COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BONNI & BARBARA A. BERKOWITZ, TRUSTEES OF THE MAVEN REVOCABLE TRUST	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF ROWLEY**

Docket Nos. F339632 & F341827

Promulgated:
November 14, 2025

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Rowley ("appellee" or "assessors") to classify real estate owned by and assessed to Bonni and Barbara A. Berkowitz, Trustees of the Maven Revocable Trust ("appellants") as agricultural/horticultural land under G.L. c. 61A for fiscal years 2021 and 2022 ("fiscal years at issue") and to abate a "roll-back" tax assessed against a portion of the subject property for fiscal year 2021 and the four preceding fiscal years.

Chairman DeFrancisco ("presiding member") heard these appeals. Commissioners Good, Elliott, Metzer, and Bernier joined him in decisions for the appellee.

These findings of fact and report are made pursuant to a request by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.34.

Peter Nechtem, Esq., for the appellants.

Yael Magen, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence during the hearing of these appeals, as well as a view of the property attended by the presiding member of the Appellate Tax Board ("Board"), the Board made the following findings of fact.

On January 1, 2020 and January 1, 2021, the relevant valuation dates for the fiscal years at issue, the appellants were the owners of nine contiguous parcels of land consisting of 93.08 acres, located on and near Wethersfield Street and Pine Needle Lane in Rowley (collectively, "subject property"). One of the parcels was improved with a farmhouse together with a garage and a residential unit above it. From January 1, 2011 to December 31, 2020, 90.08 acres of the subject property, excluding the three acres of land surrounding the appellants' farmhouse, were managed under a Certified Forest Management Plan ("CFMP") and thus assessed and taxed as forest land at reduced rates pursuant to G.L. c. 61 ("Chapter 61").

On August 8, 2018, the appellants obtained a special permit from the Rowley Planning Board for the construction of solar arrays on a portion of the subject property. In November 2018, the appellants cleared 11.27 acres of the subject property that was under the CFMP and leased that portion of the land to the solar company. While the appellants previously had discussions with the assessors regarding potential payment in lieu of taxes agreements, the appellants did not send to the assessors' office an actual notice of intent to remove the land from the CFMP as is required by G.L. c. 61, § 8. On December 4, 2018, the assessors sent a letter by certified mail to inform the appellants of their violation of G.L. c. 61, §§ 7 and 8 and the process for a change in use, with a copy to the state forester. On December 11, 2018, the Town Administrator sent a letter to the appellants informing them

that they must send notice of a change of use to the town within two weeks. On December 21, 2018, the appellants sent a letter to the board of selectmen regarding the change of use.

On September 27, 2019, the appellants applied to the assessors for a change in classification of all 93.08 acres of the subject property to agricultural and horticultural use pursuant to G.L. c. 61A ("Chapter 61A") for fiscal year 2021. On October 21, 2019, the assessors denied the application. On that same day, the assessors appealed to the state forester to request removal from Chapter 61 classification of the 11.27 acres that had been cleared for construction of the solar arrays. *See* G.L. c. 61, § 2. The state forester took no action on the assessors' appeal because it was untimely. On November 18, 2019, the appellants timely filed an appeal with the appellee for reconsideration of their disallowance of the appellants' Chapter 61A application. On January 13, 2020, the appellee disallowed the appellants' appeal. On February 11, 2020, the appellants seasonably filed a petition with the Board. Based on the foregoing information, the Board found and ruled that it had jurisdiction over the appellee's disallowance of Chapter 61A classification for fiscal year 2021.

On September 29, 2020, the appellants timely applied to the appellee for Chapter 61A agricultural/horticultural classification of all 93.08 acres of the subject property for fiscal year 2022. On November 23, 2020, the appellee denied the application. On that same day, the appellee assessed a so-called "roll-back" tax for fiscal year 2021 and the four preceding fiscal years in the amount of $28,598.74 against the 11.27 acres that had been cleared for purposes of constructing the solar arrays. The appellants have not paid the "roll-back" tax. On December 22, 2020, the appellants timely filed an appeal with the appellee for reconsideration of their disallowance of the appellants' Chapter 61A application. On December 31, 2020, the appellants seasonably filed their petition to the Board based on the

disallowance of their Chapter 61A application and the assessment of “roll-back” tax. Based on the foregoing information, the Board found and ruled that it had jurisdiction over the appellee’s disallowance of Chapter 61A classification and the assessment of a “roll-back” tax in fiscal year 2022.

On September 18, 2020, the state forester certified the appellants’ new CFMP for the subject property, effective January 1, 2021 to December 31, 2030. The new CFMP continued to exclude from classification the three acres of the subject property surrounding the farmhouse; it further excluded 11.27 acres that had been cleared in November 2018 for purposes of constructing the solar arrays. On September 29, 2020, the appellants filed their new Chapter 61 forestry certification plan with the appellee. Thus, for fiscal year 2021, 90.08 acres were under a CFMP, including the 11.27 acres that were cleared in November 2018, and for fiscal year 2022, 78.81 acres of the subject property were under a CFMP.

The appellants presented their appeals through the testimony of Bonni Berkowitz and the presentation of documents. Ms. Berkowitz testified that, during the fiscal years at issue, the appellants used all 93.08 acres of the subject property to operate 2BWell Farm, a family farm business featuring traditional and natural garden crops and products, forest products, and products derived from animals. Ms. Berkowitz testified that she used the three cleared acres surrounding the appellants’ farmhouse for a traditional garden. Ms. Berkowitz further testified that natural garden crops were located throughout the remaining 90.08 acres of the subject property, including the land around and beneath the solar arrays, and comprised various wild berries, wild grapes, wildflowers, wild lettuce, and mushrooms. Ms. Berkowitz also testified that the appellants used the portion of the subject property that was under a CFMP – 90.08 acres in fiscal year 2021 and 78.81 acres in fiscal year 2022 – to raise forest products like timber, Christmas trees, and pinecones and boughs for wreaths.

Ms. Berkowitz further testified that the appellants used portions of the subject property for their animal operation, which consisted of raising and training dogs to assist with the farm operation, as well as raising bees and goats to produce and sell honey and beeswax products and manure, respectively. She testified that the three acres surrounding the farmhouse were improved with an apartment for farm workers, three barns, a dog kennel, a utility shed, a paved driveway, eleven permanent bee apiaries, and another blue utility shed located near Wethersfield Street. Ms. Berkowitz testified that, until November 2019, and then beginning again in the spring of 2021, the appellants used the barns and kennel to house goats and sheep and the barns for storage of tools, supplies, and other farm equipment. She further testified that the appellants, at all relevant times, used the barns, kennel, and farmhouse to house dogs and the blue shed to store farm equipment and animal feed.

Ms. Berkowitz testified that the appellants sold the traditional and natural garden crops, forest products (except the Christmas trees), and animal products. She testified that in 2020, the appellants' gross sales from their traditional and natural garden operations, bee operation, and forest products totaled $16,295, comprised as follows: $6,325 horticultural, $9,920 agricultural, and $50 forest products. She testified that through July 2021, the appellants' gross sales from their traditional and natural garden operations and bee operation totaled $4,445, comprised of $1,415 from horticultural activities and $3,030 from agricultural activities. The appellants introduced three one-page, self-prepared computer printouts - one for each of calendar years 2018, 2019, 2020, and 2021 - to establish the appellants’ revenue. The purported “Farm Profit/Loss Ledger statements” were offered with no back-up receipts or other documents substantiating the numbers on the statements.

Ms. Berkowitz testified that a significant source of the appellants’ revenue was from honey and other bee products. She claimed that the appellants placed constructed hives

throughout the subject property, and that they gathered, packaged, and sold the bee products at the subject property. She testified that the appellants prepared the products for market in the farmhouse and residential unit that were located on the three-acre portion of the subject property that had been excluded from the subject property's CFMP, and that the appellants used the blue shed at the subject property as a farm stand to sell products.

The appellee presented their case through the testimony of Assessor Sean McFadden and the presentation of documents, including the requisite jurisdictional documents. Assessor McFadden testified concerning what he observed on the visit to the subject property during late May 2023, which the presiding member also attended. Assessor McFadden testified that neither the farmhouse nor the garage and residential unit above showed any signs of being used in furtherance of a farm operation, nor did a swimming pool adjacent to the farmhouse. Assessor McFadden further testified that the only animals observed on the subject property were two goats that Ms. Berkowitz had explained were kept as pets, not for their milk or meat. Assessor McFadden also testified that he observed very few bee hives at the subject property, which were in storage at the time of the visit and not in the field, and that he observed no bee activity on site. He testified that the wild berries and other wild shrubberies that the appellants claimed to be part of their agricultural operation were the same that grew wild at all the properties in the subject property's area and thus should not qualify as grown primarily in furtherance of agricultural or horticultural use.

Assessor McFadden also explained that the so-called Christmas trees that grew along the border of the property were required to serve as a buffer to the solar arrays and thus could not be part of an agricultural or horticultural endeavor. Finally, he testified that the blue shed that the appellants alleged to be used for storage and farmstand sales had no

evidence of items for sale or other farmstand use, and further, that it was only placed on the property in July of 2020, after the appellants appealed the denial of their classification application. In sum, Assessor McFadden testified that he observed no agricultural/horticultural equipment or activity at the subject property that would satisfy Chapter 61A classification.

Based on the testimony and exhibits offered at the hearing, as well as the site visit conducted by the presiding member, the Board found that the appellants did not present sufficient evidence to establish that the subject property qualified as agricultural/horticultural land pursuant to Chapter 61A. The Board did not find Ms. Berkowitz's testimony to be credible and instead credited Assessor McFadden's testimony concerning the state of operations, or lack thereof, at the subject property.

While the site visit occurred in late May, when the Board would expect to see at least some agricultural or horticultural activity, the Board found there was nothing going on at the subject property indicative of an agricultural or horticultural business operation. There was no equipment, very few hives (and those that were there were in storage in the garage and not deployed in the field), and the traditional garden space was not tilled or prepared for planting. The Board also agreed that the blue shed appeared bereft of sale items and, moreover, nonfunctional for use as a farmstand. Based on the presiding member's observation of the subject property, the Board also found credible Assessor McFadden's explanation that any wild berries that may have been growing amongst the solar arrays were those that could be growing in any other open area in the vicinity, with no proof that the appellant grew, maintained, or harvested them directly for any agricultural or horticultural purpose.

The Board further found that the appellants' Farm Profit/Loss Ledger statements, which were self-prepared and included no invoices, receipts, or other supporting documents, were insufficient to substantiate any income earned from agricultural or horticultural activities at the subject property, both as to the amount of the receipts and whether those receipts arose from activities taking place at the subject property.

During the relevant time, 78.81 acres of the subject property were under a CFMP and continued to qualify as forest land under Chapter 61. However, when 11.27 acres were cleared in November 2018 for construction of the solar arrays, they no longer qualified as Chapter 61 forest land, nor did they then qualify as agricultural/horticultural property under Chapter 61A. As will be further explained in the following Opinion, the Board found that "roll-back" taxes were properly assessed against the 11.27 acres of disqualifying property for fiscal year 2021 and the four preceding fiscal years.

Accordingly, the Board issued decisions for the appellee in these appeals.

OPINION

If land is approved for G.L. c. 61A classification, "[t]he board of assessors of a city or town, in valuing land with respect to which timely application has been made and approved as provided in this chapter, shall consider only those indicia of value which such land has for agricultural, horticultural or agricultural and horticultural uses." G.L. c. 61A, § 10. Taxpayers "who choose to have their land so qualified [under Chapter 61A] . . . receive a benefit of a lower tax levy for each year that they qualify by continued agricultural or horticultural use." ***Mann v. Assessors of Plymouth***, Mass. ATB Findings of Fact and Reports 2001-858, 869 (citation omitted).

Under G.L. c 61A, § 1, land can be classified as "agricultural" if the land is:

> primarily and directly used in raising animals, including, but not limited to . . . goats, bees, ***for the purpose of selling such animals or a product derived from such animals in the regular course of business***; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market.

G.L. c 61A, §1 (emphasis added). Under G.L. c 61A, § 2 land can be classified as "horticultural" under G.L. c. 61A if it qualifies as follows:

> Land shall be considered to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs ***for the purpose of selling these products in the regular course of business***; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop ***for the purpose of selling these products in the regular course of business***; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

G.L. c 61A, § 2 (emphasis added). To qualify under agricultural or horticultural use, the land must further qualify under G.L. c 61A, § 3 by being at least five acres in size and having gross annual sales from agricultural and/or horticultural products (and certain governmental programs) totaling not less than $500 annually, plus an additional $5 for every acre of land (other than woodland or wetland) over five acres. The appellants must sustain their burden of proving that the subject property qualifies for Chapter 61A classification. *See* ***Komosa v. Assessors of Montague***, Mass. ATB Findings of Fact and Reports 2023-91, 111, *aff'd*, 105 Mass. App. Ct. 75 (2024); *see also* ***Ernest W. Pierce III, Life Tenant v. Assessors of Rochester***, Mass. ATB Findings of Fact and Reports 2024-65, 69.

The Board found that the appellants did not present sufficient evidence to establish that the subject property qualified as Chapter 61A agricultural/horticultural land. The Board did not find Ms. Berkowitz's testimony to be credible after having visited the subject property

and witnessing first-hand the dearth of evidence of an agricultural or horticultural business operation, the purpose of which was to bring products to market in the regular course of business. From the lack of active bee hives and tilled gardens to the lack of evidence that the blue shed was actually used at all, let alone as a farm stand, the Board found the on-site evidence at the subject property to be lacking. *See* ***Howatt and Light v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 2008-1406, 1427-28 (*citing* ***Westport v. Bristol County Commissioners***, 246 Mass. 556, 563 (1923) (other citations omitted)) (The Board is entitled to base its findings on the testimony and evidence presented at the hearing, as well as the Board's own view of a subject property).

Additionally, the appellants failed to substantiate their so-called Farm Profit/Loss Ledger statements. The appellants included no invoices or other documentation to prove any actual sales. *See, e.g.*, ***Komosa***, Mass. ATB Findings of Fact at 2023-111 (citing taxpayer's lack of evidence as critical failure to meeting his burden of proving that property qualified under c. 61A). Considering the lack of substantiation and having observed the blue shed to be both devoid of sale items and inefficient for use as a farmstand, the Board found and ruled that the appellants failed to prove that sales occurred at the subject property.

Where, as here, land that had been classified under Chapter 61 no longer qualifies for classification and does not qualify under Chapter 61A, it shall be subject to "roll-back" taxes "in the tax year in which it is disqualified and in each of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed." G.L. c. 61, § 7. Accordingly, under G.L. c. 61A, §§ 13 and 16, the appellants were liable for a "roll-back" tax for the fiscal year in which it was disqualified from the CFMP and in the four immediately preceding tax years. Having found that the appellants failed to establish that the entire subject property qualified under Chapter 61A, the Board thus found that assessment of a "roll-back" tax

against 11.27 acres of the subject property – land that no longer qualified under Chapter 61 after its clearing in November 2018 and that failed to qualify under Chapter 61A - was appropriate.

Based on the evidence of record, which included the Board's own view of the subject property, the Board found and ruled that the appellants failed to meet their burden of proving that the subject property qualified as Chapter 61A property and further failed to prove that the "roll-back" tax assessment was improper.

Accordingly, the Board issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: _____
Mark J. DeFrancisco, Chairman

A true copy,

Attest: _____
Clerk of the Board