

ADUs, Variances & Billboards...

Strategies to Enhance Your Tax Base

MAAO Annual Conference
August 5, 2026

Matthew J. Thomas, Esq.



This Seems Like a Strange Grouping of Topics

Yes, this may seem like a strange grouping of topics, but there have been recent developments in all three areas that will affect your tax base and assessing practices.

- The proliferation of non-traditional Accessory Dwelling Units;
- Substantial Amendment of Chapter 40A, Section 10 in an outside section of the Commonwealth's FY27 Budget;
- The Springfield ATB Billboard Cases

What is an “Accessory Dwelling Unit”?

Chapter 40A, Section 1 defines an “Accessory Dwelling Unit” or “ADU” as:

- a self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities on the same lot as a principal dwelling,
- subject to otherwise applicable dimensional and parking requirements

What is an “Accessory Dwelling Unit”?

Chapter 40A, Section 1 defines an “Accessory Dwelling Unit” or “ADU” as:

- that: (i) maintains a separate entrance, either directly from the outside or through an entry hall or corridor shared with the principal dwelling sufficient to meet the requirements of the state building code for safe egress;
- (ii) is not larger in gross floor area than $1/2$ the gross floor area of the principal dwelling or 900 square feet, whichever is smaller; and

What is an “Accessory Dwelling Unit”?

Chapter 40A, Section 1 defines an “Accessory Dwelling Unit” or “ADU” as:

- (iii) is subject to such additional restrictions as may be imposed by a municipality, including, but not limited to, additional size restrictions and restrictions or prohibitions on short-term rental, as defined in section 1 of chapter 64G; provided, however, that no municipality shall unreasonably restrict the creation or rental of an accessory dwelling unit that is not a short-term rental.

Can a municipality regulate an ADU?

No zoning ordinance or by-law shall prohibit, unreasonably restrict or require a special permit or other discretionary zoning approval for the use of land or structures for a single accessory dwelling unit, or the rental thereof, in a single-family residential zoning district; provided, that the use of land or structures for such accessory dwelling unit under this paragraph may be subject to reasonable regulations

Chapter 40A, Section 3

Can a municipality regulate an ADU?

Municipalities can:

- Require Site Plan Review;
- Impose reasonable requirements and restrictions under Title V;
- Regulations concerning dimensional setbacks and the bulk and height of structures;
- Regulate the use as a Short Term Rental

Examples of ADUs

- Interior Conversions
 - existing dry basements, attics, or internal suites can now become a separate code-compliant apartment.
- Attached Additions
 - additions to the primary home, or additions to or over an existing garage can now become a separate code-compliant apartment.
- Detached Cottages, Conversions of Pool Houses or Conversions of Carriage Houses

So, how does this affect the tax base?

- There are “Protected ADUs” and “Local ADUs”, but in either case, you typically end up with multiple unit housing on a lot previously only had one structure.
- Presently, DLS guidance is to treat these as “109s”



So, how does this affect the tax base?

- There really should be separate Land Use Codes for different types of ADUs.
- Presently, DLS guidance is to treat these as “109s”
- But, the Massachusetts Constitution requires that similarly situated properties be treated similarly.
- Is a parcel with a Single Family House and 1 ADU really similarly situated to a parcel that contains a three family and a six family?

Some Basic Zoning Principles

The basic principle of “Euclidean Zoning” is to prevent nuisances.

Village of Euclid v. Amber Realty, 272 US 362 (1926).

- Zoning is constitutional based on “police power” of a state;
- The state can then delegate this authority through a Zoning Enabling Act to a municipality;
- Allows development of compatible uses to minimize the occurrence of nuisances.

Some Basic Zoning Principles

Types of Uses:

- “As of Right”
 - These are uses that can easily and always co-exist with each other without creating nuisances.
- “Specially Permitted”
 - These are uses that could usually co-exist with each other without creating nuisances, but should be reviewed on an individual basis.
- “Not Permitted Uses”

Some Basic Zoning Principles

Types of Uses:

- “Non-Conforming Uses”
 - These are uses that pre-existed the Zoning Ordinance or By-Law and so are constitutionally protected.
 - Any change of intensity of the use, or expansion must be reviewed on a case by case basis.

And then there are Variances.....

- “A Derogation of Zoning”

Variances

Two Types – Dimensional Variances & Use Variances

- Dimensional Variances involve dimensional hardships:
 - Circumstances owing to Soil Conditions; or
 - Circumstances owing to Shape of the Lot, or
 - Circumstances owing to Topography of land or structure.
- Which don't generally affect the rest of the zoning district

Variances

Specific Finding required

- That a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law

Variances Post FY27 State Budget

Section 47 of the FY27 State Budget changes all of this. The new requirement is a specific finding that:

- a strict enforcement of the ordinance or bylaw would result in a practical difficulty. In making its determination, the permit granting authority shall weigh the benefits to the appellant or petitioner and to the public interest, including the interest in supporting the production of housing against the detriment to the public health, safety and welfare of the neighborhood

Variances Post FY27 State Budget

The ZBA may also now consider:

- (i) whether the practical difficulty relates to soil conditions, shape, or topography of such land or structures
 - Note that the standard is no longer “substantial hardship”, it is now “practical difficulty”.
 - Note that the soil condition, shape or topography no longer needs to be unique to the property.

Variances Post FY27 State Budget

The ZBA may also now consider:

- (ii) whether the strict enforcement would impose a financial hardship on the appellant or petitioner;
- Note that the standard is no longer “substantial hardship”, it is now “financial hardship”.
- How severe does the financial hardship have to be?

Variances Post FY27 State Budget

The ZBA may also now consider:

- (iii) whether the benefit sought by the appellant or petitioner can be achieved by some other method feasible for the appellant or petitioner to achieve;
- (iv) whether the practical difficulty was self-created.

Gone is the concept that a Variance should only be granted when it is not nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw or Ordinance.

Variances Post FY27 State Budget

Use Variances are now allowed for residential purposes even if the Zoning Bylaw or Ordinance does not provide for Use Variances.

Gone is the concept that a Variance should only be granted when it is not nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw or Ordinance.

Variances now only lapse after two (2) years as opposed to one (1) year in the past.

Non-Conforming Uses Post FY27 State Budget

Pre-existing nonconforming structures or residential uses that do not conform to zoning because of lot size or shape, frontage, lot coverage or floor area ratio requirements may be extended or altered as of right, without the need for a finding by the special permit granting authority under this paragraph, if such extension or alteration complies with the current dimensional regulations regarding height, stories and setback.

- This is a substantial difference from prior law.

So, How Does This Affect the Tax Base ?

- All vacant land in a municipality, with certain very limited exceptions, is now “potentially buildable”.
- Non-Conforming Residential Structures can now be altered or expanded (within certain limits) as of right.
- Subdivision Plans and Building Permits are now grandfathered for 24 months instead of a year and the 24 months will be automatically be extended (tolled) while the Applicant is seeking other necessary permits or approvals.

Billboards

On October 16, 2014, the DOR's Division of Local Service newsletter, City & Town contained an article entitled "Valuation Guide to Billboard Structures" which was written by Brenda Cameron, then the Deputy Director of the Bureau of Local Assessment.



Billboards

The article stated that “[i]t is advisable that billboard structures and sites be valued as real property. BLA will accept the cost approach as being the most appropriate methodology applied to this type of property.”

- Note that this was an article...not a regulation, not a Bulletin, not an Informational Guideline Release.
- It also suggested that Assessors develop a mass appraisal model utilizing the data obtained on outdoor advertising property.

Billboards

The article then noted that the billboard owner typically holds a leasehold interest in the billboard site

- Fee simple ownership is usually held by an unrelated party that owns the land contiguous to the billboard site.

The article then stated that it was advisable that billboard structures and sites be valued as real property.

The article also stated that BLA would accept the cost approach as being the most appropriate method for this type of property.

Billboards

The article then set forth the following 1st three steps of the cost approach:

- Estimate the cost new of constructing and siting the billboard improvement;
- Estimate the depreciation by using an age/life analysis (billboards are subject to the three forms of depreciation: physical, economic, and functional);
- Subtract the estimated depreciation from the cost new to arrive at the depreciated cost of the billboard improvement;

Billboards

The first three steps really just value the “structure” (or the fixture if we are treating the billboard and the billboard site as real estate.

- Based on a non-scientific poll taken at the MAAO Summer Conference about 40% of municipalities treat billboards as fixtures and about 40% of municipalities treat billboards as personal property
- Modern monopole digital billboards might really be more appropriately treated as personal property (but that’s a discussion for another day).

Billboards

The next step is intended to determine the increase in land value arising from the billboard site license or lease.

- This is really no different than the increase in land value from a solar facility lease or a cell tower lease.

The article set forth the following method to capture this increase in land value:

- Estimate the value of the leasehold interest in the billboard site held by the billboard company (capitalize the land lease).

Billboards

Finally, the article sets forth a final step to calculate the increase in property value to the property owner.

- Add the value of the of the leasehold interest in the billboard site to the cost new less depreciation of the billboard improvement to arrive at the cost value.

This a essentially a restatement of the traditional “cost approach” to value.

It would seem to be relatively straightforward...and yet it has led to multiple ATB Cases over its interpretation.

A Refresher on Valuing Income Properties

Additional sources of income from complimentary or accessory uses of the property such as income from the lease, license, or other occupancy of a portion of the property for other additional uses must also be considered. *See Macy's Retail Holdings, f/k/a Federated Retail Holdings, Inc v. Burlington*, Mass. ATB Findings of Fact and Reports 2026-12. (Opinion of the Full Board).

The income capitalization approach, also known as the “direct capitalization approach” is also recognized as an appropriate technique to use for valuing income-producing property. *Taunton Redevelopment Assocs. v. Assessors of Taunton*, 393 Mass. 293, 295 (1984).

A Refresher on Valuing Leasehold Interests

Barry v. Frankini holds “in such instances, as between the property owner and the lessee, licensee, or holder of right to use the property, the ultimate liability for real estate taxes on the demised property is on the property owner.” *Barry v. Frankini*, 287 Mass 196 (1934).

An Opinion of the Atty. General in 1923 makes clear, that since Massachusetts Assessing Law requires the Assessors to assess all real estate on a Fee Interest basis, leasehold interests held by lessees are not subject to taxation. See 7 Op. Atty. Gen 1923, p. 299.

Determining the Value of the Leasehold Interest

As we discussed, Step 4 is to “estimate the value of the leasehold interest in the billboard site held by the billboard company (capitalize the land lease)”.

- This is the primary issue in the Springfield Billboard Cases.
- The City, and the Taxpayers, Outfront Media, LLC and Lamar Central Outdoor, LLC all agree that the Leasehold Interest must be valued and added to the RCNLD value of the fixture to determine the true value of the Billboard and Billboard site.
- They also agree that a Direct Capitalization Approach should be used.

Determining the Value of the Leasehold Interest

The disagreement is over the amount of the Gross Potential Income that is to be used in the calculation of the Income Indicated Value, and whether to view it from the Property Owner's or Lessee's perspective.

- The issue really arises out of the Master License Agreement by which Outfront & Lamar occupy the Billboard Sites.
- The Master License Agreement held by CSX requires Outfront to pay a monthly “New Sign Fee” that is equal to 80% of Outfront's Gross Monthly Receipts for the particular Billboard.

Determining the Value of the Leasehold Interest

- Outfront argues that using the 80% allows the City to tax Outfront's business income which it argues is not permissible.
- Outfront further argues that Gross Potential Income should be calculated by subtracting the market rent from the contract rent.
- The City argues that the Master License Agreement sets the monthly license payment as 80% of the Gross Monthly Receipts from the particular billboard.
- To adopt Outfront's formula would be to require the City to assess the License from the Licensee's perspective which would violate Massachusetts Assessing Law.

Determining the Value of the Leasehold Interest

- As we discussed, Outfront argues that Gross Potential Income should be calculated by subtracting the market rent from the contract rent.
- Outfront explains “the term “leasehold value” has a specific meaning under federal billboard laws that is defined within the Federal Highway Administration’s regulations as meaning “the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.””

Determining the Value of the Leasehold Interest

- But, the FHA's definition of Leasehold Value is not what governs in the determination of real estate assessments since it requires an analysis from the Lessee's or Licensee's perspective which violates Massachusetts Assessing Law.
- If the monthly licensee fee or rent payment was a fixed sum there would be no issue.
- The Master License Agreement is clear – CSX is to receive 80% of the Gross Monthly Receipts from the particular Billboard – not the difference between the Market Rent and the Contract Rent.

Billboard's Located in Railroad ROWs

Since 1842, the five rods (or 83 feet) in the center of a railroad right of way have been exempt from taxation if they are used for “purposes incident to their creation, it is within their franchise; and being used to promote the purposes contemplated by” the law of the Commonwealth. *Inhabitants of Worcester v. The Western Rail Road Corporation*, 45 Mass 564 (1842).

But a commercial billboard is not a “purpose incident to the creation of a railroad” and does not “promote the purposes contemplated” by the law of the Commonwealth.

Billboard's Located in Railroad ROWs

In the same decision, the SJC stated:

“So if any part of the lands, lying within the prescribed limit of five rods in width, should be used and appropriated to purposes not incident to the proper construction, maintenance and management of the rail road, or to the use of it by the corporation, as carriers of passengers and goods, we are of opinion that the estate, thus used and appropriated, would be liable to taxation, like other real estate not exempted.”

Billboards on Otherwise Tax-Exempt Property

- It is well established that if a portion of the otherwise tax-exempt real estate is used for a purpose other than the religious or charitable purpose it shall be taxable. *Shrine of Our Lady of LaSalette, Inc v. Board of Assessors of Attleboro*, 476 Mass. 690 (2017).
- The use of an otherwise tax-exempt parcel of land as a billboard site by either Outfront or Lamar is clearly a use for a purpose other than a religious purpose or the purpose for the charitable purpose of a tax exempt charitable entity.
- Therefore, its taxable.

Thank You!

MATTHEW J. THOMAS, ESQ.

Attorney at Law

© Law Office of Matthew J. Thomas, 2026