, excess sale proceeds, as defined in 36 M.R.S. §
943-C, shall be returned to the former owner.

Art. _____. To see if the Town will vote to authorize the municipal officers to dispose of tax-acquired property via quitclaim deed by either (A) offering the property to the former owner(s) or if deceased, to his/her/their heirs/devisees/personal representative for a price equal to all outstanding taxes, interest, fees and costs; or (B) using the process authorized by 30-A M.R.S. § 943-C, provided that if the former owner does not request that process or the board is unable to list or sell the property as required by § 943-C(3), the board may sell the property through a competitive sealed bid process in which a notice advertising sale of the property shall be published at least twice in a newspaper of general circulation in the county. For sales other than to the former owner, excess sale proceeds, as defined in 36 M.R.S. § 943-C, shall be returned to the former owner.

Should we require the former owner to agree to, or release claims for, the amount of excess proceeds returned by the municipality?

At a minimum, the municipal officers should require the former owner(s) to acknowledge in writing receipt of any excess proceeds and the municipality's accounting of deductions from total sale proceeds.

Chapter 358 expressly allows municipalities to condition disbursement of excess proceeds on delivery of a quitclaim deed by the former owner releasing any potential interest the former might have in the property. A quitclaim deed is the strongest approach for protecting the municipality's interests. Also, the reassurance that the former owner will release his/her claims on the property at the close of the sale process may address some potential title concerns for prospective buyers, possibly increasing the expected sale price (and former owner's proceeds).

Chapter 358 also provides that receipt of such excess proceeds by the former owner is deemed to be a waiver of the former owner's right to challenge the lien foreclosure



pursuant to 36 M.R.S. § 946-B. (Section 946-B normally allows up to 5-years to challenge foreclosures of liens recorded after 10/13/14).

At this time MMA Legal Services has not developed a sample deed for this purpose; until a sample is developed municipal officers will need to work with the municipality's attorney to draft deed and release language, if desired.

Does the new law apply to municipal sewer and stormwater liens?

The newly reformulated 36 M.R.S. § 943-C does not apply to sales of property acquired through a lien foreclosure based on unpaid sewer or stormwater user charges.

However, the constitutional principles stated in the *Tyler* decision likely apply to many types of government forfeitures. Excess sale proceeds received from sale of property acquired through sewer or stormwater lien foreclosures may need to be returned to the former owner. As a result, municipal sale procedures and warrant articles or ordinances governing sale of real estate acquired through other types of lien forfeitures should be reviewed and revised with advice of counsel.

What if the former owner does not request the special sale process?

If the former owner does not respond within 90 days of notice requesting the special sale process, the municipal officers may proceed to sell the property as otherwise allowed by the municipal legislative body. However, the municipality must still return excess sale proceeds to the former owner.

The statute (36 M.R.S. § 943-C) allows municipalities the flexibility to determine the sale process *in this limited instance*. Unfortunately, no additional guidance on sale procedures or minimum sale price was provided by the *Tyler* decision. (Note that the sale price impacts the amount of excess proceeds, if any, to be returned to the former owner).

Until additional guidance is provided by statute or the courts, in the few situations where section 943-C allows municipalities to choose sale procedures, the most cautious course of action is to use a sale process intended to obtain a reasonable sale price. To that end, municipalities may wish to incorporate elements such as ample notice, wide-spread advertising, and/or a competitive process. Options might include a well-advertised sealed bid process or a professionally managed auction process. (Note: title issues inherent to tax-acquired property usually mean that the market value will be lower than if the property was not tax-acquired.)



May we sell the property back to the former owner?

The law allows sales back to the former owner assuming the municipal legislative body has provided that authority.

However, neither Chapter 358 nor the *Tyler* decision provides guidance as to the amount the municipality may require the former owner to pay to repurchase tax-acquired property. Based on the constitutional principles stated in *Tyler*, municipalities likely should base the repurchase price for the former owner on the total taxes, interest, fees and administrative costs associated with the property. The list of costs contained in 36 M.R.S. § 943-C(3)(C) may be helpful guidance.

What about municipalities that already adopted ordinances allowing return of excess sale proceeds?

Since 2015, Maine law (36 M.R.S. § 949) has allowed municipalities to adopt ordinances voluntarily returning excess proceeds to the former owner of tax-acquired property. Unfortunately, Chapter 358 does not directly address how its requirements coordinate with existing authority in section 949. However, because Chapter 358 is the more recent legislative enactment, Chapter 358 likely supersedes section 949 in any places where the two laws conflict. For that reason, municipalities that adopted ordinances under section 949 should review those ordinances with legal counsel and revise them for consistency with Chapter 358.

Unanswered questions:

The *Tyler* decision and the recently enacted Maine legislation (Chapter 358) did not address several important questions, including:

- How should municipalities provide notice and return excess proceeds when taxacquired property is abandoned or when the former owner is deceased, and no personal representative has been appointed?
- How long must property be listed with a real estate agent before the municipal officers may determine they were "unable" to sell the property through a real estate agent?
- How many real estate agents must decline to list tax-acquired property before the municipal officers may determine they were "unable" to list the property?



- If a reasonable offer is received through a real estate broker, is the municipality obligated to seek additional offers?
- What obligations apply when a municipality retains tax-acquired property for municipal use?
- What is required for tax-acquired properties the municipality sold before the *Tyler* decision was issued?
- What obligation does the municipality have to seek the best price (i.e., highest surplus) for such property and what sale procedures are sufficient to meet that obligation?

Chapter 358 established a working group to study issues surrounding tax lien procedures and sale of tax-acquired property. It is hoped that the working group will result in legislative proposals to address many questions left unanswered by the *Tyler* decision.

MMA Legal Services is also continuing to review the *Tyler* decision and conduct further research on questions left unanswered by the Court. We expect to update this guidance in the future.

Quick Links to Resources (updated 8/31/23):

Tyler v Hennepin County, Minnesota, 598 U.S. 631 (May 25, 2023)

"An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property," <u>PL 2023, chapter 358</u>

Real Estate Tax Lien Mortgage Foreclosure statute, <u>Title 36 M.R.S. § § 942 – 949.</u>

Maine Revenue Services Notice of Intent to Sell Foreclosed Property

"Major U.S. Supreme Court Decision Impacting Municipalities," MMA Legal Services Update, May 25, 2023

For more information or questions, please contact:

MMA Legal Services at 800-452-8786 or legal@memun.org.