



MASSACHUSETTS DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

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August 27, 1990

Jane E. Sullivan, Esquire
Bogle and DeAscentis, P.C.
57 North Main Street
P.O. Box 711
Fall River, MA 02722

Re: G.L. Chapter 61A - Farmland Assessments
Exclusion of Non-Agricultural Land
Our File No. 90-696

Dear Ms. Sullivan:

This is in reply to your recent letter requesting an opinion with respect to the exclusion under G.L. Chapter 61A of land characterized as "residential".

Pursuant to G.L. Chapter 61A, Section 4, land of five or more acres which is actively devoted to agricultural or horticultural use may qualify for the preferential property tax assessments afforded by the farmland classification. On the other hand, under G.L. Chapter 61A, Section 15, all buildings and all land occupied by a dwelling or regularly used for family living may not qualify for classification. As a result of the foregoing provisions, a board of assessors must make a reasonable determination with respect to each farmland application as to the land area which is actually cultivated and the land area which is used for residential purposes in connection with an actual dwelling.

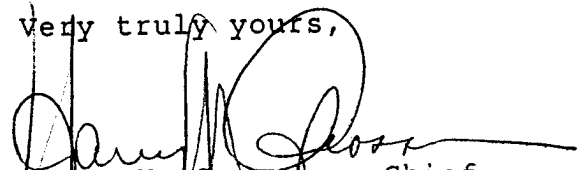
With respect to the question presented, it is our view that if an applicant for G.L. Chapter 61A classification fails to present specific information as to the land area or square footage actually used for residential purposes (areas used for the house, driveway, garage, backyard, etc.), then it is reasonable for the board of assessors to exclude from

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classification the town's standard minimum residential lot size. Conversely, if the landowner provides accurate documentation as to the precise area cultivated (e.g., photographs showing crops up to the back door) it is our view that the actual use must be determinative for classification purposes. Moreover, in no event may land be excluded from classification exclusively on the basis of a recorded subdivision plan and the potential for the development of house lots. In this regard, see N.M.B. Webstone v. Board of Assessors of East Longmeadow (1987) A.T.B. No. 141874, where all land cultivated was allowed classification notwithstanding the recording of an approved sub-division plan and the landowner's efforts to sell the property. In conclusion, therefore, all land actually cultivated should be considered in determining whether a parcel of land under the same ownership satisfies the five acre requirement of G.L. Chapter 61A.

I hope this information proves helpful. If I may be of any additional assistance in the future, please do not hesitate to contact me directly.

Very truly yours,



Harry M. Grossman, Chief
Property Tax Bureau

HMG/jeb