

# Baby, It's Cold Out There:

The ATB & Solar Power

*Bristol County Assessors Association  
Annual Meeting*

*December 4, 2015*



Under Massachusetts Law, Assessors must make certain decisions regarding the nature and value of property.

Municipalities will then issue tax bills based on those decisions and when the taxpayer disagrees they can appeal to the Appellate Tax Board (the “ATB”).

Sometimes the ATB will not rule for two (2) years and when they do.....  
Baby, its cold out there.



# First, Some ATB Basics

## Requests for Information During Abatement Process

- Pursuant to G.L. c. 59, § 38D the Assessors may request an owner or lessee of real property to make a written return under oath containing information reasonably necessary to determine value.
- If no compliance in 60 days, then subsequent ATB case is automatically dismissed.

# First, Some ATB Basics

## Jurisdictional Worksheets

- Jurisdiction of the ATB is fundamental & can not be waived or ignored.

Massachusetts Inst. Of Tech v. Bd. Of Assessors  
422 Mass 447, 452 (1996)

- An ATB Jurisdiction Worksheet should be completed as soon as the Assessors receive notice of filing.





# First, Some ATB Basics

## Transcripts of ATB Hearing

- Unless an Official Transcript of the ATB Hearing is provided to the Appeals Court, it may not consider on review challenges to findings of fact or evidentiary rulings .

Montaup Electric Co. v Bd of Assessors  
390 Mass. 847, 848-849 (1984)

# Solar Power

Chapter 59, § 5, cl. 45 creates an exemption for...

*“solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.”*

## Solar Power

In 1984, DOR issued IGR 84-209 which stated that any components that serve a “dual purpose” are not eligible for the exemption.

DOR subsequently issued Opinion Letters, City & Town Articles (“Here Comes the Sun” 3/1/12) and Trainings (Workshop A – 2011) that interpret exemption to be limited to solar property located on same or contiguous property and not connected to the Grid.

## Solar Power

DOR also found some support for its position in the provisions of Chapter 59, § 38H (part of the 1997 Electric Utility Restructuring Act)

A number of municipal counsel have been uneasy with DOR's position and have typically advised their municipal clients to negotiate PILOTs rather than rely on DOR's interpretation of the law



# Solar Power

## Forrestall Enterprises Inc. v. Bd. of Assessors of Westborough (December 4, 2014)

- Different Owners of Various Parcels
  - Car Wash & Detailing of Westborough, Inc.
  - Forrestall Enterprises, Inc.
  - Westborough Automotive Service, Inc.
  - Bruce Forrestall
- ATB ignored this and treated the properties as the “Forrestall Westborough Properties”

# Solar Power

## Forrestall Enterprises Inc. v. Bd. of Assessors of Westborough (December 4, 2014)

- Since ATB found that Bruce Forrestall was the “sole owner” of all the “Forrestall Westborough Properties”;
- Since the “Forrestall Westborough Properties” were using 100% of the power generated by the solar arrays;
- Then, by applying the “plain meaning rule”, DOR’s interpretation was wrong and the solar arrays were exempt.

# Solar Power

KTT, LLC. v. Bd. of Assessors of Swansea  
(June 1, 2015 – Findings of Fact & Report pending)

- KTT, LLC is the logical extension of Forrestall
- Solar arrays owned by KTT/Baker Road Solar Farm, LLC produced power sold back to Grid and 95% of the net metering credits used by five (5) Bank5 locations and 5% used by the Cabrals;
- ATB issued a Decision exempting the arrays, but has not yet issued Findings & Report.

# Solar Power

KTT, LLC. v. Bd. of Assessors of Swansea  
(June 1, 2015 – Findings of Fact & Report pending)

- Based on KTT, LLC the only solar arrays that would not be exempt would be ones with net metering going to municipalities or non-profits
- Swansea has indicated that it intends to appeal to the Massachusetts Appeals Court once the Findings of Fact & Report are issued



# Solar Power

## HB 2483

“An Act relative to clarifying property tax exemptions for solar and wind systems”

- Totally rewrites Clause 45<sup>th</sup> to exempt only solar or wind powered systems that produce no more than 125% of annual energy needs of real property on which it is “located”.
- Basically codifies the Forrestall definition.
- Everything else taxable unless there is a PILOT.

# Solar Power

## HB 2483

“An Act relative to clarifying property tax exemptions for solar and wind systems”

- “Board or officer authorized by legislative body” may execute the PILOT
- Unless PILOT provides otherwise:
  - Due when tax payments are due;
  - Regular collection procedures apply;
  - Eligible for Abatements



# Solar Power

## HB 2483

“An Act relative to clarifying property tax exemptions for solar and wind systems”

- Chapter 59, § 38H would be amended to provide that “generation facility” does not include solar or wind powered facility.
- Any PILOTs entered before enactment are grandfathered.

# Solar Power

## HB 2483

“An Act relative to clarifying property tax exemptions for solar and wind systems”

- “Located” includes contiguous & non-contiguous property owned the same owner or in which owner has an interest
- What is an “interest”?
- Since “net metering” is allowed, who monitors the 125% rule under the March 1 Declaration?



# Solar Power

What should a municipality do in the interim?

- Increase the Overlay (If no PILOTs)
  - Once ATB issues Findings & Report pending abatements most likely should be granted;
  - If Appeals Court affirms ATB then personal property tax bills will need to be voided & abated
- Impact on Tax Base (If no PILOTs)
  - New Growth can't be taken back



## Sing-A-Long

# Green Christmas

(With Apologies to Irving Berlin)



*Wishing you a Happy Holiday  
&  
A Healthy & Prosperous  
New Year!!*

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