

COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Developers of Solar and Wind Systems May Be Able to Avoid Local Property Taxes

DECEMBER 12, 2014

Scott Fenton – After the decision of the Commonwealth of Massachusetts Appellate Tax Board, Forrestall Enterprises, Inc. v. Board of Assessors of the Town of Westborough (Docket Nos. F317708, F318861), developers of solar and wind systems may be able to avoid local property taxes under M.G.L. c. 59, § 5, cl. 45("Clause Forty-Fifth"), which provides an exemption for certain solar and wind powered systems.

The Board determined that by the "plain, literal meaning of the text, the exemption provided in the statute requires that the subject property be: (1) a solar or wind powered system or device; (2) utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying energy; and (3) utilized to supply the energy needs of property that is subject to Massachusetts property tax."

The Board's decision overturned the Department of Revenue's interpretation of Clause Forty-Fifth which limited its application only to solar facilities that were located either on the same parcel or a contiguous parcel to the property it is intended to power and that is not connected to the grid. See Opinion Letter No. 2013-296 (May 14, 2013); Opinion Letter No. 99-753 (Dec. 6, 1999).

See the complete decision here.

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