

Dual Use Solar -

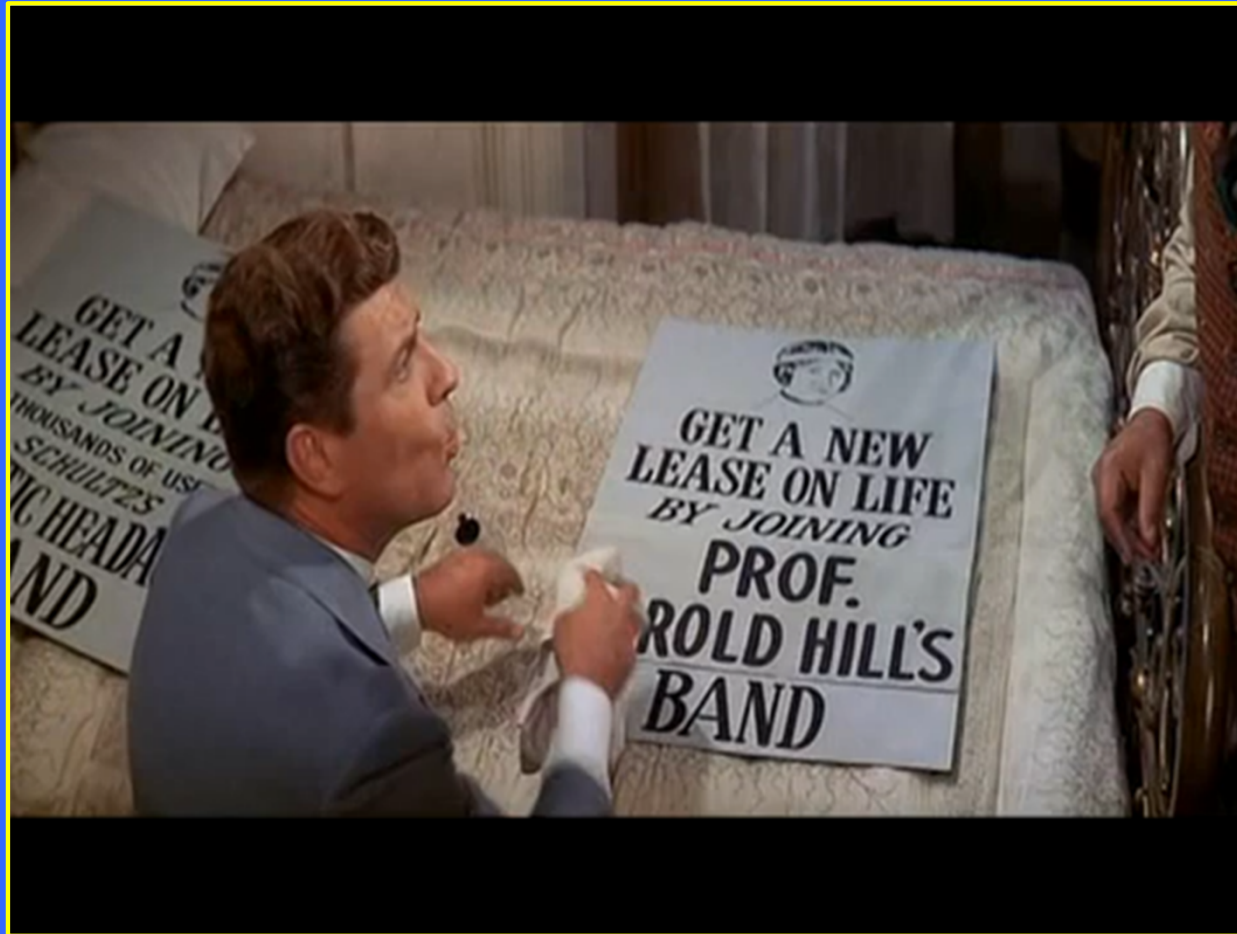
If You Think It, Is it So?

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Matthew J. Thomas, Esq.



Dual Use Solar – If You Think It, Is it So?



The Commonwealth's Competing Public Interests

“These studies were unanimous in recognizing ...that it was in the public interest to preserve and protect the Commonwealth's remaining farmland.”

Town of Sudbury v. Scott
439 Mass 288 (2009)

..to provide forthwith for the continued support of solar power generation and a transition to a stable and equitable solar market at a reasonable cost to ratepayers

Chapter 179 of the Acts of 2022

Chapterland Quick Review

In return for the lowered assessment, and hence lower taxes, the landowner is required to compensate the municipality if and when the land is sold for or converted to residential, commercial or industrial use.

Town of Sudbury v. Scott
439 Mass 288, 294 (2009)

Compensation can take one of three forms:

- Conveyance Tax (*Chapter 61A, §12*)
- Roll-back Tax (*Chapter 61A, §13*)
- Right of First Refusal (*Chapter 61A, §14*)

Chapterland Quick Review

However, there may be instances where the new owner will continue the agricultural use for a brief period after sale to conceal his true purpose, with the intent to defeat the town's right of first refusal.

Town of Sudbury v. Scott, 439 Mass 288, 299 (2009)

[F]ive acres must be primarily and directly used for agricultural, horticultural, or uses reasonably related

Komoso v. Bd. Of Assessors of Montague

105 Mass. App. Ct. 75, 80 (2024)

Chapterland Quick Review

[I]n addition to being used primarily and directly for agriculture or horticulture, [land may] be used to site a renewable energy generating source as defined in subsection (b) of section 11F of chapter 25A that qualifies in accordance with a solar incentive program for agriculture or horticulture sectors developed by the department of energy resources, if such renewable energy generating source does not impede the continued use of the land for agricultural or horticultural purposes pursuant to this chapter.

General Laws Chapter 61A, Section 2A(b)

Chapterland Quick Review

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) or subsection (b).

General Laws Chapter 61A, Section 2A(c)

So.. in order to qualify under Section 2A, the renewable energy generating source must qualify under the SMART Program (225 CMR 20.00).

SMART Program Quick Review

The SMART program includes a provision for specific incentives associated with development of Agricultural Solar Tariff Generation Units (ASTGUs).

These solar arrays are designed to be taller and to allow more light penetration to the ground below, so that agricultural activities can continue beneath the array and between rows of panels.

This type of Solar Facility is commonly known as a “Dual Use Development”.

SMART Program Quick Review

Applicants for Dual Use projects are required to consult with UMass Extension in developing an agricultural or horticultural plan - Similar to a Forest Plan under Chapter 61.

Once approved, there is an annual reporting requirement -

- Productivity of crop or herd;
- Crop management;
- Potential changes for future years.

SMART Program Quick Review

So, how do you apply for Dual Use?

- Submit a draft Pre-Determination Form to the CEE and UMass Agricultural Extension;
- Submit a Pre-Determination Application for Qualification to Massachusetts Department of Energy Resources (MA DOER);
- Receive a Pre-Determination Letter from MA DOER;
- Eventually Receive a Final Determination Decision from MA DOER.

SMART Program Quick Review

What is a “Pre-Determination Letter”?

- It’s a tentative determination that the project qualifies as Dual Use;
- “Acting in accordance with 225 CMR 20.00 and applicable Guidelines, the Department, in consultation with MDAR, hereby determines that the Project as proposed has demonstrated that it likely satisfies all criteria set forth in 225 CMR 20.00 to be considered an ASTGU.”

SMART Program Quick Review

What is a “Pre-Determination Letter”?

- “Please be advised that this pre-determination of ASTGU eligibility letter is not a final Department decision, is not binding on the Department or MDAR, and does not give rise to any appeal right under M.G.L. c. 30A, or any other law. The Department, in consultation with MDAR, will make a final determination on the eligibility of the Project's status as an Agricultural Solar Tariff Generation Unit at the time it issues a Statement of Qualification under 225 CMR 20.06. Such final determination may be different from the pre-determination contained in this letter if information provided by you in connection with your Pre-Determination Request Form is materially inaccurate or incomplete.”

SMART Program Quick Review

What is a “Final Statement of Qualification”?

- This Statement of Qualification, provided by the Massachusetts Department of Energy Resources (“Department”), signifies that the Generation Unit identified below, as described in Statement of Qualification Application ID number ABCDE_12345, meets the requirements for eligibility as a Solar Tariff Generation Unit, pursuant to the Solar Massachusetts Renewable Target (SMART) Program 225 CMR 20.00, and meets the requirements for eligibility as a RPS Class I Renewable Generation Unit, pursuant to the Renewable Energy Portfolio Standard – Class I, 225 CMR 14.00.

One Other Thing.....

General Laws Chapter 61A, Section 13 provides, in part...

- Notwithstanding this paragraph, roll-back taxes shall not be assessed if the land involved, or a lesser interest in the land, is: ...
(b) used or converted to a renewable energy generating source pursuant to section 2A;
- 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, or 10 years where the land has been used to simultaneously site a renewable energy generating source pursuant to section 2A, in which the land was valued, assessed and taxed thereunder.

One Other Thing.....

General Laws Chapter 61A, Section 13 provides, in part...

- 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.
- The provisions regarding Section 2A were added by Sections 173 & 174 of Chapter 218 of the Acts of 2016 and the provisions increasing the Roll-Back Tax to 10 years was added by Section 179 of the Acts of 2022.

Let's Look at an Example

Auntie Em's Elderberry Farms

- 50 Acre Eastern Blue Elderberry Farm
- \$100,000.00 - Annual Gross Income from Eastern Blue Elderberry Sales
- Auntie Em's Elderberry Wine traditionally always won the blue ribbon at the County Fair.



Let's Look at an Example

Auntie Em's Elderberry Farms

- Recently, a new competitor, Acme Elderberry, (a nationwide elderberry grower) has begun to cut into Auntie Em's sales.
- Auntie Em's niece, Dorothy, a rising Boston Lawyer, came to visit Auntie Em and is trying to help save the farm. She's convinced Auntie Em that Dual Use Solar could be developed since elderberries grow in full sun or partial shade.

Auntie Em's Elderberry Farms

Handout & Discussion

Thank You!

MATTHEW J. THOMAS, ESQ.

Attorney at Law

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