AAP Journal
Assessors Association of Pennsylvania

Issue 6 Volume 3 Summer 2005

CLEAN AND GREEN ONCE AGAIN SEES LEGISLATIVE CHANGES

by Eric A. Brown, Chief Assessor - Wyoming County, Pennsylvania



The Clean and Green program, Pennsylvania's preferential assessment on "agricultural use, agricultural reserve and forest reserve" lands, once again experienced a legislative change in an effort to make the program work for landowners and taxing bodies in the state of Pennsylvania.

Governor Rendell signed HB 657 on December 8, 2004, resulting in Act 235-04. The Act allows some major changes in the way lands enrolled in Clean and Green will be taxed.

Clean and Green "home site acreage," the land occupied by the landowner's residence (house) usually with a one acre minimum, can now be taxed at the market value rate previously determined by the county property assessment office as opposed to the use value rate as determined by agricultural commodity sales for your county.

The "home site acreage or "base-acre" is assessed at a much lower rate simply by being enrolled in Clean and Green regardless of its agricultural activity. (*Act 156 of 2000 was the legislative act that reduced all home site acres for Clean and Green properties*).

The new legislation only allows for the reduction in assessment of the "base-acre" if the majority of the entire parcel enrolled in Clean and Green is in active agricultural production.

This wasn't exactly the change the Assessors' Association of Pennsylvania (AAP) was looking for in this legislation. The Association advocated putting the "base-acre" back on full market value for those properties that were **not** actively managing their land for agricultural commodity production or actively managing their woodlot for future timber production through forest stewardship plans. There needs to be something to show in exchange for the large reductions in assessed value that ultimately resulted in millage increases by taxing bodies because of the revenue loss. To show that environmentally responsible management is being performed on tracts of land receiving tax breaks would go far in making many feel we're getting something worthwhile out of this program.

Pennsylvania State Representatives Sandra J. Major (R-Susquehanna, Wayne, Wyoming) and Tina Pickett (R-Bradford, Sullivan, Susquehanna) had it right when they designed HB 657 (precursor to Act 235). The "farmer" and "land manager"

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Retirement..... The Real Story

by Mary Kay Abell

Well, I thought retirement would never get here and now I wonder where those 23 years went. I'm into my third month of leisure and have never been so tired. But it is a good tired. Of course I thought I would have all this time to relax, play, clean and exercise but I find it hard to do all of that…….forget the cleaning. That's always put on the back burner.



But for all of you folks that are close to taking the Big R…… don't wait any longer than you have to. It really is great!

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President's Message....



Greetings and Salutations,

Intrinsic to the operation of the AAP are many fine people. First off, I wish to express extreme gratitude to our Past President, Ed Rupert, for a terrific job of presiding. Thank you, Ed. Thank you, thank you, thank you! You and those who served before you have been invaluable. Not to mention the AAP administration: Doug, Terry and staff are terrific! Next we have a great line up of AAP Officers: Tom, Eric, Randy, and Paulette show so many fine and honorable qualities. They are devoted and each one has a true heart for this great organization! Thank you one and all.

Recently there has been a forum of sorts on the AAP's EGroup* regarding the right of an assessor to go on, or be on someone's property. As assessors we are governed to assess (or value) real property. It goes without saying that an assessor should himself/herself actually view what it is they are to value. CPE classes have inferred that the right to assess and/or be on someone's property is relative to "police powers" reserved by the government from the property owners' "bundle of rights."

If we had police powers, we as ASSESSMENT POLICE might say,

"You have the right to remain silent while we assess your property."
"You have the right to submit a full appraisal in the event of an appeal."
"You have the right to the possibility of an increase as well as a reduction in assessment."

However, even though some of us carry guns, we are not police officers.

We are public servants. In our professional role as government employees we must ALWAYS respect others and others' property, (no matter *how* difficult it may be to resist the urge to run over something as you leave the premises!) When asked to leave a property, it is in one's best interest to comply.

Hmm, what to do next?...

What procedure might you follow? Hey, just because you can't see the air around you doesn't mean it does not exist.

What method might you use for placing a value on the unknown? When using the Scientific-Wild-Assessor-Guess method it's usually only a matter of time until a return visit is requested by the taxpayer to amend an estimated assessment. If not, you need to enhance those imagination, oops, I mean estimation skills.

There are so many "privacy" issues today. Be careful! It's better to S-W-A-G, then to risk an unfortunate confrontation or *Lemony Snickets, a series of unfortunate events.*

* For more information about the AAP E-Groups list serve, contact Terry Cochran at *tcochran@pacounties.org.*

God bless,

Brenda

AAP GATHERS IN SEVEN SPRINGS

With the last conference in the 2003-2005 education cycle, this May AAP drew a crowd of over 200 members and vendors to the 54th AAP Annual Conference, held at Seven Springs Mountain Resort in Somerset County. This year's annual meeting featured a full slate of recertification classes including Act 72, cell phone towers and a legal review of current case law.

NEW OFFICERS

On Thursday, May 5, at the annual membership meeting, AAP members voted to elect Paulette Sebring, CPE from Monroe County as the new AAP Secretary for the 2005-2006 term. At the banquet that evening Ed Rupert, CPE from Butler County and AAP President turned over the gavel to incoming president Brenda Shaw, CPE from Berks County. Brenda thanked Ed for his service to AAP and all of this hard work during his term in office. She presented him with a plaque and a gift from AAP.

At the banquet the new slate of officers was announced –

President	Brenda Shaw, CPE, Berks County
President Elect	Thomas Hill, CPE, Monroe County
Vice President	Eric Brown, CPE, Wyoming County
Treasurer	Randy Waggoner, CPE, Perry County
Secretary	Paulette Sebring, CPE, Monroe County

AWARDS

At this year's banquet, the AAP Awards Committee Chair, Norma J.P. Sando, CPE, Lebanon County, presented several awards for outstanding contributions to the AAP and the assessment profession. Barbara Walter, CPE, Adams County, received the Michael M. Chudy Award for the outstanding article in the AAP Journal. E.G. 'Hap' Rudolph, former AAP President and current CCAP liaison, was presented with a special award to thank him for his dedicated work on behalf of the association.

Lastly, AAP Education Co-chairs, Steve Howe, CPE, Dauphin County and Randy Waggoner, CPE from Perry County, presented CPE pins to new CPEs Wendy Dively, from Bedford County and Jolaine Herman from Carbon County.

GUEST SPEAKER

AAP was pleased to welcome Rebecca Burke, Lycoming County Commissioner and CCAP Assessment and Taxation Committee Chair, as the guest speaker for the banquet. Commissioner Burke spoke about the importance of tax fairness and how AAP and CCAP can work together on this issue.

FALL CONFERENCE

Please be sure to mark your calendars for November 3 and 4, 2005, for the Fall Conference at the Sheraton Inn in Reading. Registration materials will be mailed in late August/early September.

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The AAP Journal is published four times each year.

DEADLINE for the FALL 2005 issue is October 5, 2005.

Article ideas and submissions are welcome. Send them to:

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MEMBER-ABILIA



David Good
Chief Assessor
Columbia County

BIRTHPLACE: Bloomsburg, PA

MARITAL STATUS AND FAMILY: Married 23 years to Jill with sons Adam (17) and Bradley (9)

YEARS IN ASSESSMENT FIELD: 21

WHAT IRRITATES ME MOST IN THE ASSESSMENT FIELD: Not much. I've mellowed a bit after 20 years.

MOST PEOPLE WOULD BE SURPRISED TO KNOW: That I really do take this job seriously

BIGGEST CHALLENGE AS AN ASSESSOR: Going thru a reassessment one year after I became Chief Assessor

GOALS FOR LIFE AND CAREER: To get my kids thru school and retire in good health

ASSESSORS YOU ADMIRE MOST: Tom Garrity and Dick Brosious

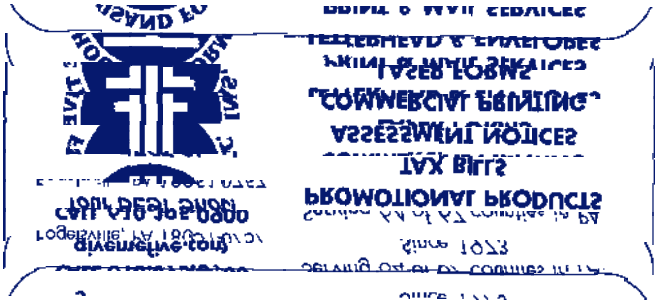
IF I COULDN'T BE AN ASSESSOR, I'D BE: Real Estate Appraiser

FAVORITE FOOD AND DRINK: Cheeseburger, fries, and an ice-cold beer

FAVORITE VACATION: Hunting with my best friend in Colorado

HOBBIES AND INTERESTS: Hunting and fishing

MY BEST FRIEND: Jeff has been my best friend since first grade and now my hunting and travel guide in Colorado



CHAPTER NOTES & OTHER NEWS

SOUTH CENTRAL CHAPTER NEWS

Jay King, York County Assessor was married to Angela Ryder in a quiet ceremony along the Susquehanna River on Friday, May 13th. They picked the 13th as their "lucky day" after being engaged on Halloween. Congratulations to the happy couple!

The next South Central Chapter Meeting will be held in September at the Adams County Agricultural and Natural Resources Center in Gettysburg. Please contact Barb Walter at 717-337-9837, for more information.

NORTHWEST CHAPTER NEWS

Retirements:

Carol Weaver, Clarion County Chief Assessor — May 2005 and Tom Polaski, Elk County Assistant Chief Assessor — February 2005

Promotions:

Barry Hurley, Elk County — Assistant Chief Assessor (former Field Assessor for Elk County); Carlene Resch, Elk County — Field Assessor (former Secretary for Elk County); Rebecca Reed, Clarion County —Director of Assessment/Chief Assessor (former Senior Field Assessor for Clarion County)

NEWS FROM THE STATE TAX EQUALIZATION BOARD

Philip J. Codispot, STEB- Western Region Field Supervisor, retired in June with over 33 years of service. Good luck to Phil and hope he enjoys retirement!

Congratulations to Kay Knupp, STEB- Clerical Supervisor, who also retired in June with 30 years of service.



If you have something to share with AAP People, contact:

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I do not miss the stress of the office, the fear of opening a newspaper nor the dread of hearing what our legislators are thinking of next for the world of assessment. And I would say I miss the co-workers but I still pop in once in awhile for something or other, making sure that I don't stay too long, for I break out into a sweat if I do. Can't imagine why….

Before I left I was getting concerned about my replacement and just how involved I would have to stay with the office but the Commissioner's choice put my mind at ease, enough for me to decline their request to come on as a consultant. I was now ready to retire and move on to my new life. I had to know that my 24 hours a day were completely mine to do with as I please.

It does surprise me however, that I was able to move on so easily without thoughts of what was happening in the courthouse. My husband has asked me several times if I miss that life and I can honestly tell him no. I don't think about it much at all……geezs…I just don't have the time. With trips to Arizona and Carlisle, taking care of my grandson sporadically, meeting friends for lunch and building my Mary Kay business there is hardly time for Yoga and walking the dog (and that is a problem… she is picking up weight).

Don't get me wrong, I have good feelings about my years in the assessment profession. For all of the ups and downs, I do not believe any of it was wasted time. After all, I know how the system works and all that is involved to make the assessments fair and uniform. Do you think even 50% of the population understands that? And I certainly made great friends in the Association that I will never forget. Without your help and friendship I could not walk away into the sunset with this feeling of satisfaction for a job done to the best of my abilities. You are all truly my heroes.

I look forward someday to making it to one of those past president luncheons and catching up on all the news and who knows, maybe I'll be driving a pink Cadillac!

Best wishes to you all.

Mary Kay Abell recently retired as chief assessor of Bradford County.



SOLICITORS' COLUMN

A Whopper That's Hard to Swallow

By Mark Love, Monroe County Assistant Solicitor

Relish this thought. A hungry field assessor goes into a new neighborhood restaurant and cooks up a hearty assessment value on the new establishment. The restaurant owner finding the tax bill too spicy, contacts a friendly attorney, who files an appeal and claims the restaurant owner is unable to digest the new assessment. In fact he goes on to say the restaurant shouldn't even be taxed. Sounds frivolous doesn't it? Imagine the egg on your face when you get waffled by the courts!

How can this be? In order to understand the facts on this issue we must travel back in time to the Lake Naomi-Timber Trails golf course as it existed in 1989. This beautiful golf course is part of various common area amenities and facilities in the Timber Trails and Lake Naomi communities located in Monroe County, Pennsylvania. These are sometimes referred to as "gated communities" and a few of these in Monroe County are so large they have more residents than some townships. Besides a golf course these gated communities will often have other common area amenities such as swimming pools, tennis courts, lakes, riding trails and maintenance facilities.

In 1989, as part of a county wide reassessment, five parcels owned by Lake Naomi and Timber Trails, including the golf course, were placed on the assessment rolls. The developers of Lake Naomi and Timber Trails asked the Monroe County Board of Assessment Appeals to designate these parcels as amenities and assign them as Class 6, a category previously established by the board for common areas. Parcels within Class 6 have an assessment, but are not taxed.

This Class 6 category was created by the board as a result of the Pinecrest Development Corp. (another Monroe County community) decision of the Commonwealth Court 98 Pa. Cmwlth, Ct. 200, 510 A.2nd 1274, (1986), which held that the common areas of a development in which individual townhouse owners held easements must be assessed and taxed separately from the townhouses. The court in *Pinecrest* further noted that the property owners' exclusive rights of easement, including exclusive use of common facilities, could diminish the actual market value of the common area areas to a zero value because there may not be a buyer willing to purchase the common area since there are so many restrictions on the property.

It is interesting to note that the court in *Pinecrest* specifically stated that, "*On the other hand, the common areas may have a greater value than the sum of the easements if the property owners released all or part of their easements rights. The actual market value of the common areas could also change if the property owners modified their easement rights extending privileges to individuals who are not property owners."*

At the assessment appeal for the Lake Naomi-Timber Trails golf course, the property manager testified that membership privileges were extended to individuals other than property owners in the developments. For that reason, the court in *Timber Trails* held that the golf course had a value and did not qualify for a zero assessment under Class 6.

Since then, and unfortunately for assessment law in Pennsylvania, all of this changed with the adoption of the Pennsylvania Uniform Planned Community Act, 68 Pa. C.S. Sec 5101 et seq. The act changed the law in our Commonwealth to provide that no separate assessed value shall be attributed to and no separate tax shall be imposed against common facilities, as defined in the act.

So now back to the present and we return to our hungry assessor who just happened to add the Saw Creek Restaurant to the tax rolls, which just happens to be owned by the Saw Creek Community Association- a community that lies partially in Monroe but mostly in Pike County. The Pike County assessor valued the restaurant, since it was opened to the public, at $142,190. The Saw Creek Association appealed to the Pike County Board of Assessment Appeals and the case went all the way to the Pennsylvania Supreme Court, which rendered a decision which could cause all assessors to lose their appetite.

The Pike County trial court held, quite understandably, that a facility could not be a common facility if it was operated by private parties pursuant to a lease agreement, which it was, and open to the public, which it was. The Commonwealth Court

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LEGISLATIVE UPDATE

July 5, 2005... Well, we are six months into the General Assembly's 2005/2006 legislative session and only eighteen months to go. This session has been rather busy in regards to the number of assessment / property tax bills introduced so far -- 48 bills in the House and 29 bills in the Senate. None has passed as of this date but some of them are well on their way to affecting our lives

Due to the lack of interest in tax fairness by the majority of school boards, a lot of the General Assembly's attention has been focused on finding a way to make Act 72 work. There have been thirteen bills introduced to date and apparently more are on the way. Some of them deal with making the Act more palatable to school boards and, on the other extreme, some deal with forcing school boards to opt in or some would bypass the school boards altogether and turn the responsibility over to the voters. A couple of the more interesting bills are HB 119 which would repeal Act 72 and force the schools to give up the property tax entirely, HB 1656 which would force districts to participate and SB 572 which would turn responsibility over to the voters.

In other areas, there are other bills that have gained support and continue to move forward. HB 87, which would allow municipalities and school districts to freeze taxes on land where an agricultural easement has been purchased, has passed the House and is being considered by the Senate

Some other bills that have passed the House are HB 958, which would prevent taxing authorities presently not levying an occupation tax from ever levying one, and HB 1788 which would provide for installment payments of school taxes and establish a school tax increase rebate program for low income homestead owners.

On the other side of the capital building, SB 573 has passed and is now being considered by the House. This bill would require school districts and municipalities in fourth through eighth class counties, in the first year following a reassessment, to set their millage based on taxes collected the previous year before considering a millage increase limited to 110% for school districts and 105% for municipalities

Some others that have been sent to the House for consideration are SB 639 and SB 640 which would allow municipalities to accept donation of property subject to tax liens. The donation of such property would clear the property of most liens except certain mortgages. These bills would also require the tax claim bureau or the municipal financial officer to maintain a public list of all property subject to tax liens

Also, SB 709, which would require school districts to provide for installment payment of property taxes, and SB 726, which is similar to SB 573 except it would apply to second class counties, have passed and are now in the House.

As of today, they are still trying to get the budget right, a day late and a dollar short. However, stay tuned, as there is a lot of legislation out there that could change the world of assessment as we now know it and, you can be assured, they will come up with new ways to torment us as time goes on. If you need any more information about any of these or other bills, please contact Phil Light, Government Information Chairman, at 724-830-3104 or *plight@co.westmoreland.pa.us*.

Service Awards at the 2005 Annual Conference

Each year at the Annual Conference, AAP honors members for their years of service in the assessment profession. The following AAP members were honored at the May 5th banquet at the Seven Springs Mountain Resort in Somerset County.

Trailblazer Awards (20 to 29 Years of Service)

Name/County	Years of Service
Yvonne Arrison, Adams County	20
Bonnie Mahoney, Cumberland County	22
Cathy Waters, Cumberland County	28
Lori A. Paul, Dauphin County	21
Sharon L. Claustre, Lehigh County	20
Joseph W. Yaros, Lehigh County	20
John Riley, Jr., Somerset County	21
Joseph J. Hudak, Somerset County	21
Barbara Rayman, Somerset County	22
Renee Cushing, STEB	20
Janice Elliot, STEB	25
Robert Lavella, Westmoreland County	20
Eric A. Brown, Wyoming County	20

Board of Governors' Awards (30 to 39 Years of Service)

Name/County	Years of Service
Gary C. Fetterhoff, Dauphin County	32
Paulette Sebring, Monroe County	30
Saumel Rumberger, NorthumberlandCounty	33
Phil Codispot, STEB	35
Margaret Davis, STEB	30
Tom Fetterman, STEB	37
Wayne Santini, STEB	31
George Yurovich, STEB	30
John F. Nolan, Wayne County	31

2006 Date for CPE Classes (Tentative)

Information will be available on the AAP website, *www.pacounties.org/aap* when the dates are finalized.

Monroe County
Intro - April 5-7
Market – April 18-21
Cost – April 25-28
Income – May 2-5

Clarion County
Intro – September 27-29
Market – October 3-6
Cost – October10-13
Income – October 17-20

2005 Fall Conference – Make your plans to attend now!

The AAP Fall Conference will be held November 3- 4, 2005, at the Sheraton Inn in Reading, Berks County. The tentative list of class topics include – USPAP and Act 28, Act 319 Administration, Real Estate Litigation, HP12C, GIS and Valuing Income Properties and the Law. A final list of topics and conference registration materials will be mailed out in September. There is no better place to get your recertification credits!



Ed Rupert, AAP's outgoing president, poses with his president's plaque and his wife, Tamara.

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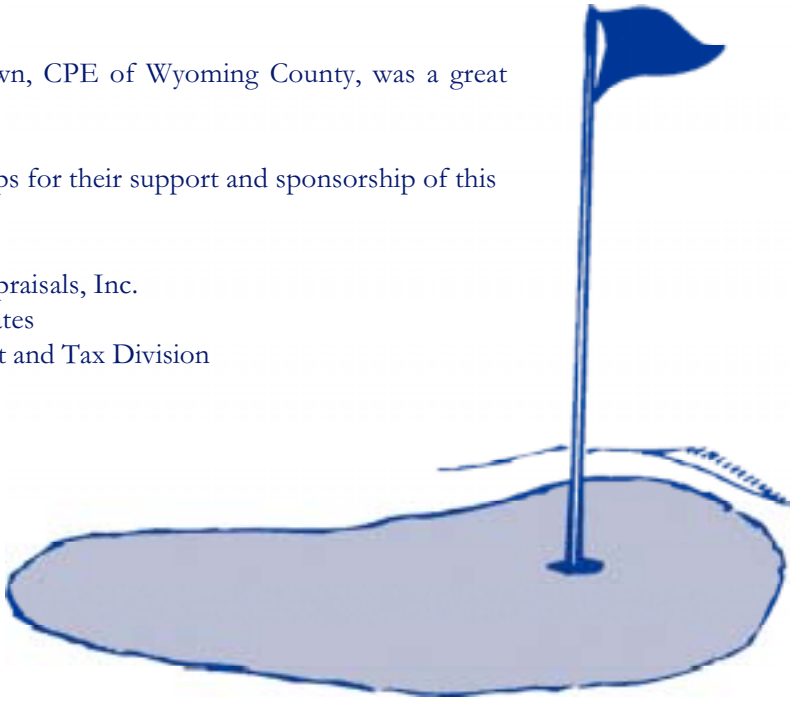
AAP Annual Golf Tournament

This year's golf tournament, coordinated by Eric Brown, CPE of Wyoming County, was a great success with 24 golfers on the Seven Springs course.

AAP wishes to thank the following individuals and groups for their support and sponsorship of this year's tournament —

Gene and Cindy Porterfield of 21st Century Appraisals, Inc.
Mike Sobonya from L.Robert Kimall & Associates
Paul Miller from Tyler Technologies, Assessment and Tax Division
Paul Shoup from Smart and Associates

And, of course, all 24 participants.



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reversed, however, stating that the plain language of the UPCA controlled, and that the restaurant clearly met the definition of common area, holding that a property is a common area if it meets the following two tests:

1. That it is within the planned community; and,

2. That it is owned by or leased to the homeowner's association.

The appeal was taken to the Supreme Court which found all of these requirements were met and added a third requirement:

3. That it must not be a unit, i.e., the property must not be designated for separate occupancy or ownership.

Now if you haven't lost your taste yet there is still some dessert left. Not only did the Supreme Court agree the restaurant could not be taxed but also the Saw Creek Real Estate office owned by the Association should not be assessed or taxed. The opinion is worth reading in its entirety, and can be found at 866 A2nd. 260 (Pa.2005). But, beware; you should have a bottle of Tums nearby.

The Solcitors' Column is published in the AAP Journal for information purposes only. All legal matters pertaining to your county should be consulted with your solicitor.

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were the key to the legislation. Unfortunately this good proposed legislation was changed and redefined before being accepted by both the House and Senate and approved by the governor. Most properties in northeast Pennsylvania consist primarily of forest land. Farmers have cut out chunks of it for pasture and crop fields but the majority of the lands are woods. Therefore, a farmer planting 49 acres of his 100 acre farm where the balance (51%) is woods **will not** receive the reduced assessment on his "base-acre." An owner of a 10-acre piece of ground enrolled in Clean and Green that has 6 acres being farmed by someone else **will** qualify for a reduction in the "base-acre" value even if the 10-acre landowners do not produce anything agriculturally themselves or even understand what good management practices are for a particular field.

Commissioners of any county could do a proclamation relinquishing any market value for base-acres in Act 319 but that would further defeat the purpose being strived for with HB 657. I believe there will be more changes in the next five years based on efforts by forest groups, tree farmers associations and forest stewards groups as well as farmers themselves.

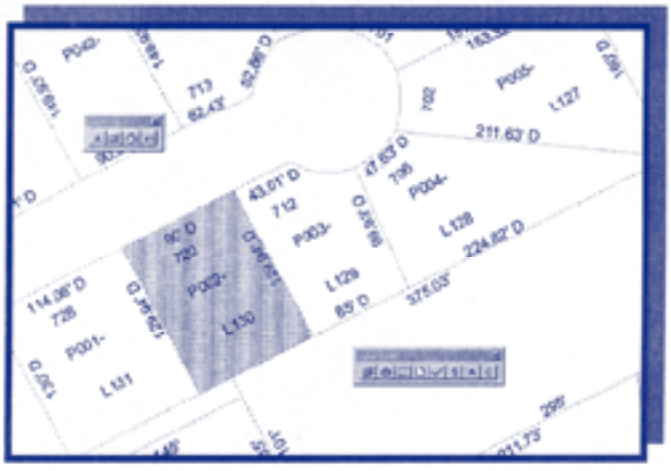
Act 235 does allow for "agribusiness" or "agri-tainment" on lands enrolled in Clean and Green under the agricultural use and forest reserve categories, without a violation resulting in repayment of back taxes and interest. Those activities could include corn or hay mazes, hayrides and other agricultural activities that are done by the landowner for the landowner. Since the landowner can charge for these activities without jeopardizing the Act 319 participation we must understand that those activities can not take place on agricultural reserve lands, the only category that must be left open to the public free of charge for passive recreational uses. The landowner may place reasonable restrictions on agricultural reserve land such as limiting access after dark, prohibiting hunting and restricting the use of motorized vehicles. The Act does provide for allowable recreational activities as long as that activity does not render the land incapable of being immediately converted to agricultural use or prevent the land from producing timber.

The good news out of Act 235 is that the taxing bodies will regain some of the loss in assessed value from the base acre. The bad news for everyone is the Act does not reward good stewards of the land, something we need more and more of these days.

Eric A. Brown *is the Chief Assessor in Wyoming County, Pennsylvania.. He is also an American Tree Farmer and vice-chairman of the Wyoming County Forest Stewards Group*

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