

MINUTES OF THE
CURRENT USE BOARD
Regular Board Meeting

Approved as written

DATE: December 14, 2018

LOCATION: Department of Revenue Administration – Training Room, 109 Pleasant Street, Concord, NH

BOARD MEMBERS:

Senator Ruth Ward

Representative Jim Belanger ~ *Excused*

Mary Pinkham-Langer, Chairman, Commissioner Designee, NHDRA

Jon Wraith, Dean, College of Life Sciences and Agriculture ~ *Excused*

Shawn Jasper, Commissioner, NH Department of Agriculture, Markets and Food

Susan Francher, Commissioner Designee, NH Department of Natural and Cultural Resources, Division of Forests and Lands ~ *Excused*

Barbara Richter, NH Conservation Commission ~ *Excused*

Lindsay Webb, Commissioner Designee, NH Fish & Game

Jonathan Rice, Assessing Official, City

Andrea Lewy, Assessing Official, Population >5,000

Norm Bernaiche, Assessing Official, Population <5,000

Susan Bryant-Kimball, Forest Landowner

Tom Thomson, Public Member

Chuck Souther, Public Member, Agriculture

MEMBERS of the PUBLIC:

Rob Johnson, NH Farm Bureau

Jasen Stock, NH Timber Owners Association

Tom Hughes, NHDRA

Chair Pinkham-Langer convened the regular meeting of the Current Use Board at 11:10 a.m. Introductions of the Board and members of the public followed.

Minutes

The minutes of the November 30, 2018, meeting, were not available.

2018 Public Forum Review

No members of the public attended the public forum in Lancaster on December 10.

Two members of the public attended the public forum in Keene on December 12; Mr. Reed, a licensed forester and Diane Souther. Chair Pinkham-Langer reported it was a good meeting. Mr. Reed relayed some concerns including the lack of maps at town offices identifying what land was in current use and what land was not. He felt the proposed rules provided a lot of good changes, in particular, clarity to areas that were difficult to interpret.

Mr. Souther suggested the Board set the forum dates earlier in the year; he believes the lack of attendance at the forums is in part due to the short notice that has been provided in the past couple years. It was mentioned the public forums generally have not received a lot of attendance in the past unless there was a controversial change or situation. A brief discussion followed including ways to distribute the information to more people including e-mailing the clerk at cub@dra.nh.gov to be added to the e-mail distribution list, including dates on the Market Bulletin and e-mailing towns and cities. Notification is annually sent out by the NHTOA, NH Farm Bureau and to the assessing community.

Chair Pinkham-Langer briefly reviewed a handout containing edits to specific proposed rules pertaining to Cub 304.06 and correcting the proposed assessment ranges from 16-17 to the published 18-19 ranges. The handout also included correspondence received from Barbara Reid with suggested changes and the proposed responses to those comments.

Public Comments

The following suggestions were received by e-mail from Barbara Reid of the NHMA:

- “Page 21 - Cub 305.01 Effective Date ---- you may recall that there was a problem a few years ago when the Board attempted to change the assessment ranges after April 1, which raised questions as to which ranges (old or new) were legally in effect for the MS-1 filing. Ultimately the rules committee recommended that the new assessment ranges be effective the following April 1, not the previous April 1. Cub 305.01 seems to address a similar occurrence where the Board amends the CU assessment ranges after April 1, but it’s not clear whether those new assessments are effective the prior April 1 or the subsequent April 1. I suggest that the proposed rule be amended to read as follows

Cub 305.01 Effective Date of Current Use Land Assessment Ranges. The effective date for the assessment ranges listed below is April 1, 2019 and will remain in effect until **April 1 following amendment** modified by the board.

- Page 7 – Cub 302.04(a)(2) – Denial ---- as [proposed, the landowner must be notified of the denial by ***July 1 or within 15 days if the application had been filed after July 1.*** What if the application is filed June 29 or June 30? I suggest it be changed to read by ***July 1 or within 15 days if the application had been filed after June 15.***
- Page 26 – Cub 308.03(d) – maybe a typo in this? It reads” (d) If the change in use **is not completed within one tax year and** is completed within one tax year,”.....not completed and completed?”

Responses and Proposed Changes

With regards to the confusion with the April 1 date, Chair Pinkham-Langer reminded the members that this represents a tax year and there is information published after April 1, such as the equalization rate. The Department does not finalize the equalization rates until May which are used to adjust the rates. She offered the following proposed language (in bullet two):

- Original proposed language
 - Cub 305.01 Effective Date of Current Use Land Assessment Ranges. The effective date for the assessment ranges listed below is April 1, 2019 and will remain in effect until modified by the board.
- Suggested change
 - Cub 305.01 Effective Date of Current Use Land Assessment Ranges. The effective date for the assessment ranges listed below is **shall be for the** April 1, 2019 **tax year** and will remain in effect **for subsequent tax years** until ~~modified~~ **amended** by the board.

Ms. Reid's second concern.

- Page 7 – Cub 302.04(a)(2) – Denial ---- as [proposed, the landowner must be notified of the denial by **July 1 or within 15 days if the application had been filed after July 1**. What if the application is filed June 29 or June 30? I suggest it be changed to read by **July 1 or within 15 days if the application had been filed after June 15**.

Chair Pinkham-Langer offered her suggestion relating Ms. Reid's second concern, above:

The proposed rule follows the statutory requirement contained in RSA 79-A:5, III., inserted and highlighted below. No changes are recommended to the proposed rule.

RSA 79-A:5, III. The assessing officials shall notify the applicant on a form provided by the commissioner no later than July 1, or within 15 days if the application is filed after July 1, of their decision to classify or refusal to classify his parcel of land by delivery of such notification to him in person or by mailing such notification to his last and usual place of abode.

Ms. Reid's last concern in Cub 308.03(d) has been corrected. This was discussed at the last meeting and now reads as follows:

*Cub 308.03(d) "If the change in use is **not** completed within one tax year, the full and true value shall be determined and the **land** use change tax assessed when the change in use is completed to a point that the ~~selectmen or~~ **municipal** assessing officials are satisfied that the development plan, as originally submitted or as subsequently amended, has been complied with and they are able to determine the number of acres on which the use has changed.*

The last suggestion from Chair Pinkham-Langer relates to Form A-5, Land Use Change Tax.

RSA 79-A:7 II, (a), states, "The commissioner shall prescribe and issue forms to the local assessing officials for the land use change tax bill which shall provide a description of the property which is subject to a non-qualifying use, the RSA 75:1 full value assessment, and the tax payable."

Additionally, RSA 79-A:7, II, (c), states in part, "Upon receipt of the land use change tax warrant and the prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice thereof [...]."

Chair Pinkham-Langer stated as new people come to work in towns, there is a lot of confusion pertaining to the Form A-5 Land Use Change Tax. She asked the Board to consider changing the name of the form in the rules to Form A-5 Municipality Land Use Change Tax Bill.

Mr. Bernaiche ***moved to change the name of Form A-5 Land Use Change Tax to Form A-5 Municipality Land Use Change Tax Bill and to incorporate the name change into the existing references within the draft proposed rules***; Commissioner Jasper ***seconded the motion***. No discussion. Chair Pinkham-Langer called the motion to accept the change. ***Motion passed unanimously.***

Mr. Souther ***moved to accept the proposed assessment ranges and move forward into rulemaking***; Ms. Lewy ***seconded the motion***. Chair Pinkham-Langer added that the farm land ranges expired in 2017 and will need to be readopted; the assessments for forest land, wetland and unproductive land have not expired and are still in effect. Mr. Souther ***amended his motion to include the farmland assessment range***; Ms. Lewy ***seconded the amendment***. Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Chair Pinkham-Langer read comments received by Mr. Swaegler on December 10, 2018. (***Note: Each suggestion was read into the record one at a time and is followed by discussion***):

“12-10-18 Schwaegler Comments Re Revisions to Cub 300

I appreciate the obvious extra effort that has been applied to creating these revisions. I think in general the changes are very helpful. I do have a limited number of questions/suggestions.

I believe the introduction of Form CU-18 is a good idea. If the form is used to significantly change the total acres of a parcel or tract, then it may make sense to record that Form CU-18 in the county registry to help title abstractors understand what has occurred. Abstractors normally stop short of visits to town offices has been my experience.”

Discussion followed pertaining to the use of the CU-18 and the suggestion it be recorded at the registry. The intent of the CU-18 was to track situations that come and go, such as recreation adjustments or minor acreage corrections. There was a consensus that it would be most useful at the town offices and that it should not be filed at the registries. It was suggested that examples of when to use the CU-18 and when to file a new application with the town and registry be included in the handbook.

“Page 3 Cub 301.16 (b) – I believe concrete footings placed on top of the ground should be allowed and would eliminate the reference to concrete. Consider “Is not permanently affixed to the underlying farm land with non-portable footings;”

After a brief discussion, it was felt the proposed language covers Mr. Schwaegler’s concern about the word ‘concrete’ when it pertains to functions supporting forestry, farming and agriculture. It was agreed no change would be made to Cub 301.16 (b).

“Page 5 Cub 302.01 (d)(1) There may very well be a tract of many contiguous parcels owned by the same entity and the Form A-10 may only apply to a ‘sub-tract.’ Consider “A map of the entire parcel or tract that is the subject of the Form A-10 application as described in Cub 301.11;”

After a brief discussion, there was some confusion as to the intent of Mr. Schwaegler’s suggestion. It was felt the reference to ‘sub-tract’ has been discussed and defined within the draft proposed rules, both in the definitions and in the section relating to maps. It was suggested clarification be requested from Mr. Schwaegler and this be considered for a future agenda item.

“Page 9 Cub 303.09 I am wondering why a fire suppression pond would be excluded from current use assessment if it is part of a parcel or tract that otherwise qualifies. Consider a definition for fire suppression pond and include in Cub 303.09.”

Chair Pinkham-Langer stated this suggestion had to do with a fire suppression pond and will be discussed later in this meeting.

“Page 10 Cub 303.12 (b) (2) Do you possibly mean to say ‘and’ between a. and b. rather than ‘or’? “and” makes sense to me.”

Chair Pinkham-Langer stated the ‘or’ is correct. If there is enough land to remain qualified, there is no problem. The problem occurs when it drops below the qualifying acreage. At that point in time, the burden would be on the property owner to supply information that it does meet the criteria.

“Page 13 Cub 304.04 (a) (2) Entire parcels may be quite large and contain varying soils within them. Consider “A separate SPI for each delineated and mapped soil type of farmland.”

Ms. Lewy stated this was discussed in the subcommittee. Mr. Johnson researched this and found that the SPI uses an average of all the soils. The Board does not have any control over how the SPI is determined.

“Page 24 Cub 307.02 (a) I am wondering if there is a “change of use” of the land required to meet a density requirement before any physical change occurs in the development. Read RSA 79-A:7, I. Consider “(a) In the case of a development, other than condominiums, which includes land identified in the development plan required to satisfy the density, setback, or other condition which requires that land to remain undeveloped as part of the plan approval, that identified undeveloped land upon any physical changes to the development and any land in the development undergoing physical changes as referenced in Cub 301.02 shall be removed from current use pursuant to RSA 79-A:7, I.”

Chair Pinkham-Langer stated this rule had been in conflict with the law and has since been amended to comply with the law. Chair Pinkham-Langer stated that completed Mr. Schaepler’s comments.

Other Business

Chair Pinkham-Langer described a handout of a sketch containing four parcels of land and a pond. The total acreage of the 4-parcels is 10-acres of vacant land in current use. Parcel one has a conservation easement not to be developed. The four parcels are being sold to four separate individuals and therefore any one of those sales will disqualify all four parcels from current use. The issue is there are varying interpretations as to whether or not the parcel with the easement gets assessed a land use change tax because the owner of the parcel with the easement did not apply for a PA-60, prior to April 1, 2018, pursuant to RSA 79-B and is therefore only in current use. The question is whether or not a land use change tax should be assessed on the 4-acre parcel. Discussion followed. No consensus was reached and it was suggested this be discussed at a future meeting.

Rulemaking Process

The rulemaking notice will be January 3, 2019; Rulemaking Hearing will be held February 1, 2019. Written comments will be due February 11, 2019. The final proposal filed by February 15th and JLCAR meeting March 15th. The Board requested the schedule be e-mailed to the members.

Proposed 300 Rules

Mr. Souther ***moved to remove paragraph (b) under Cub 303.08 Fencing***; Commissioner Jasper ***seconded the motion***. No further discussion. Chair Pinkham-Langer called the motion. ***Motion passed unanimously***.

Cub 303.08 Fencing. Land supporting fencing and the associated power source(s) which is used exclusively to contain pastured livestock or used for the protection of crops shall be eligible for current use assessment:

(a) Under the category in which the land would normally qualify; or

(b) ~~If the presence and maintenance of such fencing would affect the income producing capability of the underlying farm or forest land, the municipal assessing officials shall consider this to be a factor in determining the assessed range of value.~~

Mr. Souther ***moved to remove paragraph (b) under Cub 303.09 Irrigation***; Commissioner Jasper ***seconded the motion***. No further discussion. Chair Pinkham-Langer called the motion. ***Motion passed unanimously***.

Cub 303.09 Irrigation. Land supporting irrigated farm land and farm ponds that are used exclusively for sustaining livestock or for in ground crops shall be eligible for current use assessment:

(a) Under the category in which the land would normally qualify; or

(b) ~~If the presence and maintenance of such irrigation would affect the income producing capability of the underlying farm or forest land, the municipal assessing officials shall consider this to be a factor in determining the assessed range of value.~~

Mr. Souther ***moved to remove paragraph (b) under Cub 303.09 Irrigation***; Commissioner Jasper ***seconded the motion***. No further discussion. Chair Pinkham-Langer called the motion. ***Motion passed unanimously***.

Mr. Souther motioned to remove paragraph (a) under Cub 303.12 (b)(1)(a). No second was received.

After a lengthy discussion pertaining to Cub 304.01, a consensus was reached to move the definition of "value added" to the definitions sections; revert to the existing language below with following revisions.

Existing language

~~(a) "Value added agricultural products" means, for the purposes of this section, products or materials grown on farm land, and processed beyond their natural state as harvested, for market or sale.~~

~~(b) a~~ Open space land shall consist of:

(1) A ***parcel or*** tract of farm land, forest land or unproductive land totaling 10 or more acres;

(2) A ***parcel or*** tract of any combination of farm land, forest land or unproductive land, which totals 10 or more acres;

~~(3) A tract of undeveloped land of any size, actively devoted to the growing of agricultural or horticultural crops with an annual gross income from the sale of crops normally produced thereon totaling at least \$2,500, pursuant to Cub 304.16 and Cub 304.17, below;~~

~~(4) A certified tree farm of any size; or~~

~~(5) A tract of unimproved wetland of any size; ; or~~

(5) A tract of undeveloped land of any size, actively devoted to the growing of agricultural or horticultural crops with an annual gross income from the sale of crops normally produced thereon totaling at least \$2,500, pursuant to:

a. To qualify under Cub 304.01(a)(5), above, the landowner shall demonstrate to the local municipal assessing officials that during the previous year, at least \$2,500 gross income was earned from the sale of agricultural or horticultural crops grown on the land;

b. All land qualifying for current use assessment under Cub 304.01(a)(5), above, shall be required to show \$2,500 of annual gross income from the sale of crops normally produced thereon;

c. Land qualified for open space assessment under Cub 304.01(a)(5,) above, shall be classified as follows:

1. The acreage on which the income producing crop is actually grown shall be classified as farm land, pursuant to Cub 304; and

2. Contiguous land not involved in the income producing activity shall be classified as farm land, forest land, or unproductive land, pursuant to Cub 304, regardless of acreage; and

d. Land qualified under this section in tax years prior to 1993 may stay in current use even though the annual gross value of \$2,500 came from the sale of value-added agricultural products marketed from the land, provided that such landowner(s) continue to produce such products that qualified the land for current use assessment.

~~(c) All land qualifying for current use assessment under Cub 304.01(b)(3), above, shall be required to show \$2,500 of annual gross income from the sale of crops normally produced thereon.~~

~~(d) Land qualified under this section in tax years prior to 1993 may stay in current use even though the annual gross value of \$2,500 came from the sale of value-added agricultural products marketed from the land, provided that such landowner(s) owners continue to produce such products that qualified the land for current use assessment.~~

Ms. Bryant-Kimball ***moved under Cub 304.01 Current Use Acreage Requirement that the proposed (5) referring to the \$2,500 income revert to the following existing language***; Ms. Webb ***seconded the motion***. No further discussion. Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Fire Ponds

Mr. Stock, representing the NH Timber Owners Association, recommended the Board create a pond definition that would clarify the use of ponds for eligible for current use assessment. He suggested such language include sustaining livestock, irrigating in-ground crops, wildlife habitats and wild land fire protection. Chair Pinkham-Langer suggested the Board move into rulemaking and reiterated changes may be made at the public hearing. She asked Mr. Stock to submit proposed language.

Farm Bureau Recommendations

A review and vote on the suggestions from the NH Farm Bureau followed.

Commissioner Jasper ***moved to accept the following recommended change under Cub 301.0402 "Betterment" (d) to strike :for a tree sap" and replace with "to service"; seconded by Mr. Bernaiche***. The revised rule would read:

(d) Utility lines;, ***with the exception of a power source used exclusively for a tree sap to service equipment pursuant to Cub 303.10; or"***

No further discussion. Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Commissioner Jasper *moved to accept the following recommended changes to Cub 301.08 "Equipment" as follows; seconded by* Ms. Bryant-Kimball.

Cub 301.08 "Equipment" means no permanently affixed devices used exclusively for a farming or forestry purpose that, upon being situated or relocated, does not affect the utility of the underlying land, such as, but not limited to:

- (a) Transportable animal shelters; such as run in sheds and "chicken tractors";**
- (b) Chicken tractors Seasonal tunnels;**
- (c) Portable heat sources Irrigation pumps; or**
- (d) Tree sap collection devices.**

During a brief discussion, a suggestion was made to remove the examples in (a) Transportable animal shelters and include the word 'portable' before irrigation pumps in (c).

- (a) Transportable animal shelters; ~~such as run in sheds and "chicken tractors";~~**
- (b) Chicken tractors Seasonal tunnels;**
- (c) Portable heat sources Portable irrigation pumps; or**
- (d) Tree sap collection devices.**

Chair Pinkham-Langer called the motion to accept Cub 301.08 "Equipment" as amended. **Motion passed unanimously.**

Commissioner Jasper *moved to accept the following proposed changes to Cub 301.16, as follows; seconded by* Mr. Bernaiche. Discussion followed.

Cub 301.16 "Seasonal high tunnel" means a non-permanent covering, used exclusively for extending the growing season or for enhancing the growth of crops grown in the underlying farm land, which:

- (a) Consists of fastened, ~~non-welded~~, framing covered with membrane sheeting or other coverings which may be disassembled without damage and with little effort or difficulty;**
- (b) Is not permanently affixed to the underlying farm land with concrete or similar non-portable footings;**
- (c) When removed does not affect the utility of the underlying farm land;**
- (d) Does not contain tables or benches;**
- (e) Does not contain permanent electric service, heat, or ventilation; and**
- (f) Is not used to provide shelter or housing for livestock, or for storage.**

After a brief discussion followed about the suggestion to remove the term 'non-welded' from (a) followed by a suggestion in (a) to add the word 'similar' between 'other and covering'. With the changes, (a) would read:

- (a) Consists of fastened, ~~non-welded~~, framing covered with membrane sheeting or other similar coverings which may be disassembled without damage and with little effort or 0difficulty;**

Commissioner Jasper *moved to accept the additional changes Cub 301.16; seconded by* Mr. Bernaiche. No further discussion. Chair Pinkham-Langer called the motion to accept Cub 301.16 as amended. **Motion passed unanimously.**

Commissioner Jasper ***moved no change to Cub 303.06; seconded by*** Ms. Lewy. Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Commissioner Jasper ***moved to accept the proposed change to Cub 303.10 Equipment; seconded by*** Ms. Lewy: “Land supporting tress sap collection devices inclusive of ***its housing***, the non-permanent staging...” Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Commissioner Jasper ***moved to accept the proposed change to Cub 303.11 from Seasonal High Tunnel to Seasonal Tunnel and to correct the reference throughout the rules; seconded by*** Mr. Benaiche. Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Ms. Bryant-Kimball ***moved to bring the rules with amendments, as proposed, forward into rulemaking; seconded by*** Commissioner Jasper. No discussion. Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Mr. Benaiche ***moved, if no comments are received during the public hearing comment period, to allow the Chair to move forward into final rulemaking; seconded by*** Mr. Souther. No discussion. Chair Pinkham-Langer called the motion. ***Motion passed unanimously.***

Commissioner Jasper ***motioned to adjourn.*** Ms. Bryant-Kimball ***seconded the motion.***

Chair Pinkham-Langer adjourned the meeting at 1:00 p.m.

Respectfully Submitted, Stephanie Derosier
NH Department of Revenue Administration – Municipal and Property Division

Documentation relative to the Current Use Board may be submitted, requested or reviewed by:

Telephone: (603) 230-5955
Facsimile: (603) 230-5947
E-mail: cub@dra.nh.gov
Web: <http://revenue.nh.gov/current-use>

In person at 109 Pleasant Street, Concord
In writing to:
NH Dept of Revenue Administration
Current Use Board
PO Box 487
Concord, NH 03302-0487