DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

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Tax Administration

Classified
Forest, Farm and Recreational Lands
and
Other Tax Administration Issues

Workshop A
2018

Supporting a Commonwealth of Communities
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Classified Forest, Farm and Recreational Lands
and
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Discussion Questions

CHAPTERLANDS

1. What are the minimum acreage requirements for classification? Under c. 61 – Forest Land? Under c. 61A - Farm Land? Under c. 61B – Recreational Land?

   G.L. c. 61, § 2; c. 61A, § 3; c. 61B, § 1; Chapterland FAQs 4, 7,

2. What action should assessors take on an application if a parcel does not meet the minimum acreage requirements? Under c. 61 – Forest Land? Under c. 61A - Farm Land? Under c. 61B – Recreational Land?

   G.L. c. 61, § 2; c. 61A, § 9; c. 61B, § 6; FAQ 11

3. Does the following parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

   G.L. c. 61A, § 3; FAQs 4B, 7B, 8, 10

   Mary has 4.75 acres of land. Her application states she has been raising sheep on the parcel for the past two years. The parcel contains fields where she grows hay for the sheep to forage, a barn where she houses the sheep and farm roads providing access throughout the farm. Mary's submitted tax returns and receipts show she has sold lambs for the past two years with gross sales of more than $500 each year.

4. What if Mary's parcel is exactly 5 acres in size? Does the land under the barn and roads count toward the 5-acre minimum required for classification under c. 61A - Farm Land?

   G.L. c. 61A, § 1; FAQs 4B, 7B

5. What part of the land involved in cranberry production will count toward the 5-acre minimum required for classification under c. 61A - Farm Land?

   Land under storage barn/staging area
   Land under juice factory
   Land under pump house
   Land under Company HQ building
   Cranberry bogs, irrigation ponds
   Land used for bee-keeping
   Land under farm roads
   Sand pits
   Adjacent Woodland

   G.L. c. 61A, § 2, 4; FAQs 4B, 7B; Advisory Opinion 2009-734

6. What if Mary's sheep farm is 4.9 acres, but she adds the adjacent 4-acre sheep farm that she owns with her son John? Would the combined parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

   G.L. c. 61A, § 4; FAQ 6

7. Mary's sheep farm is 5 acres and meets the requirements of c. 61A – Farm Land. Mary places solar panels in her pasture and her sheep graze under them. Is the land still eligible for classification?

   G.L. c. 61A, § 2A; FAQs 15C – 20, 19 (Example 2)

8. What if the solar facility placed on Mary's pasture is on a concrete platform that prevents forage from growing and the sheep from grazing? Is the land still eligible for classification?

   G.L. c. 61A, § 2A; FAQs 15C - 20, 19 (Example 3)

9. Mary's placement of a solar facility with a concrete platform on her pasture (preventing the forage from growing and the sheep from grazing) has caused the land under and associated with the solar facility to be ineligible for classification. Does this action also trigger a penalty tax or the ROFR?

   G.L. c. 61A, §§ 2A, 12-14; FAQ 21

10. Mary is ready to retire and does not timely file an application for classification of her sheep farm. Instead, she notifies the assessors that she will be giving her sheep to her son John and will be taking it easy in her retirement. She has no plans to do anything with her land. What should the assessors do?

    G.L. c. 61A, §§ 12-14; FAQ 13, 14

11. A 501(c)(3) nonprofit organization, Friends of the Trees, owns a 10-acre, nine-hole golf course and submits an application for classification of the parcel under c. 61B – Recreational Land. On page 2 of the CL-1 form, under "Recreational," #2 is checked. The application also states the land is used primarily for golfing 8 months of the year by many people; is not open to the general public; and is restricted to use by members of the Hoity-Toity Exclusively Private Golf Club for the Rich and Famous. Under "C – Lessee Certification," the President of Hoity-Toity signs as lessee, certifying the leased property is being used as stated in the application. Is the land eligible for classification?

    G.L. c. 61B, § 1; FAQs 4C, 9; Advisory Opinions 96-709, 2003-57; *Cape Cod Five Cents Savings, et al v. Assessors of Harwich & Brewster,* ATB F277365, (July 17, 2009)

OTHER TAX ADMINISTRATION QUESTIONS

12. Robert Chase owned a two family house, Class Code 104, which was assessed for one million dollars for FY 2017. In April 2017 he recorded a master deed to create two condominiums. In June 2017 he sold one of the units to Edward Noonan for one and half million dollars, and kept the second condo for himself.

    A. How should the property be valued and assessed for fiscal year 2018? Who can file for an abatement?

    B. Noonan requested that the assessors provide him with a separate bill for his condo. Can the assessors comply with the request?

    C. Noonan visited town hall and explained to the assessors that he was a veteran. Can Noonan receive a veterans exemption for FY 2018?

    G.L. c. 59, § 11; G.L. c. 59, § 78A

13. The assessors have been busy responding to requests for overvaluation abatements and exemptions.

    A. The board of assessors has an e-mail account in their town hall office. At 6:15 PM on the last day for filing timely abatement applications, a taxpayer e-mailed an abatement application to the assessors' e-mail address. Was the application properly and timely filed?

    B. Your municipality, a quarterly tax billing community, has adopted the residential exemption and it has been in effect for many years. John Davis bought a house in town on July 7, 2016. Davis filed an application for the FY 2018 residential exemption with the assessors on August 30, 2017. The assessors sent a denial notice to Davis on December 30, 2017 with a decision date of December 30, 2017. The first actual tax bills were also sent on December 30, 2017. Davis appealed to the Appellate Tax Board on April 4, 2018. The assessors then filed a motion to dismiss the appeal on jurisdictional grounds. Was Davis' appeal to the ATB timely?

    G.L. c. 59, § 59; G.L. c. 59, § 5C; G.L. c. 59, § 64; *Wiggins v. Board of Assessors of Boston*, ATB Docket No. X299727 (January 13, 2009)

14. The assessors recently sent a warrant and tax list to the collector for motor vehicle excise tax.

    A. Richard Murdock who registered his tractor-trailer in Massachusetts under the International Registration Plan filed an abatement application with the assessors because he used the tractor-trailer outside the Commonwealth. Should Murdock receive an abatement?

B. The Holmes, MA assessors are concerned because a trucking firm paid excise on only a few trucks to the town which was its principal place of business. Most of the trucking fleet was parked in a lot in the neighboring town of Baskerville, MA. Which town is entitled to the excise on the trucks regularly parked in Baskerville?

C. A taxpayer who was upset about the number of cars parked near his house brought to the assessors a list of registration numbers of these vehicles. The taxpayer wanted to learn the names and addresses of the registrants. Should the assessors supply this information?

G.L. c. 60A, §§ 1 and 6; 18 USC 2721

15. A taxpayer owns a 30 acre parcel of undeveloped land which has extensive frontage on the main street in the town. The town is a Chapter 653 community which recognizes new development as of June 30th as existing on January 1st. How should this property be assessed in the following scenarios for FY 2019?

A. Before January 1, 2018 the assessors had in their files an unrecorded subdivision plan for 30 lots which was endorsed by the planning board as not requiring subdivision approval, i.e., an ANR plan.

B. The subdivision plan for 30 lots was prepared and endorsed after January 1, 2018.

C. The taxpayer took no action and a subdivision plan was never created.

G.L. c. 59, § 11; G.L. c. 59, § 2A; *Town of Lenox v. Oglesby*, 311 Mass. 269 (1942*); City of Boston v. Boston Port Development Co*., 308 Mass 72 (1941)

16. The owner of the 30 acre parcel has been approached by the trustees of a private high school in town. The trustees want to build an elementary school on the site.

A. Negotiations were successful and the deed to the school trustees was recorded in May 2018. The trustees informed the assessors about the purchase and told them the property was now exempt. Is the property exempt as of May 2018 for FY 2018? What is the parcel's tax status for FY 2019?

B. The private high school offers a driver education course for its students. The vehicles are leased. Is the high school exempt from the motor vehicle excise on the leased vehicles?

C. The assessors visited a local private school and noticed a bank ATM in the campus center. Is the ATM taxable?

G.L. c. 59, § 5(3); G.L. c. 60A, § 1; G.L. c. 59, § 5(16)

17. The new principal assessor wants to increase revenues for the town and has created new personal property accounts. Assessments were made for the first time to taxpayers who operated businesses in their homes.

A. One taxpayer who received a personal property tax bill filed for abatement because his "office" consisted of an old desk with a chair and an out-of-date computer. Should the assessors abate the tax?

B. Could the taxpayer's personal property be exempted? Could the town establish a minimum value of personal property subject to tax? Alternatively, could the assessors send a $50 minimum personal property tax bill, regardless of value, to all small business owners?

C. The taxpayer complained that several of his neighbors had business offices in their homes but never received tax bills. Could the assessors use this information to tax the neighbors for business personal property?

G.L. c. 59, § 2; G.L. c. 59, § 29; G.L. c. 59, § 61; G.L. c. 59, § 5(54); G.L. c.. 59, § 38; G.L. c. 59, § 38F; G.L. c. 59, § 75

18. A three acre parcel has been assessed for many years to Owners Unknown. The parcel is in tax title.

A. The treasurer is planning to foreclose on the property and a question has been raised about the validity of the assessments. What do the assessors have to show to support the Owner Unknown assessments?

B. A title search has disclosed that Robert Higgins is the actual owner. What actions must the assessors take?

C. Assume the assessors learned of the Higgins ownership from his deed conveying ownership to Henry Tilden. Can the town collect all outstanding taxes? Does the town still have a lien for all tax years?

G.L. c. 59, § 11; G.L. c. 59, § 77; G.L. c. 59, § 57; G.L. c. 59. § 59; G.L. c. 60, § 37

19. Upon the death of his mother, who was the sole owner of the house, her son inherited the house. He moved to the house and was informed by town officials that his mother had deferred real estate taxes on the house for many years under G.L. c. 59, § 5, Clause 41A. The total amount of outstanding taxes and interest was in excess of $30,000.

A. The son complained that he never agreed to the deferral and the tax bills never listed an outstanding amount in deferred taxes. Can the son successfully challenge the deferral?

B. What action will the town now take?

G.L. c. 59, § 5(41A); G.L. c. 59, § 57

20. Real estate tax bills for FY 2019 have been sent and some taxpayers have visited the assessors' office.

A. Property at 84 Main Street was assessed to Ruth Hill. She told the assessors that she recently married and requested that tax bills be issued in her married name, Ruth Saunders. How should the assessors respond? Is a new deed necessary?

B. Acme, Inc. leased undeveloped land to the Dawes Corporation under a 50 year lease. Dawes Corporation built a large apartment building on the site. Dawes requested that the town assess the building to Dawes and assess the land to Acme. Can the assessors agree to separate assessment of the land and building?

C. William Barnes, the sole owner of a house, passed away on May 14, 2018. How should the FY 2019 property taxes be assessed? Would your answer be different if he died on December 15, 2017?

G.L. c. 59, § 11; G.L. c. 59, § 2A; G.L. c. 59, § 12D; G.L. c. 59, § 12E; *Tobin v. Gillespie*, 152 Mass. 219 (1890)

21. **A.** A taxpayer who was upset about the passage of a debt exclusion for the new high school inquired whether the assessors could show as a "separate charge" on the tax bill the amount of the additional taxes assessed because of the debt exclusion. How should the assessors respond?

B. A group of taxpayers inquired whether the assessors could abate a portion of their tax bills because some tax dollars were used to pay for municipal rubbish collection from which these taxpayers derived no benefit because they paid for rubbish collection services in their condominium association fees. Should the assessors grant the abatement?

C. A local factory, National Fabric Inc., is experiencing financial difficulties due to the loss of major customers. The company has filed for a hardship abatement. How should the assessors respond?

G.L. c. 60, § 3A; *Opinion of the Justices*, 357 Mass. 846 (1970)

22. The assessors are reviewing exempt organizations that own real property in town. A religious organization owns a church, a church hall, a large parking lot and two parsonages.

A. One of the parsonages is in an adjoining town. Are both parsonages exempt? Is one of them taxable?

B. The church hall is used for religious instruction and for meetings of various church groups and civic organizations, such as, the local realtors. The hall is also used for wedding receptions. Is the church hall exempt?

C. The church operates a summer camp in the Berkshires for 7 weeks each year. The camp offers musical and theatrical training to campers who must pass an audition to receive admission to the camp. Tuition is $2,100 but some participants receive financial assistance. Is the camp exempt?

G.L. c. 59, § 5(11); G.L. c. 59, § 5(3); *Assessors of Boston v. Old South Society*, 314 Mass. 364 (1943); *Shrine of Our Lady of La Salette, Inc. v. Assessors of Attleboro*, 476 Mass. 690 (2017)

23. The assessors reported receipt of 28 abatement applications signed by a tax agent. On each application, it was written in the statement of reasons for the application that "We are presently reviewing the assessment on this property and are filing to reserve the right to appeal should we find a discrepancy exists."

A. Were the abatement applications proper?

B. Would the Appellate Tax Board have jurisdiction in the event of any appeal?

G.L. c. 59, § 59

24. Julie and Ann who are sisters moved to the Commonwealth in 2017 from New York and purchased a house in your town in November 2017. Julie is over 70 years of age and Ann, age 63, is a surviving spouse. They visited the assessors where they inquired about possible real estate exemptions for FY 2019. The town has adopted Clause 17D and Clause 41C.

A. If eligible, could each sister receive a property tax exemption?

B. How should the assessors advise these taxpayers?

DeCenzo v. Assessors of Framingham, 372 Mass. 523 (1977); *Sylvester v. Assessors of Braintree*, 344 Mass. 263 (1962*); Lee v. Commissioner of Revenue*, 395 Mass. 527 (1985)

25. Actual tax bills have been issued and many residents have filed overvaluation abatement applications and personal exemption applications. A local newspaper reporter is writing a story on the financial condition of the municipality.

A. Are abatement and exemption applications open to public inspection?

B. May the assessors meet in executive session to discuss applications for abatement and exemption? Does the exemption or abatement applicant have a right to attend the executive session?

G.L. c. 59, § 60; G.L. c. 30A, §§ 18-25; Attorney General Frequently Asked Questions (Open Meeting Law)

26. Three situations have been discussed in the assessors' office.

A. A taxpayer is having financial difficulties. The taxpayer turned 70 years of age and was advised by a neighbor to file for an elderly exemption. The taxpayer also saw an article in the local newspaper about Clause 41A tax deferrals. If the property is in tax title, can the taxpayer receive a Clause 41C elderly exemption? Can he defer his taxes? Can he receive both a Clause 41C elderly exemption and a Clause 41A tax deferral?

B. Another taxpayer, Strategy Inc., was assessed business personal property taxes for FY 2018. The taxpayer claimed to be exempt from personal property taxes as a manufacturer and filed for abatement. Is there a basis for the abatement?

C. A third taxpayer who filed an abatement application negotiated a settlement with the assessors. He wants interest to be paid on the abatement refund. What is the source of any interest payment?

G.L. c. 58, § 2; G.L. c. 59, § 5; G.L. c. 59, § 25

CLASSIFICATION OF FOREST LANDS BY ASSESSORS; APPLICATION

General Laws Chapter 61, § 2

Section 2. Except as otherwise herein provided, all forest land, parcels of not less than 10 contiguous acres in area, used for forest production shall be classified by the assessors as forest land upon written application sufficient for identification and certification by the state forester. Such application shall be accompanied by a forest management plan. The state forester will have sole responsibility for review and certification with regard to forest land and forest production….

An application to have land classified as forest land shall be submitted to the state forester not later than July first in any year. After certification the owner shall submit to the assessors not later than October first of the same year evidence of certification together with the approved management plan. Classification shall take effect on January first of the year following certification and taxation under this chapter and shall commence with the fiscal year beginning after said January first.

When in judgment of the assessors, land which is classified as forest land or which is the subject of an application for such classification is not being managed under a program, or is being used for purposes incompatible with forest production, or does not otherwise qualify under this chapter, the assessors may, on or before December first in any year file an appeal in writing mailed by certified mail to the state forester requesting a denial of application or, in the case of classified land, requesting removal of the land from such classification. Such appeal shall state the reasons for such request. A copy of the appeal shall be mailed by the assessors by certified mail to the owner of the land. The state forester may initiate, on or before December first of any year, a proceeding to remove land from classification, sending notice of his action by certified mail to the assessors and the owner of such land. The state forester may deny the owner's application, may withdraw all or part of the land from classification, or may grant the application, imposing such terms and conditions as he deems reasonable to carry out the purpose of this chapter, and shall notify the assessors and the owner of his decision no later than March first of the following year. If the owner or the assessors are aggrieved by his decision they may, on or before April fifteenth, give notice to the state forester of a claim of appeal. The state forester shall convene on or before May fifteenth, a panel in the region in which the land is located. Said panel shall consist of three members, one of whom shall be named by the state forester, one of whom shall be named by the assessors, and one of whom shall be named by the state forester and the assessors. Said panel shall give notice of the date and place of the hearing in writing to the parties seven days at least before the date of said hearing. The panel shall furnish the parties, in writing, a notice of its decision within ten days after the adjournment of said hearing. Decisions of the panel shall be by majority vote of its members. If the owner or the assessors are aggrieved by such decision, they may, within forty-five days from receipt of the decision, petition either the superior court in the county in which the land is located for a review of such decision under the provisions of chapter thirty A or the appellate tax board under the provisions of chapter fifty-eight A, and said land shall not be classified or withdrawn from classification until the final determination of such petition. The state forester may adopt such regulations as he deems necessary to carry out the provisions of this chapter.

LAND USED TO SITE RENEWABLE ENERGY GENERATING SOURCE
General Laws Chapter 61A, § 2A

Section 2A. (a) Land used primarily and directly for agricultural purposes pursuant to section 1 or land used primarily and directly for in horticultural use pursuant to section 2 may, in addition to being used primarily and directly for agriculture or horticulture, be used to site a renewable energy generating source, as defined in subsection (b) of section 11F of chapter 25. A renewable energy generating source on land primarily and directly used for agricultural purposes pursuant to section 1 or land primarily and directly used for horticultural purposes pursuant to section 2 shall: (i) produce energy for the exclusive use of the of the land and farm upon which it is located, which shall include contiguous or non-contiguous land owned or leased by the owner or in which the owner otherwise holds an interest; and (ii) not produce more than 125 per cent of the annual energy needs of the land and farm upon which it is located, which shall include contiguous or non-contiguous land owned or leased by the owner or in which the owner otherwise holds an interest.

(b) Land used primarily and directly for agricultural purposes pursuant to section 1 or land used primarily and directly for horticultural purposes pursuant to section 2 shall be deemed to be in agricultural or horticultural use pursuant to this chapter if used to simultaneously site a renewable energy generating source pursuant to subsection (a).

(c) Renewable energy generating sources located on land used primarily and directly for agricultural purposes pursuant to section 1 or land used primarily and directly for horticultural purposes pursuant to section 2 shall be subject to local zoning requirements applicable to renewable energy generating sources.

CHANGE OF USE; LIABILITY FOR ROLL-BACK TAXES
General Laws Chapter 61A, § 13

Section 13. Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of land actively devoted to agricultural, horticultural or agricultural and horticultural use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in those years of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but roll-back taxes shall not apply unless the amount of those taxes as computed under this section, exceeds the amount, if any, imposed under section 12 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 12. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to those provisions. Notwithstanding this paragraph, roll-back taxes shall not be assessed if the land involved, or a lesser interest in the land, is: (a) acquired for a natural resource purpose by (1) the city or town in which it is situated; (2) the commonwealth; or (3) a nonprofit conservation organization; (b) used or converted to a renewable energy generating source pursuant to section 2A; (c) subject to a permanent wetland reserve easement through the agricultural conservation easement program established pursuant to 16 U.S.C. 3865c; or (d) otherwise subject to another federal conservation program; provided,

however, that if a portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, roll-back taxes shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to a roll-back tax. If, at the time during a tax year when a change in land use has occurred, the land was not then valued, assessed and taxed under the provisions of this chapter, then such land shall be subject to roll-back taxes only for such of the five immediately preceding years in which the land was valued, assessed and taxed thereunder. In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall have ascertained the following for each of the roll-back tax years involved:

(a) The full and fair value of such land under the valuation standard applicable to other land in the city or town;

(b) The amount of the land assessment for the particular tax year;

(c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under subsection (a); and,

(d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (c) by the general property tax rate of the city or town applicable for that tax year.

Roll-back taxes will be subject to a simple interest rate of 5 per cent per annum. Land which is valued, assessed and taxed under this chapter as of July 1, 2006 shall be exempt from any interest if it remains in the same ownership as it was on that date or under the ownership of the original owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased such relative.

If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than $10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or recreational land under section 1 of chapter 61B or renewable energy generating source pursuant to section 2A.

Land retained as open space as required for the mitigation of development shall be subject to the roll-back taxes imposed by this section.

RECREATIONAL LAND AND USES
General Laws Chapter 61B, § 1

Section 1. Land not less than five acres in area shall be deemed to be recreational land if it is retained in substantially a natural, wild, or open condition or in a landscaped or pasture condition or in a managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources, including but not limited to, ground or surface water resources, clean air, vegetation, rare or endangered species, geologic features, high quality soils, and scenic resources. Land not less than five acres in area shall also be deemed to be recreational land which is devoted primarily to recreational use and which does not materially interfere with the environmental benefits which are derived from said land, and is available to the general public or to members of a non-profit organization including a corporation organized under chapter one hundred and eighty.

For the purpose of this chapter, the term recreational use shall be limited to the following: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery, target shooting and commercial horseback riding and equine boarding.

Such recreational use shall not include horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure.

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

CAPE COD FIVE CENTS SAVINGS BANK and WILLIAM R. ENLOW, as TRUSTEES OF THE JOHN R. PFEFFER FAMILY TRUST and CAPE COD NATIONAL GOLF FOUNDATION, INC.
v.

BOARD OF ASSESSORS OF THE TOWN OF HARWICH and
BOARD OF ASSESSORS OF THE TOWN OF BREWSTER

Docket Nos.: F277365 (FY 05); F277363-364 (FY 06); F282675, F282763 (FY 07); F288014-015 (FY 08)

Promulgated: July 17, 2009

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 appellee to abate real estate taxes assessed to the appellants under G.L. c. 59, §§ 11 and 38 by the Town of Brewster for fiscal years 2006, 2007 and 2008, and by the Town of Harwich for fiscal years 2005, 2006, 2007 and 2008.

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa, Egan, and Mulhern joined him in the decisions for the appellee.

These findings of fact and report are made pursuant to requests by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.

F. Alex Parra, Esq. and *Louis N. Levine*, Esq. for the appellants.
Jeffrey T. Blake, Esq. for the Harwich assessors.
Edward E. Veara, Esq. for the Brewster assessors.

FINDINGS OF FACT AND REPORT

On the basis of the parties' Stipulation of Facts and Issues ("Stipulation") and attached exhibits, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2004, January 1, 2005, January 1, 2006, and January 1, 2007, the John R. Pfeffer Family Trust, Cape Cod Five Cents Savings Bank and William R. Enlow, as Trustees of the John R. Pfeffer Family Trust (the "Trust"), were the assessed owners of 151.86 acres of contiguous land, of which approximately 70.66 acres are located in Brewster (the "Brewster property"), and about 81.20 acres are located in Harwich (the "Harwich property"), (collectively the "subject property").

At all times relevant to these appeals, the subject property was used as an 18-hole golf course known as the Cape Cod National Golf Course ("golf course"), which the Trust leased to the Cape Cod National Golf Foundation, Inc. ("Foundation" and with the Trust, "appellants"). Approximately 90 acres of the subject property's 151.86 acres are landscaped for use as a golf course, including tees, fairways, and greens. As part of the golf course design, the Cape Cod Commission (the "Commission") required the Trust to preserve fifty acres of undisturbed pine/oak woodlands to "provide travel corridors and significant habitat for wildlife." The Commission also required the installation of a comprehensive groundwater monitoring program and, except for the restoration of previously disturbed wetlands, that the golf course be developed without further wetland alteration.

Located on the Brewster property is a clubhouse, the golf pro's residence and a maintenance building. Situated on the Harwich property is a 2,000-square foot barn, which is in dilapidated condition and unused; another barn, which is used as a pump house in connection with the irrigation of the golf course; and a 130-square-foot bathroom facility. All buildings are used solely in connection with the golf course.

I. Jurisdiction

Brewster property

In accordance with G.L. c. 61B, § 3, applications for recreational classification must be submitted to the assessors prior to October first of the year preceding the tax year at issue. For fiscal years 2006, 2007 and 2008, the Trust, as the assessed owner, and the Foundation, as lessee, applied to the Brewster Board of Assessors (the "Brewster assessors") for recreational classification of the Brewster property under G.L. c. 62B. The relevant jurisdictional information is set forth in the following table.

Docket Number	Fiscal Year	Chapter 61B Application Filed	Application Denied	Request for Modification	Modification Denied	ATB Appeal Filed
F277363	2006	9-28-04	12-28-04.[1]	12-29-04	3-14-05	3-18-05
F282763	2007	9-19-05	11-30-05	12-05-05	1-06-06	1-26-06
F288015	2008	9-25-06	11-13-06	12-29-06	No action	3-28-07

For fiscal year 2006, the Brewster assessors valued the Brewster property at $5,252,500 and assessed a tax thereon at the rate of $5.58 per $1,000, in the total amount of $30,188.22, exclusive of land bank tax. For fiscal year 2007, the Brewster assessors valued the Brewster property at $5,709,600 and assessed a tax thereon at the rate of $5.47 per $1,000, in the total amount of $31,231.51, exclusive of land bank tax. The parties stipulated that the fiscal year 2008 assessment information was not known at the time of filing the Stipulation and, therefore, it was not presented to the Board. At all times material to these appeals, the Trust was the assessed owner of the Brewster property.

Based on these facts, the Board found and ruled that it had jurisdiction over the appellants' Brewster appeals.

Harwich property

For fiscal years 2005 through 2008, the Trust, as the assessed owner, and the Foundation, as lessee, applied to the Harwich Board of Assessors (the "Harwich assessors") for recreational classification of the Harwich property under G.L. c. 62B. The relevant jurisdictional information is set forth in the following table.

Docket Number	Fiscal Year	Chapter 61B Application Filed	Application Denied	Modification	Modification Denied	ATB Appeal Filed
F277365	2005	9-28-04	12-14-04	12-21-04	No action	03-18-05
F277364	2006	9-28-04	12-14-04	12-21-04	No action	03-18-05
F282675	2007	9-19-05	09-27-05	10-04-05	10-25-05	11-23-05
F288014	2008	9-25-06	12-05-06	12-29-06	01-09-07	03-28-07

For fiscal year 2005, the Harwich assessors valued the Harwich property at $4,170,700 and assessed a tax thereon, at the rate of $6.24 per $1,000, in the total amount of $26,025.17, exclusive of land bank tax. For fiscal year 2006, the Harwich assessors valued the Harwich property at $4,379,600 and assessed a tax thereon, at the rate of $5.89 per $1,000, in the total amount of $25,795.84, exclusive of land bank tax. For fiscal year 2007, the Harwich assessors valued the Harwich property at $4,522,000 and assessed a tax thereon, at the rate of $5.58 per $1,000, in the total amount of $25,232.76, exclusive of land bank tax. As with the Brewster property, the parties stipulated that the fiscal year 2008 assessment information was not known at the time of filing the Stipulation and, therefore, it was not presented to the Board.

The Harwich property was assessed to the Trust on a single tax bill, despite being shown as twenty-three separate lots on the Harwich assessors' Maps 114, 115 and 118. At all material times, the Trust was the record owner of the six lots identified on Maps 114 and 115, and also one lot identified on Map 118. By virtue of a deed dated January 3, 1997, and recorded on May 31, 2006, eight lots on Map 118 were conveyed to the Trust by John R. Pfeffer. Further, at all times relevant to these appeals, an

[1] Pursuant to G.L. c. 61B, § 6, the appellants' application for recreational classification was deemed denied three months from the date of filing, September 28, 2004. The appellants then had sixty days to file a request for a modification. G.L. c. 61B, § 14.

additional eight lots identified on the assessors' Map 118, parcels N1-149 through N1-156, were owned by John R. Pfeffer, individually.

Pursuant to G.L. c. 61B, § 3, the appellants' fiscal year 2005 application for recreational classification was due no later than October 1, 2003. As stated on the appellants' petition to the Board, the appellants did not file the application until September 28, 2004, nearly a year after the statutory due date. Accordingly, the Board found and ruled that it did not have jurisdiction over the appellants' fiscal year 2005 Harwich appeal. The Board found that the appellants' fiscal years 2006, 2007 and 2008 applications for classification and subsequent appeals were timely filed. Accordingly, and for the reasons more fully explained in the following Opinion, the Board found and ruled that it had jurisdiction over the appellants' fiscal years 2006, 2007 and 2008 Harwich appeals.

II. Recreational classification

For the four fiscal years preceding the fiscal years at issue in these appeals, fiscal years 2001 through 2004, the Trust and the Cape Cod National Golf Club, LLC (the "Club") filed appeals with the Board concerning denials by the Harwich assessors and the Brewster assessors of their applications for recreational classification under G.L. c.61B. The Trust and the Club took the position in those appeals that the subject property was available to the general public. During those years, the subject property was leased to the Club and was available only to members of the Club and patrons of the Wequassett Inn. In August 2004, the Trust, the Club, and the assessors entered into an Agreement for Judgment in the fiscal years 2001 through 2004 appeals, which provided that "the Appellants' claims in the Appeals for recreational land classification of the Properties under the provisions of G.L. c. 61B [were] dismissed." The Agreement further provided that "[f]or so long as the Appellants and/or golf course thereon are as presently constituted and/or organized, the Appellants shall not apply for recreational land classification as a golf course of the [subject property] under the provisions of G.L. c. 61B, § 1 ... ." Based on the Agreement for Judgment the Board issued a decision dated August 26, 2004 "for the appellees on the issue of classification under G.L. c. 61B."

On September 14, 2004, approximately one month after the Agreement for Judgment was executed, the Club conveyed its leasehold interest in the subject property to the then recently organized Foundation. The Assignment of Lease between the Club and the Foundation states that the lease was conveyed for $1.00 and "other valuable consideration" not identified. Notwithstanding this assignment, the Club continued to manage the subject property and remained responsible for the day-to-day operations of the golf course.

The Foundation was organized under the laws of the State of Florida on April 28, 2004, purportedly as a non-profit organization. According to the Foundation's Articles of Incorporation:

> [t]he general purposes for which the corporation is organized are exclusively for charitable, religious, medical, educational, scientific or literary purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations . . . . In addition to the general purpose of the corporation, the corporation is also organized to promote not-for-profit botanical gardens, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations ... .

The Foundation's By-Laws provide that "[a]ny golf member of our wholly-owned subsidiary [the Club] shall be considered a non-voting member [of the Foundation] and will be eligible to serve on the Member Advisory Board of the Golf Club." All members of the Foundation are also members of the Club, a private organization. The golf course is available only to members of the Club, who are also ex-officio members of the Foundation, as well as to patrons of the Wequassett Inn.

The day-to-day operations of the golf course are managed by the Club. The Club derives revenues from the following sources: annual membership dues and greens fees paid by members of the Club, which includes ex-officio members of the Foundation; fees paid by patrons of the Wequassett Inn; and, pro shop and food sales to members of the Club and Foundation and patrons of the Wequassett Inn. All revenues derived from the operation of the golf course, after the payment of operating expenses, not including rent or real estate taxes, are required to be paid by the Club to the Foundation. Under the terms of the lease, the Foundation is then obligated to pay to the Trust rent equal to the Trust's allowable

depreciation of the cost of the improvements to the golf course and also real property taxes assessed on the subject property.

For calendar year ending December 31, 2004, the Club reported a total income of $2,809,203 and total operating expenses, which included payment of rent and property taxes, of $2,747,015, with a net profit paid to the Foundation of $62,189. For calendar year ending December 31, 2005, the Club reported a total income of $2,584,195 and total operating expenses, which included payment of rent and property taxes, of $2,575,739, with a net profit of $8,456 paid to the Foundation. No financial information was provided for calendar years 2006 and 2007.

Pursuant to the Foundation's Articles of Organization, after the payment of rent, taxes, debts and other expenses and obligations, the Foundation was required to distribute all funds received from the Club for charitable purposes. During the fiscal years at issue, however, the Foundation made only two nominal charitable distributions, totaling $1,500: one to the Harwich Cultural Council in the amount of $500 and another to the Leadership Institute in the amount of $1,000. The Foundation was also organized to promote or make donations to not-for-profit botanical gardens. The appellants failed to provide any evidence to demonstrate that the Foundation attempted to carry out this purpose.

On the basis of these facts, the Board found and ruled that the golf course was in fact available only to members of a private club and guests of the Wequassett Inn and, therefore, was not available to the general public or members of a non-profit organization. The Board further found that the appellants' applications for Chapter 61B classification, based on the lease of the golf course to the Foundation, were submitted for the purpose of evading payment of the "full and proper taxes due" on the subject property. *See* G.L. c. 61B, § 6.

The Foundation was organized on April 28, 2004, while the Trust had appeals for prior fiscal years pending before the Board in which the availability of the golf course to the general public was in issue. In August of 2004, the parties agreed that the Trustees' appeals for those years should be dismissed and the Trustees agreed that they would not apply for Chapter 61B classification "[f]or so long as the Appellants and/or the golf course thereon are as presently constituted and/or organized." Less than one month later, the Club transferred its leasehold interest in the golf course to the newly created Foundation. The clear purpose of the creation of the Foundation, and the transfer to it of the leasehold interest in the golf course, was to give the appearance that the golf course was no longer available only to private club members and guests of a particular hotel, but to "members of a non-profit organization" as required under G.L. c. 61B, § 1. However, the creation of the Foundation had no impact on the operation or use of the golf club and its availability only to the private Club members and hotel guests.

In effect, there was no difference in the operation and use of the golf course as a result of the Foundation lease. The Club continued to maintain the day-to-day operations of the golf course and all members of the Foundation were also members of the Club. Despite the lease to the Foundation, only private club members and Wequassett Inn guests continued to be afforded exclusive access to the course. Accordingly, the Board found that the golf course was not open to the general public or members of a non-profit organization for purposes of G.L. c. 61B, § 1.

The Board further found that the creation of the Foundation, and the assignment of the lease of the golf course to it, was for the sole purpose of supporting an application for Chapter 61B classification in an attempt to evade the payment of the full and proper tax due on the subject property.

The appellant also maintained, as an alternative argument, that the subject property qualified under the first sentence of G.L. c. 61B, § 1, even if it was not available to the general public or members of a non-profit organization, because it is "retained in substantially a natural, wild or open condition or in a landscaped condition" for purposes of G.L. c. 61B, § 1.

As detailed in the Opinion which follows, however, the Board found and ruled that the specific language of § 1 regarding classification of land used for golfing and other recreational uses and not the general language of § 1 applicable to land in a natural, wild, open or landscaped condition, applies to the subject property. Where, as here, the relevant statute provides for classification of land put to a particular use and provides conditions for such classification, a taxpayer cannot avoid those conditions by using the land for unspecified purposes. The parties stipulated that the sole use of the subject property was as a golf course, together with a club house and various improvements used solely in connection with the golf

course. Accordingly, to qualify under Chapter 61B, the subject property must be available to the general public or members of a non-profit organization. Because it was not so available, the assessors were correct in denying classification for the fiscal years at issue.

On the basis of the foregoing findings of fact and for the reasons more fully explained in the following Opinion, the Board found that the appellants did not qualify for recreational classification and issued decisions for the appellees in these appeals.

OPINION

I. Jurisdiction

Pursuant to G.L. c. 61B, § 2, taxpayers seeking classification of their land as "recreational land" must apply to the board of assessors no later than October first of the year preceding each tax year for which such classification is sought. Accordingly, for taxpayers seeking classification for fiscal year 2005, the period beginning July 1, 2004 and ending June 30, 2005, they must have filed a classification application no later than October 1, 2003. In the present appeals, the appellants filed their fiscal year 2005 application with the Harwich assessors on September 28, 2004, nearly one year after its statutory due date. Accordingly, the Board found and ruled that it did not have jurisdiction over the appellants' fiscal year 2005 Harwich appeal.

In addition, the Harwich assessors argued that the Board lacked jurisdiction over the appellants' fiscal years 2006, 2007, and 2008 Harwich appeals because the appellants failed to list and obtain the signatures of all property owners on Section D of the application form. The applications were signed by one of the Trustees, Cape Cod Five Cent Savings Bank, on behalf of the Trust, and John R. Pfeffer, on behalf of the Foundation as lessee. There is no dispute that eight of the parcels, which comprise the Harwich property, are owned by John R. Pfeffer, individually. Therefore, the Harwich assessors argued that Mr. Pfeffer was required to sign the applications in his individual capacity and that his failure to do so is a jurisdictional defect which should result in the dismissal of the appellants' Harwich appeals for fiscal years 2006, 2007 and 2008.

At all material times, the Harwich assessors sent to the Trust a single tax bill for all Harwich parcels, which listed the Trust as the assessed owner of the Harwich property. Acceptance of the Harwich assessors' argument would mean that the assessed owner of property has no standing to seek recreational classification for land on which he is being taxed. There is nothing in Chapter 61B or elsewhere that supports such a result.

Under G.L. c. 61B, § 3, the assessors shall provide forms for use "by applicants" and the "applicant" is required to provide certain certifications to the assessors. The focus of the § 3 application process is therefore on the "applicant," not the "owner," of the property. Although § 3 also provides that the commissioner "may [] prescribe" a "certification by a landowner" that the information in his application is true, the statute nowhere specifically requires that only the owner of record may apply for Chapter 61B classification. It would be an anomalous result to prevent the assessed owner from applying for classification, particularly where, as here, the assessors assessed the multiple Harwich parcels comprising the subject property on a single bill to a single owner. *Cf.* c. 59, § 59 ("a person upon whom a tax has been assessed" may apply for an abatement of real estate tax). Accordingly, the Board ruled that it had jurisdiction to hear and decide the Harwich appeals for fiscal years 2006, 2007 and 2008.

II. Recreational Classification

G.L. c. 61B, § 1 provides in pertinent part that:

> Land not less than five acres in area shall be deemed to be recreational land if it is retained in substantially a natural, wild, or open condition or in a landscaped condition in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources, including but not limited to, ground or surface water resources, clean air, vegetation, rare or endangered species, geologic features, high quality soils, and scenic resources. Land not less than five acres in area shall also be deemed to be recreational land which is devoted primarily to recreational use and which does not materially interfere with the environmental benefits which are derived from said land, and

is available to the general public or to *members of a* ***non-profit organization …*** . emphasis added).

For purposes of this chapter, the term recreational use shall be limited to the following:.. . golfing ... .

The parties agree that the subject property is not less than five acres and is used solely as an 18-hole golf course, together with a club house and various improvements used solely in connection with the golf course. The primary issue, therefore, is whether the golf course is available to the general public or members of a non-profit organization. The appellants argued that since the golf course is available to members of the Foundation, a non-profit organization, the subject property qualified for recreational classification. The assessors, however, argued that the Foundation does not act as a non-profit organization for real estate tax purposes and that the golf course is, in fact, only available to members of a private club and guests of a particular hotel. Further, the assessors maintained that the appellants' filing of their Chapter 61B applications for the fiscal years at issue was "for the purpose of evading payment of full and proper taxes" because the creation of the Foundation and the transfer to it of a leasehold interest in the golf course had no effect on the availability of the golf course to the general public. *See,* G.L. c. 61B, § 6.

For fiscal years 2001 through 2004, the golf course was leased to the Club and available only to members of the Club and the Wequassett Inn. By decision dated August 24, 2004, the Board found and ruled for those fiscal years, based on the Trustees' concession reflected in the parties' Agreement for Judgment, that the subject property, which was open only to members of the Club and patrons of the Wequasset Inn, did not qualify for recreational classification because it was not available to members of the general public or a non-profit organization. Less than one month later, on September 14, 2004, the Club conveyed its leasehold interest in the subject property to the Foundation. The Club, however, continued to manage the day-to-day operations of the golf course and access to the course continued to be limited to Club members and guests of the Wequassett Inn.

Pursuant to the Foundation's Articles of Organization, "[t]he general purposes for which the corporation is organized are exclusively for charitable, religious, medical, educational, scientific or literary purposes" including making distributions to various civic organizations. In addition, "the corporation is also organized to promote not-for-profit botanical gardens." These purposes underscore the fact that the Foundation has no practical purpose other than to support the appellants' classification application. The stated purposes are a generic listing of charitable purposes and the specific inclusion of "botanical gardens" is curious; the appellants fail to explain how aiding botanical gardens is consistent with the operation of a golf course.

Moreover, as of the date of these appeals, approximately three years after the establishment of the non-profit organization, the Foundation had made only two charitable contributions totaling a mere $1,500. The appellants offered no evidence that the Foundation performed any other charitable activity during the relevant time period.

Based on the evidence presented, the Board found that the golf course, which was open only to members of a private club and patrons of a particular hotel, was not open to the general public or members of a non-profit organization within the meaning of G.L. c. 61B, § 1. Given that the members of the Foundation were also members of the Club and that the only evidence that the Foundation acted in a manner consistent with its stated purposes was its nominal charitable contributions, the Board found and ruled that the subject property was not open to members of a non-profit organization for purposes of § 1.

Generally, real estate tax benefits are conferred only on non-profit organizations that perform charitable works consistent with their stated purposes. *See* ***Lasell Village, Inc. v. Assessors of Newton,*** 67 Mass. App. Ct. 414 (2006) (ruling that an institution is a charitable organization for purposes of the property tax exemption under G.L. c. 59, § 5, cl. 3, if the dominant purpose of its work is for the public good, but if the dominant purpose of its work is to benefit its members or a limited class of persons, it does not qualify for the exemption.) There is no indication that the legislature intended to confer a tax benefit under Chapter 61B where, as here, a non-profit organization is not fulfilling its stated charitable purposes but is merely acting as a façade to allow a members-only golf course to receive a tax benefit.

Further, the availability of the course to guests of the Wequassett Inn does not mean that the course was open to the general public for purposes of G.L. c. 61B, § 1, a point which even the appellants do not attempt to argue in these appeals. Favorable tax treatment of land available only to a select few, as opposed to the general public, has consistently been denied. *See, e.g.,* ***Brookline Conservation Land Trust v. Assessors of Brookline,*** Mass. ATB Findings of Fact and Report, 2008-679, 699-700; ***Wing's Neck Conservation Foundation, Inc. v. Board of Assessors of Bourne***, Mass. ATB Findings of Fact and Reports 2003-329, 343, *aff'd*, 61 Mass. App. Ct. 1112 (2004). ("the absence of public access to land has consistently proven fatal to a landowner's claim of charitable exemption.")

The Board further found and ruled that the assessors were justified in denying the applications based on their determination that the appellants' "application [was] submitted for the purpose of evading payment of full and proper taxes." *See* G.L. c. 61B, § 6. Despite the Foundation being listed as the lessee, the private, members-only Club continued to operate the golf course on a day-to-day basis and its members, along with guests at the Wequassett Inn, were the only individuals able to use the course. Accordingly, the Board found and ruled that the operation and use of the subject property was unaffected by the transfer of the leasehold interest to the Foundation. The sole purpose of the Foundation, whose members were also members of the Club, was to allow the golf course to continue to be used exclusively by its members and Inn guests while enjoying the tax benefits of recreational classification.

"It is axiomatic that taxpayers have the right to mold business transactions in such a manner as to minimize the incidence of taxation, for no taxpayer is obligated to pay more tax than the law demands of him." ***Brown, Rudnick, Freed & Gesmer v. Assessors of the City of Boston***, Mass. ATB Findings of Fact and Report 1982-41, 53, *aff'd* 389 Mass. 298 (1983) (quoting ***Aldon Homes, Inc. v. Commissioner of Internal Revenue***, 33 T.C. 582 (1959)). However, "this right does not bestow upon the taxpayer the right to structure a paper entity to avoid tax when that entity does not stand on the solid foundation of economic reality." ***Zmuda v. Commissioner,*** 79 T.C. 714, 719 (1982), aff'd. 731 F.2d 1417 (9th Cir. 1984).

> The Government may not be required to acquiesce in the taxpayer's election of that form for doing business which is most advantageous to him. The Government may look at actualities and upon determination that the form employed for doing business or carrying out the challenged tax event is unreal or a sham may sustain or disregard the effect of the fiction as best serves the purposes of the tax statute. To hold otherwise would permit the schemes of taxpayers to supersede legislation in the determination of the time and manner of taxation.

Higgins v. Smith, 308 U.S. 473 (1940). "To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies." ***Commissioner v. Court Holding Co.,*** 324 U.S. 331, 334 (1945).

Chapter 61B, § 6, explicitly provides assessors with the authority to deny classification applications where the applicant's purpose is to evade payment of taxes by providing "[i]f any board of assessors shall determine that any such application is submitted for the purpose of evading payment of full and proper taxes, such board shall disallow such application." G.L. c. 62B, § 6. In the present appeals, the Board found and ruled that the Foundation was created, and the leasehold interest in the golf course was transferred to it, for the sole purpose of attempting to qualify for Chapter 61B classification and thereby evade the full and proper real estate tax. Accordingly, the Board found and ruled that the assessors properly determined that the appellants' submitted applications for classification were "for the purpose of evading payment of full and proper taxes."

In the alternative, the appellants also argued that the subject property qualified under chapter 61B, § 1 as land "retained in substantially a natural, wild, or open condition or in a landscaped condition in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources." Where, as here, the statute provides for classification of land put to a particular use, such as golfing, and provides conditions for such classification, a taxpayer cannot avoid those conditions by claiming the benefit of classification as land used for unspecified purposes. It is a familiar principle of statutory construction that a statutory provision of specific applicability trumps one of general applicability. ***W.D. Cowls, Inc. v. Board of Assessors of Shutesbury,*** 34 Mass. App. Ct. 944, 945 (1993) (citing ***Hennessey v. Berger,*** 403 Mass. 648, 651 (1988)). *See also* ***Pereira v. New England LNG Co.,*** 3674

Mass. 109, 118-19 (1973) (If a general statute and a specific statute cannot be reconciled, the general statute must yield to the specific statute).

In the present appeals, the parties stipulated that the sole use of the subject property was as a golf course, together with a club house and various improvements used solely in connection with the golf course. Accordingly, the Board found that to qualify under Chapter 61B as land used for the recreational use of golfing, the subject property must be available to the general public or members of a non-profit organization. Because it was not, the assessors were correct is denying classification for the fiscal years at issue.

On these bases, the Board found and ruled that the subject property did not qualify for recreational classification for the fiscal years at issue and therefore decided these appeals for the appellees**.**

APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy, Attest: _____
Clerk of the Board

CHAPTERLANDS FREQUENTLY ASKED QUESTIONS (FAQS)
Excerpts
The full FAQs may be found at:
https://www.mass.gov/files/documents/2018/07/27/chapterlandfaq_0.pdf

Frequently asked questions (FAQs) published by the Division of Local Services (DLS) within the Department of Revenue provide general information about Massachusetts municipal tax and finance laws and DLS policies and procedures in effect when published. They do not answer all questions or address complex issues about their topics. FAQs are not public written statements of the Department. They are informational only as described in 830 CMR 62C.3.1(10)(c), and do not supersede, alter or otherwise change any Massachusetts General Law, Department public written statement or other source of law.

Eligibility FAQs

4. What are the basic requirements for land to be classified as forest, farm or recreational land for local tax purposes?

A) Forest Land (Chapter 61) - The land must (1) consist of at least 10 acres of contiguous land under the same ownership, (2) be "actively devoted" to growing forest products during the fiscal year for which classification is sought and not used for incompatible purposes during the previous two fiscal years, and (3) be managed under a 10 year forest management plan approved and certified by the State Forester. G.L. c. 61, §§ 1, 2 and 3. The State Forester alone determines whether the land is devoted to growing forest products and eligible for classification under G.L. c. 61 and has issued regulations that define the criteria applied to determine the land included in the certified management plan. G.L. c. 61, § 2; 302 CMR 15.

B) Farm Land (Chapter 61A) - The land must (1) consist of at least five acres of contiguous land under the same ownership and (2) be "actively devoted" to agricultural or horticultural use during the fiscal year for which classification is sought and the previous two fiscal years. Actively devoted means (1) the land must be used primarily and directly in raising animals or growing food, animal feed, plants, shrubs or forest products or in a manner related or necessary to their production or preparation for market, *e.g.*, farm roads, irrigation ponds or land under farm buildings, and (2) annual gross sales of the farm products in the regular course of business must equal or exceed a specified amount that depends on the size of the farm. G.L. c. 61A, §§ 1, 2, 3 and 4. Once five or more acres qualify as land actively devoted to agricultural or horticultural uses, up to the same amount (100%) of contiguous, non-productive land under the same ownership may be classified in addition to the productive land. G.L. c. 61A, § 4.

C) Recreational Land (Chapter 61B) - The land must (1) consist of at least five acres of contiguous land under the same ownership and (2) be retained in one of the following conditions in a manner that preserves wildlife or other natural resources: a substantially natural, wild or open condition, landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, or be devoted to a qualifying recreational use in a manner that does not materially interfere with the environmental benefits derived from the land. To be classified based on use for a qualifying recreational purpose, the land must be open to the public or members of a non-profit organization. No public access is required if classification is sought based on the condition of the land. It can be open to the public or maintained as private undeveloped land. G.L. c. 61B, § 1.

6. What does same ownership mean?

Same ownership means that legal title to all of the land must be held in the same name(s) and in the same capacity. The ownership of the land must be identical.

> *For example, John Jones is the sole owner of record of two abutting parcels of 3 acres each. The 6 acres are under the same ownership. They are not under the same ownership,*

however, if John Jones is the sole owner of one parcel and owns the other with his spouse.

7. How is the minimum acreage requirement computed?

The minimum acres required for classification as forest, farm or recreational land must be contiguous and under the same ownership….

B) Farm Land (Chapter 61A) - Land area under farm buildings such as barns and farm sheds count toward the minimum five acres as necessary and related land. Any land under and associated with other buildings that are not related to the farm production is excluded. If there is a house on the land, the following is also excluded: (1) the land under the house and (2) the land around the house that is regularly used for residential living purposes and not actually being used for a qualifying forest, farm or recreational use under Chapters 61, 61A or 61B. G.L. c. 61A, § 15….

9. What are qualifying recreational land uses under Chapter 61B?

To be classified under Chapter 61B based on a qualifying recreational use rather than condition of the land, the land must be (1) open to the public or members of a non-profit organization and (2) used for one of the following purposes: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery, target shooting and commercial horseback riding and equine boarding. It may not be used for horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure. G.L. c. 61B, § 1.

Appeal Procedure FAQs

11. What is the procedure to appeal the denial of an application for classification of land as forest, farm or recreational land under Chapters 61, 61A or 61B?

A) Forest Land (Chapter 61) – If the State Forester determines land qualifies for classification as forest land, the landowner submits the State Forester's certificate and approved forest management plan for the land to the assessors with an application for classification on or before October 1. If the assessors believe that any land included within the State Forester's certification and approved management plan does not qualify for classification under G.L. c. 61 (or if previously classified land is not being managed under the approved management plan or is being used in a manner incompatible with forest production), they may appeal in writing to the State Forester on or before December 1 and request denial of the application for classification (or removal of the land from classification). The assessors must, by certified mail, send the appeal to the Department and a copy to the landowner. The State Forester must notify the assessors and landowner of its decision on the appeal by March 1 of the following year. The assessors or landowner may appeal that decision on or before April 15. The appeal must be sent, by certified mail, to the Department and a copy to the landowner (or to the assessors if the appeal is by the landowner). In the event no appeal is received by the Department on or before April 15th, the Department's decision becomes final and binding on the assessors and the owner. If an appeal has been timely filed, the State Forester must, on or before May 15, convene a three-person regional panel to hear the appeal. The panel consists of three members: one nominated by the Department, one by the assessors and a third to be selected by the first two panel members. If the assessors fail to nominate its panel member within 10 days after notice from the Department, the Department will select the assessors' panel member. After the panel has been established, it must set a hearing date and give at least seven days' notice of the hearing to the parties by certified mail. The hearing must begin on or before June 15 or an agreed-upon date of the parties. No panel member may serve as a witness at the hearing. Notice of the panel's decision must be given to the assessors and landowner within 10 business days after the hearing ends. Within 45 days of

notice of the panel's decision, the assessors or landowner may appeal to the Appellate Tax Board or Superior Court. The State Forester may also initiate the removal of land from classification, on its own, upon knowledge that the land is not being managed according to the approved forest management plan or does not otherwise qualify for classification. The same procedures and deadlines apply to that removal procedure. G.L. c. 61, § 2. Appeals must comply with the Department's procedures established under 302 CMR 15.08.

B) Farm Land (Chapter 61A) – The assessors have 3 months to act on a timely filed application to determine whether the land qualifies for classification as agricultural or horticultural land under G.L. c. 61A. If the assessors do not act within that time, the application is deemed allowed. The assessors must send a written notice of the allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2, *Notice of Action on Application for Forest-Agricultural or Horticultural-Recreational Land Classification*, sets forth the reasons for any disallowance and explains the landowner's appeal rights. It must be sent by certified mail. G.L. c. 61A, § 9.

A landowner denied classification of all or part of the land may apply to the assessors for a modification of their action on the application for classification. The landowner must apply for the modification within 30 days of the notice of denial. *Form CL-7, Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land*. If the assessors refuse to modify their determination, or they do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessors' decision, Form CL-8, *Notice of Action on Application to Modify a Decision or Abate a Tax, Classified Forest, Agricultural-Horticultural – Recreational Land*, or within 3 months of the date of the application for modification, whichever is later. G.L. c. 61A, § 19.

C) Recreational Land (Chapter 61B) – The assessors have 3 months to act on a timely filed application to determine whether the land qualifies for classification as recreational land G.L. c. 61B. If the assessors do not act within that time, the application is deemed disallowed. The assessors must send a written notice of the allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2, *Notice of Action on Application for Forest-Agricultural or Horticultural-Recreational Land Classification*, sets forth the reasons for any disallowance and explains the landowner's appeal rights. It must be sent by certified mail. G.L. c. 61B, § 6.

A landowner denied classification of all or part of the land may apply to the assessors for a modification of their action on the application for classification. The landowner must apply for the modification within 30 days of the notice of denial. *Form CL-7, Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land*. If the assessors refuse to modify their determination, or they do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessors' decision, Form CL-8, *Notice of Action on Application to Modify a Decision or Abate a Tax, Classified Forest, Agricultural-Horticultural – Recreational Land*, or within 3 months of the date of the application for modification, whichever is later. G.L. c. 61B, § 14.

Sale For or Change in Use FAQs

13. What rights in land classified under Chapters 61, 61A or 61B does a municipality have when the landowner changes its use or decides to sell it for another use?

The classified land statutes provide preferential property tax benefits to landowners who make a long-term commitment to using their land for qualifying forest, farm or recreational uses. In exchange for providing those benefits, a municipality has a right of first refusal (ROFR) or option to purchase the land in certain cases where a change of use is planned by the landowner or a new owner after a sale.

Specifically, a municipality has a ROFR when a landowner converts, or decides to sell, classified land for residential, commercial or industrial development or use during (1) any fiscal year the land is classified or (2) the fiscal year after the year the land was last classified. G.L. c. 61, § 8; G.L. c. 61A, § 14; G.L. c. 61B, § 9.…

The ROFR does not apply if the landowner (1) simply discontinues the classified use, *i.e.*, leaves the land undeveloped, or (2) sells or converts the land for a residence for the owner; the owner's spouse, parent, grandparent, child, grandchild, brother or sister, or the surviving spouse of those relatives; or an employee working full-time in the use and care of the property for its classified use.

Whenever local officials receive any notice indicating the landowner's intent to sell or convert classified land, or believe a notice should be given, they should consult municipal counsel for guidance on the municipality's rights and the procedures it must follow.

14. What tax benefits provided a landowner may be recaptured by a municipality when classified land under Chapters 61, 61A or 61B is sold or its use changed?

As a general rule, a landowner must pay one of two "penalty" taxes, a roll-back or conveyance tax, when classified land is sold for or converted to another use. No penalty tax is assessed, however, when the classified land is being sold for or converted to a residence for the owner; the owner's spouse, parent, grandparent, child, grandchild, brother or sister, or the surviving spouse of those relatives; or an employee working full-time in the use and care of the property for its classified use. See See *Adams v. Assessors of Westpor*t, 76 Mass. App. 180 (2010) and *Ross v. Assessors of Ipswich*, (ATB docket #F239496, November 21, 2000), both of which involved classified farm land and extended the same exemption from the ROFR to the penalty taxes.

A) Roll-back Tax – A roll-back tax is assessed when classified land is changed to a non-qualifying use. A non-qualifying use means (1) land retained as open space as mitigation of a development or (2) any other use or condition that does not qualify for classification as forest land under Chapter 61, agricultural or horticultural land under Chapter 61A or recreational land under Chapter 61B. The tax is assessed to the owner of the land when the change to the non-qualifying use occurs. G.L. c. 61, § 7; G.L. c. 61A, § 13; G.L. c. 61B, § 14.

The roll-back tax provides for recapture of the property tax savings on the land for the immediately preceding five year period.… The amount saved for each year is simply the difference between the tax assessed on the classified land under the program and the tax that would have been assessed on the fair cash value of the land if not classified… .*G.L. c. 61A, § 13.)*

B) Conveyance Tax – A conveyance tax is assessed as an alternative to a roll-back tax when classified land is sold for or converted to a use or condition that does not qualify for classification under any of the three chapters within a certain time period, but only if greater than the roll-back tax. G.L. c. 61, § 6; G.L. c. 61A, § 12; G.L. c. 61B, § 7.

Specifically, a conveyance tax must be computed, compared to the roll-back tax and assessed if greater when (1) a landowner is selling or converting classified forest or farm land under Chapters 61 or 61A to a non-qualifying use within 10 years after the date the owner acquired the land or began the continuous use of the land for the classified use, whichever is earlier; or (2) a landowner is selling classified recreational land under Chapter 61B for a non-qualifying use within 10 years from the beginning of the fiscal year in which it was first classified. The seller is not assessed a conveyance tax if the buyer files an affidavit with the assessors that the classified use will be continued after the sale… . The conveyance tax does not apply to a number of deeds or transfers… .

The conveyance tax is computed by multiplying the applicable conveyance tax rate to the sales price of the classified land in the case of a sale, or the fair market value as determined by the assessors in the case

of a change to a non-qualifying use by the landowner. The conveyance tax rate is set on a descending basis over the initial 10 years of ownership or classification. Under Chapters 61 and 61A, the rate is 10% in the first year of ownership, 9% in the second, 8% in the third, and down to 1% in the tenth. Under Chapter 61B, the rate is 10% for the first five years of classification and 5% for the sixth through tenth year of classification… .

Installation of Solar or Wind Farms FAQs

Note: The below FAQs relate only to the impact of placing solar or wind facilities upon classified land; they do not relate to the taxation of the solar or wind facility itself.

15. Does the development or installation of solar or wind farms or facilities on classified land impact the classification of land under Chapters 61, 61A or 61B?

As a general rule, development or installation of solar or wind farms or facilities on classified land will constitute a change in use and trigger a municipality's right of first refusal (ROFR) and penalty tax assessment. However, there is an exception to this general rule for certain solar or wind facilities located on land classified under Chapter 61A (Farm Land)… .

C) Farm Land (Chapter 61A) - To be classified as farm land under Chapter 61A, the land must be "actively devoted" to agricultural or horticultural use. Actively devoted means: (1) the land, which includes a minimum of five acres, must be used: (a) primarily and directly for agricultural production (raising animals or a product derived from animals for the purpose of sale in the regular course of business) or horticultural production (raising fruits, vegetables, etc. for human consumption, feed for animals, nursery or greenhouse products, for the purpose of sale in the regular course of business or raising forest products under a certified forest management plan) or (b) in a manner necessary and related to that production, *i.e.*, in a manner that directly supports or contributes to the production, *e.g.*, farm roads, irrigation ponds, land under farm buildings; and (2) annual gross sales of the farm products in the regular course of business must equal or exceed a specified amount that depends on the size of the farm. G.L. c. 61A, §§ 1, 2, 3 and 4.

Effective for fiscal years beginning FY 2018, a new section 2A was added to Chapter 61A. (See Sections 172 – 174 of Chapter 218 of the Acts of 2016, Municipal Modernization Act.) Under that section, land in agricultural use (G.L. c. 61A, § 1) and land in horticultural use (G.L. c. 61A, § 2) "may, in addition to being used primarily and directly for agriculture or horticulture, be used to site a renewable energy generating source," (emphasis added) which includes a source that generates electricity using solar or wind energy. (See full definition of "renewable energy generating source" below.) However, the renewable energy generating source must meet the following purpose and size requirements:

(i) It must produce energy for the exclusive use of the land and farm on which it is located, and
(ii) It cannot produce more than 125% of the annual energy needs of the land and farm upon which it is located.

The land and farm on which the renewable energy generating source is located includes contiguous or non-contiguous land that is owned or leased by the land and farm owner or in which the owner holds an interest.

These changes do not apply to land classified under Chapter 61 (Forest Land) or Chapter 61B (Recreational Land).

16. What is a "renewable energy generating source" under G.L. c. 61A, § 2A?

A "renewable energy generating source" is one that generates electricity from several identified sources, including solar photovoltaic or solar thermal electric energy or wind energy. (Note: Although the

legislature referenced G.L. c. 25, § 11F(b) in the definition, we believe the legislature meant to cite G.L. c. 25A, § 11F(b), as there is no G.L. c. 25, § 11F.)

17. Can a landowner change the use of all of the owner's agricultural and horticultural land to the production of electricity through solar or wind and still qualify for classification under Chapter 61A (Farm Land)?

No. The clear language of G.L. c. 61A, § 2A requires that the agricultural use under G.L. c. 61A, § 1 or the horticultural use under G.L. c. 61A, § 2 must continue… .

18. How can assessors verify that a solar or wind facility meets the purpose and size requirements of G.L. c. 61A, § 2A?

When a solar or wind facility is located on land classified or to be classified under Chapter 61A, assessors will need to determine: (1) whether the solar or wind facility is producing electricity for the exclusive use of the land and farm where located and (2) that the amount of electricity produced by the facility is not more than 125% of the annual energy needs of the land and farm where located. As indicated in FAQ No. 15C above, the land and farm where the facility is located includes contiguous or non-contiguous land that is owned or leased by the landowner claiming classification, or in which the owner holds an interest. Landowners must demonstrate that their land qualifies for classification and assessors should request documentation to establish that the facility meets these requirements.

19. If the solar or wind facility falls within the purpose and size requirements of G.L. c. 61A, § 2A, will the land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind facility (*e.g.*, access roads) be included for purposes of determining compliance with the minimum five-acre and the gross sales requirements of G.L. c. 61A, § 3? And how will that land be valued?

It depends.

Note: The following examples are related to cranberry production; but **G.L. c. 61A, § 2A** applies equally to land used for other qualifying horticultural and agricultural uses.

Example 1: A solar facility located on a cranberry bog provides electricity only for the irrigation pumps and farm buildings used in cranberry production. This is similar to land under farm buildings, irrigation ponds and ditches and farm roads. The land is primarily and directly used in a related manner that is incidental to the growing or production of cranberries, *i.e.*, in a manner that directly supports or contributes to the production and represents a customary and necessary use in raising the products and preparing them for market. G.L. c. 61A, § 2. As a result, the land under the solar facility is included in determining whether a farm meets the five-acre minimum requirement of G.L. c. 61A, § 3. (Please see FAQ Nos. 4B and 7B above.) That land will also be included when determining the gross sales requirement under G.L. c. 61A, § 3 and will be classified and valued as actively devoted to cranberry production. (See the Farmland Valuation Advisory Commission (FVAC) recommended values.)

Example 2: A solar facility is located over a sand pit which is part of a cranberry farm. The land (sand pit) is used primarily and directly in a manner that directly supports or contributes to the cranberry production and represents a customary and necessary use in raising cranberries and preparing them for market. G.L. c. 61A, § 2. The solar facility does not interfere with the use of the land for the production of cranberries and the land continues to be used in the production of cranberries, *i.e.*, the sand from the sand pit is still accessible and is still used by the farmer in raising and preparing the cranberries for market. Although the solar or wind facility does not produce electricity only for the use of farm buildings, field irrigation, etc.; it does comply with the purpose and size requirements of G.L. c. 61A, § 2A.

Because the solar facility is located on land (the sand pit) that is "simultaneously" being used primarily and directly in a manner that directly supports or contributes to the cranberry production and represents a customary and necessary use in raising cranberries and preparing them for market under G.L. c. 61A, § 2, then the land under the solar facility (the sand pit) is included within the minimum five-acre requirement of G.L. c. 61A, § 3 and will be classified and valued as actively devoted to cranberry production. (See the Farmland Valuation Advisory Commission (FVAC) recommended values.) The land is also included when determining the gross sales requirement under G.L. c. 61A, § 3.

Example 3: A solar facility that complies with the purpose and size requirements of G.L. c. 61A, § 2A is placed over a cranberry bog in a manner that prevents the "simultaneous" use of that land for the production of cranberries, *e.g.*, a concrete platform is constructed on the land under the solar panels or the panels are placed so low to the ground that the land can no longer be accessed or used for cranberry production. In this case, the placement of the solar facility prevents the "simultaneous" use of the land for the production of cranberries and the land under the solar facility will not be included when determining compliance with the minimum five-acre requirement of G.L. c. 61A, § 3 and will not be classified or valued as actively devoted to the production of cranberries. The land will be taxed based on its fair cash valuation under G.L. c. 59, §§ 2 and 38. (Note: The same result will occur if the farmer voluntarily discontinues "simultaneous" use of the land under the solar facility for cranberry production.)

Example 4: A solar facility that complies with the purpose and size requirements of G.L. c. 61A, § 2A is installed on a field of grass located next to an active cranberry bog owned by the same farmer. The grass field is or may be classified as contiguous non-productive land, *i.e.*, land "contiguous" to the land actively devoted to cranberry production under G.L. c. 61A, § 4. (For more information on contiguous, non-productive land, please see FAQ No. 4B above.) Because it is non-productive land and not actively devoted to cranberry production, the land cannot be included to meet the minimum five-acre requirement of G.L. c. 61A, § 3. It is also not included when determining the gross sales requirement under G.L. c. 61A, § 3. However, the land could be classified and valued as non-productive contiguous land under G.L. c. 61A, § 4. Once five or more acres of land qualify as land actively devoted to horticultural use (here, cranberry production), up to the same amount of contiguous non-productive land under the same ownership may be classified in addition to the productive land. (See the Farmland Valuation Advisory Commission (FVAC) recommended values for non-productive land.)

20. What if the solar or wind facility does not meet the purpose, size and other requirements of G.L. c. 61A, § 2A?

If the solar or wind facility does not meet the requirements of G.L. c. 61A, § 2A, then the land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind farm or facility (*e.g.*, access roads) or impacted by its operation will not be eligible for classification under Chapter 61A (Farm Land) and will be taxed based on its fair cash valuation under G.L. c. 59, §§ 2 and 38. The development of the facility will also be subject to a penalty tax. See FAQ No. 21 below.

21. Will the development or installation of solar or wind farms or facilities that comply with the requirements of G.L. c. 61A, § 2A on land classified under Chapter 61A (Farm Land) trigger a penalty tax under G.L. c. 61A, § 12 (conveyance tax) or G.L. c. 61A, § 13 (roll-back tax) or a municipality's right of first refusal (ROFR) under G.L. c. 61A, § 14?

No. Effective FY 2018, G.L. c. 61A, § 13 was amended to provide that the installation of a solar or wind farm or facility that meets the requirements of G.L. c. 61A, § 2A on classified land under Chapter 61A (Farm Land) will not trigger a roll-back tax. (See Section 174 of Chapter 218 of the Acts of 2016.)

Although no similar amendments were made to the conveyance tax under G.L. c. 61A, § 12 or a municipality's ROFR under G.L. c. 61A, § 14, the Appellate Tax Board or a court could hold that when classified land under Chapter 61A (Farm Land) is converted to an eligible renewable energy generating source under G.L. c. 61A, § 2A, no change of use has occurred to trigger the alternative conveyance tax,

See *Adams v. Assessors of Westpor*t, 76 Mass. App. 180 (2010) and *Ross v. Assessors of Ipswich*, (ATB docket #F239496, November 21, 2000), or a municipality's ROFR.

However, development or installation of solar or wind farms or facilities that do not meet the requirements of G.L. c. 61A, § 2A on classified land under Chapter 61A (Farm Land), will be subject to a penalty tax under G.L. c. 61A, § 12 (conveyance tax) or G.L. c. 61A, § 13 (roll-back tax) and a municipality's ROFR under G.L. c. 61A, § 14.

Therefore, the development of the solar or wind facilities described in Examples 1, 2 and 4 in FAQ No. 19 above will not be subject to a penalty tax or a municipality's ROFR. However, the development of the facilities described in Example 3 in FAQ No. 19 and in FAQ No. 20 will be subject to a penalty tax and a municipality's ROFR.

Classified Land Comparison

COMPARISON	CHAPTER 61 - FOREST LAND	CHAPTER 61A AGRICULTURAL/HORTICULTURAL (A/H)	CHAPTER 61B - RECREATIONAL LAND
QUALIFICATIONS	10 contiguous acres – Same ownership. 10 year management plan certified by state forester. Recertified every 10 years. (For Forest Classification regulations, see 302 CMR 15.00.) ***State forester has sole responsibility for determining land use, may include "accessory" land. Assessors have right to appeal to state forester when they believe land not "forest land".***	5 acres, same ownership, "actively devoted" to A/H. 2 prior years A/H use. Gross sales in the regular course of business, starts at $500 for initial 5 acres, $5 per extra acre, and .50 for forest land and wetland. Additional, contiguous and non-productive land may qualify but only up to 100% of productive land. Forest land, certified by state forester, will qualify.	5 acres, same ownership, and either Condition - natural, wild, open, landscaped, or pastured condition or in managed forest condition under certified forest management plan; or Use-devoted to a recreational use as listed in the statute and available to the general public or to the members of a non-profit organization.
APPLICATION PROCEDURE	On or before June 30th, 5 p.m. - application to state forester. 302 CMR 15.05(1). Certificate and approved forest management plan submitted to assessors with Form CL-1 on or before October 1. Assessors take action – Form CL-2. JAN 1- listed as classified. JULY 1- taxation under c. 61 commences.	Annual Application on or before October 1 to Board of Assessors on Form CL-1. Assessors take action – Form CL-2. Application deemed allowed if no action in 3 mos. Revaluation year filing extension to 30 days after actual tax bills mailed. 61A:8. For purpose of statute, each year is revaluation year.	Annual Application on or before October 1 to Board of Assessors on Form CL-1. Assessors take action – Form CL-2. Application disallowed if no action in 3 months. Revaluation year filing extension to 30 days after actual tax bills mailed. 61B:5. For purpose of statute, each year is revaluation year.
LIEN RECORDING REQUIREMENTS	RECORD a statement of lien - Form CL-3. Collect recording fees. Copies of lien to landowner and state forester.	RECORD a statement of lien - Form CL-3, if first application, after a lapse & not classified, or after a change of record ownership. Collect recording fees.	RECORD a statement of lien - Form CL-3, if first application, after a lapse & not classified, or after a change of record ownership. Collect recording fees.
APPEAL OF CLASSIFICATION DETERMINATION	On or before DECEMBER 1- to state forester. MARCH 1- forester's decision will issue. APRIL 15- appeal to 3 person regional panel. MAY 15- panel hearing. Appeal of panel decision to ATB or Superior Ct. – within 45 days of notice.	Landowner may appeal a determination to: Board of Assessors-within 30 days of notice, then to Appellate Tax Board-within 30 days of notice of decision or 3 months of application, whichever is later.	Landowner may appeal a determination to: Board of Assessors-within 30 days of notice then to Appellate Tax Board-within 30 days of notice or 3 months of application, whichever is later.
TAXATION	SPECIALIZED VALUATION Assessed at its FOREST "USE" VALUE. Values for forestland published annually by the FVAC, used as a guide. Commercial rate (class 3) applied to Forest "USE" value. Buildings, residences and land accessory to their use are taxed at regular, full value. "OPEN SPACE" local option. If city/ town accepts c.61, §2A, classified forest land is classified as "open space" and taxed at that tax rate.	SPECIALIZED VALUATION Assessed at its A/H "USE" VALUE. Values published annually by FVAC, used as a guide. Commercial rate (class 3) applied to A/H Use value. Buildings, residences and land accessory to their use are taxed at regular, full value. "OPEN SPACE" local option. If city/town accepts c.61A, §4A, classified farmland is classified as "open space" and taxed at that tax rate.	SPECIALIZED VALUATION Assessed at its RECREATIONAL "USE" VALUE. However, assessed "use" value may not exceed 25% of the full and fair cash value. Commercial rate (class 3) applied to CH61B value. Buildings, residences and land accessory to their use are taxed at regular, full value. "OPEN SPACE" local option. If city/town accepts c.61B, §2A, classified recreational land is classified as "open space" and taxed at that tax rate.
PENALTY TAXES	Generally, a landowner must pay one of two "penalty" taxes, a roll-back or conveyance tax, when classified land is sold for or converted to a non-qualifying use. The tax is triggered by a change in use to a non-qualifying use. A non-qualifying use means a use or condition that would not qualify under the definitions of either c. 61, c. 61A or c. 61B. No penalty tax is assessed, however, when the classified land is being sold for or converted to a residence for the landowner; the landowner's spouse, parent, grandparent, child, grandchild, brother or sister, or the surviving spouse of those relatives; or an employee working full-time in the use and care of the property for its classified use. See Adams v. Assessors of Westport, 76 Mass. App. 180 (2010) (conveyance tax); Ross v. Assessors of Ipswich, (ATB docket #F239496, November 21, 2000) (roll-back tax), both of which involved classified farm land and extended the same exemption from the ROFR to the penalty taxes.		

COMPARISON	CHAPTER 61 - FOREST LAND	CHAPTER 61A AGRICULTURAL/HORTICULTURAL	CHAPTER 61B - RECREATIONAL LAND
PENALTY TAXES **(Alternative taxes – only the greater is imposed.)**	**Roll-back tax** imposed upon change to a non-qualifying use. Roll-back recovery period is FIVE (5) YEARS. SIMPLE INTEREST at 5% over recovery period. Roll-back tax for each year: TAX: c. 59, full value taxes - c. 61, reduced forest "use" taxes = the difference (with 5% interest) **Conveyance tax** imposed when sold for or converted to non-qualifying use within 10 years of landowner's acquisition (or continuous forest use, if earlier). Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back. "Grandfather" exemption from conveyance tax for landowner in program from FY 2008. St. 2006, c. 394, § 51. See also statutory exemptions to roll-back tax (61:7) and conveyance tax (61:6).	**Roll-back tax** imposed upon change to a non-qualifying use. Roll-back recovery period is FIVE (5) YEARS. SIMPLE INTEREST at 5% over recovery period. Roll-back tax for each year: TAX: c. 59, full value taxes - c. 61A, reduced A/H "use" taxes = the difference (with 5% interest) "Grandfather" exemption from INTEREST on roll-back for parcel classified for FY 2007 and still owned by same landowner or certain close relatives. **Conveyance tax** imposed when sold for or converted to non-qualifying use within 10 years of landowner's acquisition (or continuous A/H use, if earlier). Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back. See also statutory exemptions to roll-back tax (61A:13) and conveyance tax (61A:12).	**Roll-back tax** imposed upon change to a non-qualifying use. Roll-back recovery period is FIVE (5) YEARS. SIMPLE INTEREST at 5% over recovery period. Roll-back tax for each year: TAX: c. 59, full value taxes - c. 61B, reduced rec. "use" taxes = the difference (with 5% interest) **Conveyance tax** imposed when sold for or converted to non-qualifying use within 10 years of first classification. Tax = price or value x conveyance tax rate. C.T. rate 10% within first 5 years, 5% within years 6-10. Only assessed if more than roll-back. See also statutory exemptions to roll-back tax (61B:8) and conveyance tax (61B:7).
APPEAL OF ASSESSMENT	ABATEMENT-apply to Board of Assessors within 30 days of notice of tax. APPEAL TO ATB within the later of 30 days of notice of decision, or 3 months of application.	ABATEMENT-apply to Board of Assessors within 30 days of notice of tax. APPEAL TO ATB within the later of 30 days of the notice of decision, or 3 months of application.	ABATEMENT-apply to Board of Assessors within 30 days of notice of tax. APPEAL TO A.T.B. within the later of 30 days of the notice of decision, or 3 months of application.
BETTERMENT AND SPECIAL ASSESSMENTS	Subject to assessment only to "pro-rata" extent improves forest use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during forest use. Suspended amount due and payable upon a change in use of land.	Subject to assessment only to "pro-rata" extent improves A/H use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during A/H use. Suspended amount due and payable upon a change in use of land.	Subject to assessment only to "pro-rata" extent improves recreational use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during recreational use. Suspended amount due and payable upon a change in use of land.
CERTIFICATE OF PENALTY TAXES DUE	There is no statutory provision in c. 61 (similar to 61A:19A or 61B:15) for penalty tax certification process. However, assessor's authority to release the tax lien implies authority to issue statement of penalty taxes due and partial releases of lien, etc., as determined appropriate. Note: Consult with municipal counsel when exemption to penalty tax applies or when change to non-qualifying use is planned for portion of classified land to ensure lien continues on remainder of land or to retain lien for future non-exempt transfers.	Certificate states potential penalty tax liability. Assessors must issue within 20 days of request. $6 charge. If certificate recorded, fixes liability and payment of tax terminates all liens "except that any liens for any roll-back taxes assessed by reason of such land ceasing to qualify for valuation… under this chapter after the date of such sale or other transfer, shall continue." 61A:19A. Note: Consult with municipal counsel when exemption to penalty tax applies or when change to non-qualifying use is planned for portion of classified land to ensure lien continues on remainder of land or to retain lien for future non-exempt transfers.	Certificate states potential penalty tax liability. Assessors must issue within 20 days of request. $6 charge. If certificate recorded, fixes liability and payment of tax terminates all liens "except that any liens for any roll-back taxes assessed by reason of land ceasing to qualify for valuation…under this chapter after the date of such sale or other transfer, shall continue." 61B:15 Note: Consult with municipal counsel when exemption to penalty tax applies or when change to non-qualifying use is planned for portion of classified land to ensure lien continues on remainder of land or to retain lien for future non-exempt transfers.
RIGHT OF FIRST REFUSAL (ROFR)	Municipality has a ROFR when a landowner converts, or decides to sell, classified land for residential, commercial or industrial development or use during (1) any fiscal year the land is classified or (2) the fiscal year after the year the land was last classified. 61:8; 61A:14; 61B:9. (See statutory exemptions.) Municipal counsel should always be consulted when ROFR has been or may be triggered.		

Classified Land Forms

https://www.mass.gov/service-details/forms-used-by-assessors-collectors-and-treasurers

No.	Name	Prepared by	Recipient
CL-1	Application for Forest – Agricultural or Horticultural – Recreational Land Classification	Taxpayer	Assessors
CL-1(61)	Property Owner's Acknowledgement of Rights and Obligations under Classified Forest Land Program (submit with CL-1)	Taxpayer	Assessors
CL-1(61A)	Property Owner's Acknowledgement of Rights and Obligations under Classified Agricultural or Horticultural Land Program (submit with CL-1)	Taxpayer	Assessors
CL-1(61B)	Property Owner's Acknowledgement of Rights and Obligations under Classified Recreational Land Program (submit with CL-1)	Taxpayer	Assessors
CL-2	Notice of Action on Application for Forest-Agricultural or Horticultural-Recreational Land Classification	Assessors	Taxpayer
CL-3	Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien	Assessors	Registry of Deeds
CL-6	Certificate of Penalty Tax for Classified Forest-Agricultural or Horticultural-Recreational Land	Assessors & Collector	Taxpayer
CL-7	Application to Modify a Decision / Abate a Tax Classified Forest-- Agricultural or Horticultural -- Recreational Land	Taxpayer	Assessors
CL-8	Notice of Action on Application to Modify a Decision or Abate a Tax Classified Forest-Agricultural or Horticultural-Recreational Land	Assessors	Taxpayer
CL-9	Release of Classified Forest-Agricultural or Horticultural-Recreational Land Tax Lien	Assessors	Taxpayer
CL-10	Notice of Late Application for Forest-Agricultural or Horticultural-Recreational Land Classification	Assessors	Taxpayer

Classified Land
Important Cases

Adams v. Assessors of Westport, 76 Mass. App. 180 (2010). Appeals Court applied exemption from Right of First Refusal for construction of a residence for the landowner to the imposition of the conveyance tax. Further review denied. 456 Mass. 1106 (2010). See "Residence Built on Farmland Exempt from Penalty Tax" in November, 2010 edition of *City and Town.*

Ross v. Assessors of Ipswich, Findings of Fact and Report, ATB docket #F239496, November 21, 2000. ATB applied exemption from Right of First Refusal for construction of residence by landowner's son to roll-back tax.

Zaniboni v. Assessors of Pembroke, ATB docket #F314713, January 24, 2014. Landowner requested release of lien on portion of classified land where development rights being sold to U.S. – subject land to be encumbered by restrictions limiting use to undeveloped recreation. Assessors required payment of roll-back on entire parcel (not just subject land) for release of lien. Owner paid tax and appealed to ATB. ATB abated roll-back tax assessed on 61A parcel. ATB held there was no change to a non-qualifying use and no roll-back is triggered – the restrictions limited the use of the subject land to 61B use. See "Release of Lien and Potential Rollback Tax" in March 19, 2015 edition of *City and Town.*

DEPARTMENT OF REVENUE MATERIALS
Additional Resources

DLS website - www.mass.gov/dls

Chapterlands FAQs

Farmland Valuation Advisory Commission (FVAC) FY 2019 Recommended Values

DLS Bureau of Local Assessment Property Type Classification Codes

August 12, 1996

Arthur K. Holmes, Principal Assessor
Board of Assessors
Town of Southborough
P.O. Box 9109
Southborough, MA 01772-9109

Re: G.L. Chapter 61B - Recreational Land
Commercial Golf Course Operation
Our File No. 96-709

Dear Mr. Holmes:

This is in reply to your recent letter requesting information with respect to the requirements of G.L. Chapter 61B, the preferential tax classification for qualifying "recreational land". Specifically, you inquire as to whether a parcel of land consisting of a nine hole golf course, which is owned by a tax exempt educational institution but leased to a private management company, may qualify for the G.L. Chapter 61B classification.

The information provided indicates that the subject parcel is of sufficient size to qualify for the Chapter 61B classification and is devoted primarily to a qualifying recreational use. While the golf course has been owned by a private educational entity that is generally exempt from local property taxes under clause 3 of Section 5 of Chapter 59, the land has been regularly taxed from the outset due to its non-educational use. At this time, the landowner has applied for the recreational land classification and you question whether the recreational land tax benefits are available where the land is devoted to a profitable, commercial use.

Please be advised that G.L. Chapter 61B, in our view, does not preclude the qualification of property devoted to income-producing uses, provided the statutorily prescribed recreational use requirements are satisfied. Indeed, it seems the purpose of the chapter in part is to promote recreational uses and activities at golf courses, campgrounds, etc., where the continued recreational uses of such parcels might well be less profitable than the development of the land. With respect to profit-making recreational facilities such as golf courses and campgrounds, however, we would emphasize that the statute requires that certain public access requirements be satisfied. In this regard, Section 1 provides:

'ost Office Box 9655, Boston, MA 02114-9655, Tel: 617-626-2300; Fax: 617-626-2330

> Land not less than five acres in area shall also be deemed to be recreational land which is devoted primarily to recreational use and which does not materially interfere with the environmental benefits which are derived from said land, and is available to the general public or to members of a non-profit organization including a corporation organized under chapter one hundred and eighty. (Emphasis added).

Based upon the foregoing, for a parcel used for active recreational uses such as golfing or camping in a commercial, profit-making venture, the land must be available to the general public (albeit for a fee). For properties owned by a non-profit organization or corporation, the facility need only be open to the members of the non-profit organization.

I hope this information proves helpful. If I may be of any additional assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours,

Harry M. Grossman
Acting Deputy Commissioner

HMG/jeb

March 6, 2003

Glenna L. Protami
Board of Assessors
Town Hall
346 Bedford Street
Lakeville, MA 02347

Re: Chapter 61B - Labaron Hills Country Club
Our File No. 2003-57

Dear Ms. Protami:

You inquired whether the above referenced golf course is eligible for classification under Chapter 61B. Assowompsett Golf Company, LLC is the owner of the property which consists of 149.52 acres and certain structures including a restaurant which is open to the public. This is a private course which is made available on a limited basis to the general public who can hire the course for golf tournaments on Mondays during the golf season. There are also walking/jogging trails along the perimeter of the property which the general public can use for exercise and nature walks.

Chapter 61B provides that land must fit into one of the following two categories to qualify as recreational land:

1. It must be maintained in a substantially natural, wild or open condition or be maintained in a landscaped condition permitting the preservation of wildlife and other natural resources. This land can be open to the general public or be held as a private, undeveloped open space land.
2. It must be used primarily for certain recreational purposes, including golf, and must be open to the general public or to the members of a non-profit organization including a corporation organized under Chapter 180.

In the case at hand, we were informed that the course is open only once a week to the general public and available at other times to members of the country club. In our view, such an arrangement does not appear to allow us to characterize the course as open to the general public. We also note that the country club is held by a limited liability company and available to its membership and not to the members of a non-profit organization as set forth in Chapter 61B. For these reasons, therefore, it does not appear that the land satisfies the access requirements of the statute.

Whether or not this land in Lakeville qualifies for classification as recreational land, the buildings would be taxed under Chapter 59. Chapter 61B Section 10 states in pertinent part that "All buildings located on land which is valued, assessed and taxed on the basis of its recreational use...shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property." Consequently, buildings even on recreational land are not entitled to a discount and must be assessed at full and fair cash value.

I hope this information proves helpful.

Very truly yours,

Daniel J. Murphy

Daniel J. Murphy, Chief
Property Tax Bureau

ALAN LeBOVIDGE
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
PO Box 9550
Boston, MA 02114-9550

March 29, 2006

Senator Pamela P. Resor
The State House, Room 410
Boston, MA 02133

Re: Classified Farm and Recreational Lands
Our File No. 2006-78

Dear Senator Resor:

This is in reply to your questions about the qualification of certain lands for classification as agricultural or horticultural land under G.L. c. 61A or recreational land under G.L. c. 61B. Classification under those chapters provides preferential tax treatment to land owners by exempting the qualifying land from local taxation at its fair cash valuation and substituting a reduced "use value" assessment instead.

Your first question relates to the qualification requirements under G.L. c. 61A. You wish to know:

1. If feed or forage from pastures or hayfields is grown on at least five acres of land and then used to feed boarded horses on the same land, does that crop or pasture land qualify as land devoted to agricultural or horticultural use under Chapter 61A, assuming the sales value of this feed or forage can be documented to meet the minimum revenue requirements? What documentation should be provided to assessors?

We do not believe the land in question would qualify for classification as agricultural or horticultural land for purposes of obtaining the preferential property tax treatment under G.L. c. 61A.

An essential prerequisite to classification is that the land be used for an "agricultural" or "horticultural" use. Those uses are defined in G.L. c. 61A, §§1 and 3, respectively, which provide, in relevant part:

> Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, ... horses ..., 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. (Emphasis added).

> Land shall be deemed 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, ..., for the purpose of selling such products 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 products and preparing them for market. (Emphasis added).

In addition, G.L. c. 61A §3 requires certain minimum sales from farm products as follows:

> Land not less than five acres in area shall be deemed to be actively devoted to agricultural or horticultural uses when the gross sales of agricultural, horticultural or agricultural and horticultural products resulting from such uses...total not less than five hundred dollars per year. (Emphasis added).

If the land is more than five acres, the minimum amount is increased by per acre rates depending on the type of land.

Finally, G.L. c. 61A §4 requires active farm use for a period of time as follows:

> For general property tax purposes, the value of land, not less than five acres in area, which is actively devoted to agricultural, horticultural, or agricultural and horticultural uses during the tax year in issue and has been so devoted for at least the two immediately preceding tax years, shall ..., be that value which such land has for agricultural or horticultural purposes. (Emphasis added).

In our opinion, these provisions demonstrate a clear intent to promote and conserve active, productive farmland. They plainly require the raising of animals or cultivation of crops for the express purpose of selling them or products derived from them in the regular course of business, thereby generating sufficient sales receipts to meet the established annual gross sales requirements. In this scenario, there is no sale transaction in the regular course of business, nor is there an established or documented receipt of a dollar amount for purposes of satisfying the annual gross sales requirement. To the extent that there is no identified and reported regular sale of a farm product, we do not see how the land can qualify as actively devoted to agricultural or horticultural purposes.

Your second question relates to land used for boarding of horses or horseback riding activities.

2. Is land used for the facilities of a boarding or riding stable (including barns, riding rings, arenas and similar facilities) eligible as a customary and necessary related use of land under Chapter 61A, assuming that an equal or greater acreage is actively devoted to the production of feed or forage for sale or utilization at said facility?

In this scenario, the land is used primarily to keep, board or ride horses, and includes barns, areas for riding rings, arenas and other similar facilities. It is not clear precisely what the term "facility" means, but it seems to refer to areas ranging from an outdoor, fenced paddock to a corrugated steel arena for equestrian events. In any event, no information is provided to indicate that the horses are bred or kept

for sale at maturity in the regular course of business, as would be the case for a typical farm product, or that the land areas are used in a manner that is necessary or related to raising horses and preparing them or a product derived from them for market. Likewise, we do not see how the keeping or riding of the horses is a necessary related use to raising a horticultural product and preparing it for market. Therefore, we do not see a basis for land used primarily for boarding or riding to qualify under G.L. c. 61A. Importantly, however, we think that paddocks, riding rings and other outdoor areas used primarily for horseback riding would likely fit within the distinct provisions of G.L. c. 61B, which allows for the classification of recreational land used for "horseback riding" and provides for preferential tax assessments at no more than 25 percent of fair cash value.

The third question presented is as follows:

3. Is land used for the facilities of a boarding or riding stable (including barns, riding rings, arenas and similar facilities) eligible for inclusion as land under Chapter 61B?

As we indicated in our response to Question 2., we believe that outdoor areas used primarily for horseback riding, *e.g.*, paddocks, riding rings, trails and open lands, would generally qualify for G.L. c. 61B classification, provided the acreage, access and other statutory requirements are satisfied. If the activities take place inside a building or other constructed facility, however, we do not believe the underlying land area qualifies. In our opinion, an intent to promote the conservation and preservation of natural, undeveloped land is clearly manifest in the statutory definitions of recreational use that encompass land of an open or landscaped condition and land areas that may also be used for certain outdoor activities. More specifically, the statute limits classification to land where a qualifying recreational activity does not "materially interfere with the environmental benefits which are derived from said land." G.L. c. 61B §1. We have consistently taken the position that development, such as buildings or other structures, is not consistent with protecting the "environmental" benefits derived from the land upon which they sit.

I hope this information proves helpful.

Sincerely,

Alan LeBovidge
Commissioner of Revenue

AL:KC

June 23, 2009

Mr. Paul Matheson
Westport Board of Assessors
816 Main Road
Westport, MA 02790

Re: Horticultural Uses of Land
Our File # 2009-734

Dear Mr. Matheson:

You have asked our opinion on whether certain activities carried out by a local taxpayer qualify the locus for classification under G.L. c. 61A as "agricultural" or "horticultural" land. Specifically, you refer to land used to cultivate crops including apples, cranberries, and grapes; the land under a building where apples, cranberries, and grapes are processed into juices, wines, and other such products; the land under a building used as a store to sell the products generated at the site to the public; and open areas with picnic tables and walkways for the use of members of the public who have purchased products from the store on-site.

Land is considered to be in "horticultural use" for purposes of G.L. c. 61A, § 2 when it is "primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption ... 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." Obviously the land devoted to cultivation of crops including cranberries, apples, and grapes qualifies for classification as "horticultural" land within the meaning of G.L. c. 61A, § 2. Moreover, some "accessory" land must be set aside to support the cultivation of crops such as cranberries, and qualifies as land "used in a related manner which is incidental to [horticultural] uses and represents a customary and necessary use in raising these products and preparing them for market." ***Id.*** As to cultivated and accessory land, c. 61A classification is warranted.

However, land devoted to food processing activities, *i.e.* making juice or sauce from cranberries or wine from grapes, goes beyond what is necessary to get produce ready for market. There is a difference between activities necessary to prepare cranberries, grapes, and apples to enter the stream of commerce, and food processing activities which create new products out of the farm produce. Juice-making is not a "customary and necessary use ... in preparing [fruits] for market...." because the fruits can be sold as such, and do not have to be processed in order to be marketable. *Cf.* G.L. c. 61A, § 1 (agricultural use extends to incidental activities "customary and necessary [to] raising [farm] animals and preparing them *or the products derived therefrom* for market.")(Emphasis added.)

The land devoted to the commercial sale of the processed juices, sauces, and wines is still further removed from the c. 61A eligible activity of growing crops on the land. And open space made available for the convenience of customers purchasing products from the store on-site stands in clear contrast to the horticultural uses which qualify land for classification under G.L. c. 61A, § 2.

Mr. Paul Matheson
June 17, 2009

In sum, it is our view that the land used for growing crops, and accessory land incidental to crop production activities, qualify for classification under G.L. c. 61A, § 2. Land devoted to food processing and the commercial marketing of processed products on site falls outside the scope of G.L. c. 61A.

If you have any further questions, please do not hesitate to contact us.

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:DG