TECHNOLOGY

Technology of the future is already at the Registry of Deeds

BY RICHARD P. HOWE, JR.

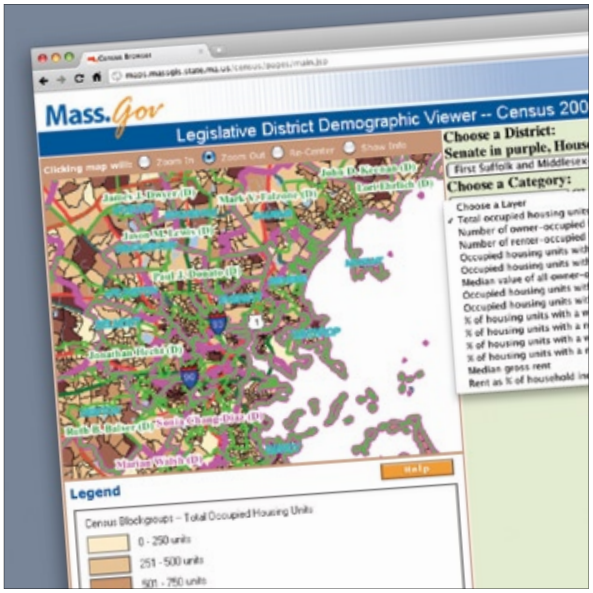
One of my most important responsibilities as register of deeds is to keep current on the latest technology and to try to discern how that technology might be best employed at the registry. This is a real challenge, because the pace of technological change during the past two decades has been staggering. Still, technological change tends to be evolutionary, so the early variants of much of tomorrow's technology are already with us today.

ELECTRONIC RECORDING

At Middlesex North, the first electronic recording occurred back in 2005. Today, this method accounts for 20 percent of all recordings, with submitters evenly divided between large institutions filing batches of discharges and early adopters in the local bar who do full closings electronically. Once all registries implement this technology, the volume of usage will only go up.

Dick Howe

The submitter group with the largest e-recording growth potential is governmental entities. The real savings here will come from what used to be called Level III electronic recording. By that method, no paper document is created prior to recording. Instead, properly formatted data from the submitter's computer, secure and authenticated, flows to the registry computer where it first appears as a document image at the point of recording.



MASS.GOV

The capabilities of MassGIS are underutilized by the state's registries of deeds. With overhead imagery of the entire Commonwealth and shape files for nearly all of its parcels, MassGIS could be an invaluable asset to every real estate researcher in Massachusetts.

Whether it's IRS liens or municipal tax takings, the current practice of the submitters taking data that already exists on computers, then printing it on paper, then physically transporting that paper to the registry where the data is rekeyed into the registry's database, makes little sense from an efficiency standpoint. With only a handful of software providers for municipalities and registries, synchronizing the computer systems should be a relatively easy and affordable undertaking.

GIS INTEGRATION

MassGIS is an amazing agency, the capabilities of which are underutilized by the state's registries of deeds. With overhead imagery of the entire Commonwealth and shape files for nearly all of its parcels, MassGIS could be an invaluable asset to every real estate researcher in Massachusetts. Because MassGIS receives regular updates from every local assessor, its database already contains the street address, as well as the deed book and page, of nearly every parcel. Since these two fields already exist in the registry's own database, linking the two together should be a relatively easy task. With that, anyone viewing a deed on the registry website could simply click a "view parcel" button to display the corresponding parcel map/overhead photograph from MassGIS, while a visitor to the GIS site could reach the deed and related registry documents by reversing the process.

GIS-BASED PLAN INDEX

I have always been dissatisfied with the utility of our plan index. With the name of the owner who commissioned the plan, the surveyor's name, and the names of all streets depicted, the plan index defies precise searching. Most times, finding a relevant plan requires finding its plan book/plan number somewhere in the property description section of the deed. A plan index that was map-based, rather than data-based, would be more helpful.

Last year Middlesex North retained Boston-based Applied Geographics Inc. to create a tool that allows us to depict each recorded subdivision plan as a transparent rectangle overlaid on a Google-type map that resides at MassGIS.

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CONSTRUCTION LAW

Sewer improvements pose taxing problem for developers

BY CHARLES N. LE RAY

To obtain project approval, the developer of a subdivision, office park, or large commercial building may be required to extend or improve the municipal sewer system.

This may mean constructing an on-site sewer collection system or sewer extension to connect to the municipal system. Or it may involve helping to eliminate existing inflows of storm water or infiltration of groundwater which reduce the municipal system's capacity to receive sewage or contribute to sewer overflows during storms. Negotiations between developers and permitting authorities over the nature and extent of the construction or contribution can be prolonged and contentious.

Charles Le Ray

Two recent Appeals Court decisions establish some parameters for this dialogue.

NORTH ADAMS DECISION

In a January 2011 decision, *North Adams Apartments Limited Partnership v. North Adams*, the Appeals Court addressed what compensation is due when a private sewer system is taken for public use. In 1992, the developer and owner of an apartment complex and residential subdivision spent $136,540 to construct a sewer extension and pump station to connect to the city's sewer system.

In 2005, the North Adams city council took the sewer system by eminent domain, for $10,000. The owner claimed valuation should have been based on a depreciated replacement cost of $271,370 or, using income capitalization, based on $235,000 in estimated sewer tie-in fees from neighboring properties over the next five years.

The Appeals Court held that a private sewer system is no different from any other private property, and cannot be taken without just compensation. However, the court found that this owner had suffered no measurable loss. After the taking, the owner's properties continued to be served by the system, but the owner was relieved of maintenance and repair obligations; future earnings from tie-in fees were speculative.

The court also found that the owner built the system as part of its housing investment, with the costs recouped through apartment rents and the increased value of subdivision homes connected to municipal sewer, rather than to individual Title 5 systems.

> The likely lack of a significant damages award if the municipality later takes a private sewer system leaves developers with little reason not to transfer ownership from the start.

Absent particular reasons to retain ownership, such as the need to preserve flexibility for future phases, the likely lack of a significant damages award if the municipality later takes a private sewer system leaves developers with little reason not to seek to transfer ownership – and maintenance obligations – from the start.

SAUGUS DECISION

In another January 2011 Appeals Court decision, *Denver Street LLC v. Saugus*, four developers of multifamily residential projects in Saugus had challenged the town's infiltration and inflow (I/I) reduction contribution charges.

The town's I/I problems had resulted in sewer overflows during storm events since 1986. Saugus entered an administrative consent order with the Department of Environmental Protection in 2005, requiring the town to identify and eliminate I/I sources as a condition of allowing new connections to its sanitary sewer system. In response, Saugus adopted a program under which the town allowed an applicant to purchase the right to connect to the town's sewer system by making an I/I "reduction contribution" based on the project's projected sewer flows.

To determine whether the charge was a permissible fee or an impermissible tax, the Appeals Court applied a three-factor test. A fee must be:

- In exchange for a particular governmental service which benefits the party in a manner not shared by other members of society;
- Paid by choice, meaning that the fee could be avoided by not utilizing the service; and
- Collected to compensate the government entity providing the services, not to raise revenues.

The Appeals Court found that the developers could avoid the charge by abandoning their plans. The court also

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