



M • A • A • O NEWSLetter

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FROM THE PRESIDENT

President Ellen M. Brideau, MAA, Chief Assessor, Lowell

Greetings and welcome back to our first newsletter since the Winter of 2020. I hope this finds you all well and getting ready to wrap up Classification Hearings and billing files so that you can enjoy the approaching holidays.

I'm amazed how much has happened since the last newsletter. I went back to the archives (yes, they are on the website) and the last President's letter was written by Chris Wilcock right at the beginning of the pandemic. Since that time, MAAO had two Presidents John Neas, MAA and Missy Couture-Rimbold, MAA. Both did a wonderful job keeping us going during what was a very trying time, thank you both! Additionally, we have seen changes in our administrative staff. Christine Purple, our former Executive Director moved on to become the Human Resources Director for the City of Marlborough. Christine is greatly missed as she worked tirelessly to ensure that everything behind the scenes at MAAO went smoothly.

I would like to welcome, Mike Flynn, who has taken on the role of part time Executive Director and Susan LeMay, who will be focused on membership and education offerings. They make a great team and I'm already seeing improvements.

The MAAO Executive Board met in Shrewsbury in September for a strategic planning session. The goal was to identify areas that we would like to see improved and to develop a plan to implement them.

From that meeting the number one item we all shared was communication to our members. The MAAO has a great reputation for its education, but we are falling short in providing the membership with timely information and a platform to ask questions. To that end we are working to change up the website and the way that information is distributed to our members. My goal is to have this accomplished by the start of the year.

The Fall Conference was a great success in Southbridge. The Education Committee did a wonderful job of putting together a strong program of relevant topics. I am pleased to have heard positive feedback from the assessors who attended in person and those that joined via zoom. We still have growing pains with hybrid platforms, but I personally hope that we continue to offer them when possible.

Our Winter School Course dates and Winter Meeting will be announced soon, and we plan to hold them via zoom to avoid any issues with weather.

As always, if you have any suggestions or concerns, please reach out to me.

Warm regards,

Ellen M. Brideau, MAA

President

MAAO Calendar

To find a comprehensive Calendar of Events, please go to the MAAO Website and click on the word "more" next to the Calendar located in the lower right-hand side. Or click here to go directly to the [Calendar of Events \(maao.org\)](https://maao.org)

12/1/2022
Bristol County Assessors
Association Annual Meeting

12/2/2022
Essex County Assessors
Association Annual meeting

12/7/2022
Worcester County Assessors
Association Annual meeting



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MAAO

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LEGISLATIVE COMMITTEE UPDATE

By Kevin Rudden
Principal Assessor – Holliston
Chairman, Legislative Committee

As the 2021-2022 General Court legislative session is heading toward a conclusion at the end of December, several bills advocated by the MAAO are advancing toward possible passage.

Notably among the nine bills we’re pushing for adoption is H.1537, “An Act Relative to Assessor Certificates,” which would increase the stipends awarded to assessors attaining certifications and designations from the MAAO and IAAO for the first time since the 1970s. The bill has been passed by the House of Representatives and is awaiting action by the Senate. If enacted, this would be a local option, meaning each municipality would have to vote to accept it. For a full text of the bill, go to: <https://malegislature.gov/Bills/192/H5137>.

On August 11, Governor Charlie Baker signed bill H. 5060, “An Act Driving Clean Energy and Offshore Wind” into law. With its emergency preamble, the 96-page bill took effect immediately. Assessors need to be aware of Sections 41 and 42, which address the issue of “dual use” on farm land.

- Key provisions of this new law are:
- Land protected under Chapter 61A may now be used for solar energy projects with an output greater than 125% of the property’s annual electrical usage without taking the property out of 61A.
 - The state Department of Energy Resources (DOER) makes proposed dual use agriculture solar projects – sometimes called “agrovoltatics” – undergo a review in order to be qualified, including land use and siting guidelines and an assessment by the Center for Agriculture, Food and the Environment at U Mass Amherst. Proposals that pass this review receive a “predetermination” from the DOER. (Information about this program can be found at: <https://ag.umass.edu/clean-energy/fact-sheets/dual-use-agriculture-solar-photovoltaics>.)
 - Communities can either tax the solar arrays as Personal Property or enter into a Payment in Lieu of Taxes (PILOT) agreement with the owner(s) of any solar project built under these provisions.

The new law includes an important provision the MAAO advocated for: There is now 10-year “claw-back” (roll-back) on property taxes if a dual use property owner later elects to go all solar and forego agricultural/ farming use.

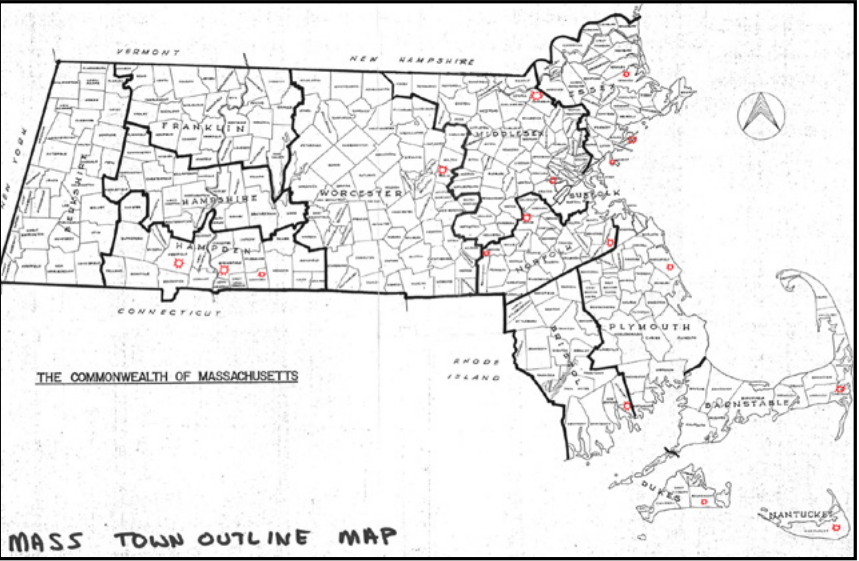
The MAAO Legislative Committee has 11 members from municipalities across the state and works with our legislative agent, Charlie Stefanini, to advocate for bills proposed by the MAAO, as well as to argue against those bills that would have an adverse impact on our profession.

MAAO EDUCATION COMMITTEE & MAAO COMMUNITY

By Joanne Foley, MAA
Co-Chair MAAO Education Committee
Chief Assessor
Town of Tewksbury, MA

Being an Assessor means living in a world of change. For years we’ve been valuing utilities using net book value, and now we’re valuing them using a blended method. You’ve been reporting growth for years in Gateway and now there’s a new form to use. Your community decides to switch financial or permitting systems and you need to determine how to send and receive data from a new system. You’ve been accepting only Certificate of Blindness for exemptions but now you can accept Massachusetts Commission for the Blind identification and Certificate of Blindness cards starting in FY23. You think you’re ready to submit values and then you get a phone call that a solar facility went live, and you need to include it in this year’s values. You take a job in a new community and how is it possible that even though you’re still an Assessor, everything seems a little different. While change is often a good thing, the possible keys to survival in this unique world that we work in are education and friends. The MAAO community can provide you with both.

The MAAO Education Committee each year provides important and relevant educational opportunities for all, and it oversees the MAAO curriculum. The current committee consists of 2 co-chairs and 16 plus members that meet every month and develop programs that are offered to members. Each member of the committee brings a different perspective which assists in creating a spectrum of thoughts and ideas. The diverse group consists of Assessors, Assistant Assessors, BOA members and retired Assessors. The committee works with steadfast guidance from the MAAO President and Director. Covid changed meetings from in-person to virtual meetings which has allowed members from greater physical distances to participate on the committee. The red marks show representation of the current Education Board.



These dedicated people work in subcommittees to decide topics, find speakers, and coordinate the needs of the speaker. They work with the MAAO Director and staff to establish program locations, timeframes and assist with moderating and facilitating events. The committee does its best to establish programs 4 months in advance to allow for the setup of the program, as well as time for registrations. They strive to bring new and interesting topics to the MAAO membership.

The committee year runs with the fiscal year from July to June. Here’s what a typical year includes:

- a. Winter Meeting, February/March
- b. Spring Conference, March/April
- c. Summer Conference, June
- d. Summer School at UMASS, first week of August
- e. Clerks’ meetings (3), September/October
- f. Fall Conference, October
- g. Winter School, January-April (dependent on instructor availability)
- h. Workshops & Webinars

When I first became the Chief Assessor, I remember thinking... ok, I have my certification, and I’ve worked in the office for several years, but now what. How am I going to execute the position of a Head Assessor? I knew I would need the help of others.

The gathering at the educational programs provides more than just the educational program and credits, it provides us with an opportunity to talk with fellow assessors and exchange ideas and experiences. The MAAO community is a network of intelligent caring individuals. A vast amount of information can be learned by talking, listening, and exchanging ideas with your peers.

The MAAO community has provided me with a network of friends and mentors that I rely on. I’ve met them through attending educational programs and volunteering on committees. My phone-a-friends include people that I attended courses with while obtaining my MAAO designation, instructors I have had, I met them attending a continuing education program, or I met them volunteering on a county or MAAO committee. However I met them, I’m grateful to have them just a phone call away because they make me a better Assessor.

My thanks to the members of the MAAO Education Committee past and present for the hard work and dedication they show to the organization. Their work is important to the day-to-day execution of our jobs. My thanks to the MAAO community for your assistance and guidance, it’s great to know you’re only a phone call away!

LEGAL CORNER

NEW DUAL USE SOLAR LAW CASTS QUITE A BIT OF SHADE

By Matthew J. Thomas, Esq.

The Commonwealth of Massachusetts has a long history of supporting the right to farm and the protection of important agricultural soils. As the Supreme Judicial Court has noted “[t]he Legislature was concerned with the rapidly decreasing number of farms in the Commonwealth during the 1940’s and 1950’s, and the resulting loss of a vital resource for the people of the Commonwealth.” See *Sudbury v. Scott*, 439 Mass. 288 (2003). The Supreme Judicial Court further explained that General Court sought a way to reverse the trend and so it commissioned several studies between 1955 and 1970, which proposed as a solution the assessment and taxation of agricultural lands at agricultural use value. The result was the enactment of the “Agricultural Classification Act,” more commonly known as “Chapter 61A”.

In much the same way, the Commonwealth recognized the need to support the development of reliable, affordable, and sustainable renewable energy sources as a way to combat climate change. In 2021, the General Court enacted sweeping legislation, commonly known as “the Climate Act” to promote and subsidize the development of renewable energy sources. The Climate Act built upon earlier legislation passed in 1985 to promote the development of Solar Energy and protect access to sunlight for Solar Energy Systems. Chapter 637 of the Acts of 1985 added a new ninth paragraph to Chapter 40A, Section 3 that provided:

No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems to the building of structures that facilitate the collection of solar energy, except where necessary to protect public health, safety or welfare.

Chapter 637 also amended other sections of the General Laws including language that required due regard be given to “the policy of the commonwealth to encourage the use of solar energy.”

So, what happens when these two well established policy mandates of the Commonwealth come into contact with the requirement that all property, real or personal, located in the Commonwealth should be taxed to its full and fair cash value? The result is something known as “Agrivoltaic.”

As noted above, the purpose of Chapter 61A was to facilitate the protection of farmland by allowing municipalities to artificially reduce the value of the farmland, provided that the farmland produced certain minimal agricultural sales that allowed it to be deemed commercial. Since these properties could be deemed

commercial, municipalities with a split tax rate could assess this artificially lowered value at a commercial rate. In fact, this ability to assess protected farmland at a commercial rate even led some rural municipalities with large areas of protected farmland to adopt a split rate. Even with the higher tax rate on the artificially lowered assessed value, Massachusetts farms were able to continue to be a “vital resource” for the residents of the Commonwealth. Thus, the Commonwealth’s policy mandate to protect real estate that was being used primarily for agricultural purposes was successfully implemented. However, Chapter 61A could not insulate farmland from uncertain weather, crop failure, or the high utility rates that all Massachusetts residents were facing. While homeowners and business owners could install solar facilities on their rooftops or ground mount them to land they owned, and thus reduce their energy costs, owners of protected farmland could not. In order to place a solar facility on their protected farmland, they would have to remove the farmland from Chapter 61A protection.

In 2016, the General Court passed the Municipal Modernization Act which added Section 2A to Chapter 61A. Pursuant to Section 2A, the Commonwealth now allowed the development of Agrivoltaic projects to help further protect land in agricultural use or important agricultural farmland. These Agrivoltaic projects were known as “Agricultural Solar Tariff Generation Units” or “ASTGUs” and pursuant to the ASTGU Guideline issued by the Department of Energy Resources (“DOER”) solar facilities could be built and maintained on Chapter 61A protected land provided they met certain parameters that optimized the balance between electrical generation and agricultural production. The solar facility could not have a capacity of more than 2 MW AC, the lowest edge of the panel had to be at least 8 feet above the ground for a fixed panel system or 10 feet for a tracking system, and during the growing season the maximum sunlight reduced due to shade from the panels could not be more than 50% on any square foot of land. In essence, the solar facility had to be designed to help offset the utility costs of the protected agricultural land, but was not so large that its true purpose was to generate power to sell to the power grid.

As a result of the passage of Section 2A and the issuance of the ASTGU Guideline, solar facilities were developed on agriculturally protected properties. However, solar developers and agricultural property owners soon realized that as the demand for renewable energy continued to grow, there was an opportunity to build larger capacity solar facilities. In order to do so, they had to remove the land under these new larger solar facilities from the protection of Chapter 61A.

The twin protections for municipalities assessing property pursuant to Chapter 61A are the First Right of Refusal Option and the Rollback or Conveyance Tax. Chapterland programs such as Chapter 61 or 61A require that landowners “compensate the municipality if and when the land is sold for or converted to residen-

tial, commercial or industrial use” within a prescribed period. See *Sudbury v. Scott*, 439 Mass. 288 (2003). When a solar developer and a landowner obtain a Special Permit, it is arguable that the land has been converted to a commercial use. Recently, solar developers and landowners are requesting that municipalities waive their First Right of Refusal Options much earlier in the development process than before, typically due to requirements set forth by the title attorneys for their funding sources. In either case, municipalities committed Rollback Taxes and no longer assessed the land under the proposed solar facility as Chapterland. At the same time, the Interconnection Studies required to determine the possibility and cost of connecting the proposed solar facility to the power grid have continued to be stalled. The result has been a longer period of carrying the increased tax assessment before the solar facility achieves commercial production. This condition, together with advocacy of the solar power industry, based on the Commonwealth’s renewable energy mandate, led to the amendment of Section 2A.

On August 11, 2022, Governor Baker signed Chapter 179 of the Acts of 2022 which is also known as “the Clean Energy Act.” Section 42 of the Clean Energy Act (the “Amendment”) amends Section 2A, and does to it what ATB and Court Decisions did to the Clause 45th Solar Exemption prior to its amendment by the Climate Act – it takes what was originally intended to be a benefit for a private property owner and extends it to an energy generation company. Prior to the Amendment, Section 2A had required that the power generated by the ASTGU be “used primarily and directly for agriculture.” The Amendment added language to Section 2A(b) that the Chapter 61A protected land could now also be used to site a “renewable energy generating source” that qualifies as an ASTGU under the DOER Guideline. The Amendment also added a new subsection (c) that expressly states that the agricultural land under the ASTGU shall be “deemed to be in agricultural use” pursuant to Chapter 61A, even though it is simultaneously being used as the site of a renewable energy source. Thus, the land under a solar facility with a capacity of less than 5 MW AC no longer must be withdrawn for Chapter 61A.

The Amendment also expressly brings the development of these solar facilities under the protection of agricultural uses of Chapter 40A, Section 3, in addition to the protection of solar energy systems under Chapter 40A, Section 3. In an effort to mitigate the impact of the Amendment on municipalities, Section 43 of the Clean Energy Act amends Chapter 61A, Section 13 and extends the rollback on these dual use Chapter 61A protected sites to ten (10) years.

Needless to say, this is a major shift in the law governing the assessment of Chapter 61A protected land. Prior to the passage of the Clean Energy Act, DOER had already amended the ASTGU Guideline. The amendments to the ASTGU Guideline provided, in part, that the farmland had to be in agricultural production prior

to applying as a dual use site; it allowed conversion of fallow farmland for ASTGU; and it prohibited the clearing or conversion of forest land. The revised ASTGU Guideline can be found at <https://www.mass.gov/doc/guideline-regarding-the-definition-of-agricultural-solar-tariff-generation/download>. The ASTGU Guideline requires that ASTGU Applicants must develop an “agricultural plan” in consultation with UMass Clean Energy Extension and that this plan must be submitted as part of the ASTGU application. Proponents of the Amendment cite to this provision in claiming that there is now greater protection for the agricultural use since deviation from the agricultural plan will cause disqualification in much the same way that deviation from an approved forestry plan can cause disqualification from Chapter 61.

It would be reasonable to take the position that the new provisions of Section 2A do not apply until Fiscal Year 2025. Section 2A is essentially part of a taxing statute. Amendments to taxing statutes do not typically take effect until the Assessment Date following the amendment. Thus, the new provisions of Section 2A should not take effect until January 1, 2023. Pursuant to Chapter 61A, Section 6, applications for protection under Chapter 61A must be submitted to the Board of Assessors no later than October 1st preceding the fiscal year for which the valuation is sought. Therefore, applications including ASTGUs on Chapter 61A land submitted by October 1, 2023 would take effect on January 1, 2024 which is the Assessment Date for FY2025.

Prior to October 1, 2023, municipalities will most likely be faced with Rollback Tax decisions on Chapter 61A land on which a solar facility is being developed. In making the decision as whether or not to assess the Rollback Tax these municipalities should consult with their Town Counsel or City Solicitor.

Section 69 of the Clean Energy Act creates a commission “to investigate and make recommendations to remove barriers to further development of agrivoltaic projects. In order to protect the interests of taxpayers in their municipality and ensure that properties are assessed at their full and fair cash value, Assessors should make sure that they are well represented on this commission. The enhanced development of renewable energy sources and requirement of full and fair taxation are equally important goals of the Commonwealth. The development of larger commercial scale ASTGUs by the Clean Energy Act may not cast more shade on agricultural uses, but it clearly casts a very large shadow on the ability of municipalities to assess what is essentially solar land at its full and fair cash value.

The foregoing is not intended to provide Legal Advice, but rather to be for informational purposes only. All opinions expressed are those of the author. Municipalities should review any questions with their local Counsel and should follow the advice of their local Counsel in all instances.

CALL FOR ARTICLES

Submitted by Richie Allen, a private citizen and formerly the Chairman of the Board of Assessors for the City of Springfield (1988-2021).

UTILITY PERSONAL PROPERTY TAXATION HISTORY AND PROGRESS

As the Fiscal year 2023 value certification and tax rate season continues, it is important to consider the impact of the major valuation methodology change involving class 504 property. City and town assessors and other local officials know the fiscal significance of class 504. The utility accounts are often the largest taxpayer in the municipality and are generally in the top five.

Class 504 property consists of electric and gas utility personal property which is devoted to transmission and distribution, e.g. conduits, poles, wires, pipes, mains, meters, etc. Local assessors are responsible for the valuation of this class.

DOR POLICY CHANGE

Fiscal year 2023 represents the second fiscal year of wide-scale compliance by cities and towns with the Bureau of Local Assessment (BLA) policy that net book value (NBV) does not represent full and fair cash value (FFCV). DOR’s Local Finance Opinion 2019-1 pronounced NBV as no longer acceptable, in line with court decisions. NBV had been accepted as the assessed value by assessors and DOR for decades. Assessors have complied with the policy change by adopting the 50/50 approach (described below). The increase in assessed value for class 504 statewide has been dramatic:

FISCAL YEAR	STATEWIDE CLASS 504 ASSESSED VALUE	STATEWIDE CLASS 504 VALUE INCREASE
2022	49,216,242,012	135.50%
2021	20,898,190,061	14.20%
2020	18,299,322,074	8.30%
2019	16,887,707,796	5.30%
2018	16,042,140,545	6.00%

The 50/50 valuation approach is one that DOR accepts, and it may yet prove to be the only method which communities use. DOR’s certification guidance refers to it (IGR 2022-12, p.4) but does not mandate that communities use it. Further, DOR introduced new Forms of List for class 504 accounts to facilitate an efficient capture of relevant data for the 50/50 approach.

HISTORY

In the Western Mass. Electric v. Assessors of Springfield case, the ATB Findings of Fact and Report issued May 12, 2020 stated, “The board and courts have consistently upheld the methodology implemented by the assessors in valuing the subject property, an equal weighting of the reported net book cost and the reproduction cost new less physical and functional depreciation of the subject property.”

The history of cases citing the 50/50 approach extend back in time to at least 1988 when the Supreme Judicial Court (SJC) decided a Boston Edison v. Assessors of Boston case. Another decision involving the method concerned Stow Municipal Electric and Hudson Light and Power (1997).

The most notable case for tax assessments was the Boston Gas case, decided by the SJC in favor of the Boston Assessor in 2011. That was followed by victories for assessors in the case of NStar Electric v. Boston Assessor (Appeals Court, 2019) and also in the Springfield case mentioned above. These two electric cases were both refused further review by the SJC.

METHOD

The 50/50 method is the result of determining the Reproduction Cost New Less Depreciation (RCNLD) and then adding fifty percent (50%) of that number to the number which is 50% of the net book value (NBV).

The Reproduction Cost New Less Depreciation (RCNLD) is developed by first obtaining a complete and accurate Form of List (FOL) using the FOLs created specifically for this class. The Handy-Whitman pricing index is then applied to the asset listing, to calculate Reproduction Cost New (RCN)). Next, consideration is given to whether any physical and functional depreciation is present. These amounts, if any, are then deducted from the RCN to establish RCNLD. Construction Work in Progress (CWIP) and Contributions in Aid of Construction (CIAC) may be added to RCNLD. The property’s economic depreciation is implied in NBV.

There are several consultants who provide valuation services for class 504. The DLS website maintains a list of Appraisal Contractors. The list is not complete, however. Assessors can choose to develop the method on their own, but at a minimum, would need to purchase the Handy-Whitman index.

FUTURE PROSPECTS

The utility companies certainly can continue to file abatement applications for Fiscal Year 2023 and beyond.

Currently, there are hundreds of pending appeals at the ATB involving class 504 property. Based on the ATB and court decisions to date, those claims would appear to be lacking in merit. Since the June 2022 final adjudication of the Springfield case with the SJC’s refusal to consider the utility’s petition, the ATB has held some status conferences; but no hearings have been held.

The MAAO Utilities Committee reports: “The committee has been meeting regularly to determine the best approach to resolving this issue. A recent meeting with Eversource officials has led to a better understanding of how to move forward in seeking solutions to this conflict. Discussions so far have been promising and we will keep our colleagues/MAAO members updated with any new developments as they occur. Ultimately, municipalities and their respective Assessors need to be mindful of our obligation to value all property at full and fair cash valuation.”

Assessors seeking advice on this issue should consult their legal counsel, valuation consultant, Utilities Committee members and other assessors.

CONCLUSION

DOR’s policy change has spurred widespread adoption of the 50/50 approach for class 504. This development has corrected a long-standing disparity. The change has had substantial impact in documenting major increases in CIP value, which is a benefit to residential and other taxpayers in cities and towns.

Have you looked at the MAAO Website lately?

WWW.MAAO.ORG

If so, have you completed your profile and updated your password?
If not, take a few moments to log in and look around.

If you have any issue logging into your profile, please contact
Sue Lemay at Educationadmin@maao.org
or Michael Flynn at Director@maao.org
and they will gladly assist you.

The MAAO’s new site is a work in progress and we are always look for recommendation on items that you would love to see on the site. We will be working over the next several months to add our members to various forum groups based on your geographic location or by your membership type.

Calendar of Events, Announcements, Employment Opportunities,
Links to Other Resources, as well as member-only content areas.

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