

MINUTES OF THE  
CURRENT USE BOARD  
Regular Board Meeting

**Approved as written**

**DATE:** June 13, 2019

**TIME:** 9:30 a.m.

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

**BOARD MEMBERS:**

*(E) Excused*

Senator Ruth Ward – (E)

Representative Timothy Josephson

Mary Pinkham-Langer, Chair, Commissioner Designee, NHDRA

Ted Howard for Jon Wraith, Dean, College of Life Sciences and Agriculture

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

Susan Francher, Commissioner Designee, NH DNCR, Division of Forests and Lands

Barbara Richter, NH Conservation Commission

Lindsay Webb, Commissioner Designee, NH Fish & Game – (E)

Jonathan Rice, Assessing Official, City – (E)

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:**

Bradford Keith, Lyme

Sam Greene, DRA

Philip Bodwell, DRA

James Gerry, DRA

Adam Denoncour, DRA

Rob Johnson, NH Farm Bureau

Chair Pinkham-Langer convened the regular meeting of the Current Use Board at 9:12 a.m.

**Election of the Chair**

A discussion ensued about the election of a new Chair. There was some concern expressed about the remaining rules process, administrative assistance and experience with current use. Historically, the position has been held by one of the appointed individuals from a State agency such as Fish and Game, Forests and Lands and the Department of Revenue (DRA). Mary Pinkham-Langer is the current Chair however she will be retiring on June 28, 2019. Mr. Gerry, new Director of the Municipal and Property Division, stated the DRA Commissioner will be appointing Rick Evans, the Timber Tax Appraiser for the DRA as her designee to replace Ms. Pinkham-Langer. The Board felt the next Chair should be familiar with the current proposed rule changes as the Board has put a lot of work into them and to be available to answer questions throughout the remaining rulemaking process.

After further discussion, Mr. Thomson **nominated Mr. Souther as Chair**, Ms. Richter **seconded the motion**. Chair Pinkham-Langer called the nomination. **Vote passed unanimously**. A brief discussion followed and a suggestion was made to clarify the nomination.

Mr. Thomson **amended his nomination for Mr. Souther as Chair of the Current Use Board to be effective June 28, 2019**; Ms. Richter **seconded the motion**. Chair Pinkham-Langer called the amended nomination. **Vote passed unanimously**.

Ms. Bryant-Kimball and the Board expressed appreciation for the work Ms. Pinkham-Langer has done for the Board.

A correction was made to the public comment period end date which is June 23, not June 20, as the original hearing date was rescheduled.

## **Minutes**

### **February 4, 2019 Rulemaking Hearing**

Mr. Bernaiche **motioned to accept the minutes of the February 4, 2019, rulemaking hearing**; Ms. Bryant-Kimball **seconded the motion**. The date on the minutes was incorrect as January 4, 2019 and will be corrected to February 4, 2019. Chair Pinkham-Langer called the motion to accept the minutes of February 4, 2019, as amended. **Motion passed unanimously**.

There was no motion to accept the minutes of the February 4, 2019 regular board meeting. Discussion took place pertaining to the following sentence which was expressed to be inaccurate, "*When considering the market value of land; when land is sold the value is in the development rights and if the development value were to be subtracted, the assessed value would be \$0.*" (Page 2, Paragraph 1, Line 4) The assessed value of a property would not be \$0 however it would be reduced. Ms. Derosier will review the recording and clarify the statement.

Ms. Bryant-Kimball **motioned to postpone the vote on the minutes of February 4, 2019, regular board meeting until the next meeting to provide time to clarify the statement**; Mr. Thomson **seconded the motion**. No discussion. Chair Pinkham-Langer called the motion to postpone the vote on the minutes of February 4, 2019, until the next meeting. **Motion passed unanimously**.

## **Rulemaking Update**

Chair Pinkham-Langer stated in addition to the rules, the forms have been processed and are ready to be published once the rules are in place.

Mr. Bernaiche reported that he and Ms. Pinkham-Langer presented the proposed changes to the rules at the assessor's monthly meeting and there were questions but no recommended changes or concerns.

## **Booklet Update**

Chair Pinkham-Langer met with Ms. Webb on the booklet update and the intent is to publish the booklet once the rules are approved. A suggestion was made to include a summary to provide some transparency into the process

of how the forest and farmland rates are determined. This summary would include, information and sources considered, and a description and purpose of the forestry model.

Ms. Derosier requested the forestry subcommittee meeting date be sent to her so that she could publish it on the DRA website and House and Senate calendars. As a subcommittee meeting public comment does not have to be accepted but will provide an opportunity for the public to attend and gain a better understanding of the process of how the values are developed.

### **Public Hearing Comments**

A discussion ensued about the public comments received pertaining to RSA 79-A, Current Use versus RSA 79-B, Conservation Restriction Assessment. It was suggested that if a property owner with land in current use were to file a PA-60 for conservation restriction assessment, the current use would then be removed and no land use change tax applied. Enrolling land into the current use program creates a lien on the property that is filed at the registry of deeds and the only provision for it to be removed is for a change to occur on the property.

A concern was stated that property having a conservation restriction assessment was being reported incorrectly on the MS-1 Report as current use property. Chair Pinkham-Langer clarified that if a property is enrolled in current use, it is reported as such, however if a conservation restriction assessment is placed on any part of that property in current use, that portion with the easement should no longer be reported as current use; it should be reported as a conservation restriction assessment. While the reporting is different, that property retains both the current use designation and the conservation restriction assessment designation and applicable existing liens.

Mr. Keith confirmed his concern with reporting was the categorization on the MS-1 as he feels from transparency standpoint it is important for the taxpayers to understand how much land in their town could be developed. He also agreed removing land from current use would trigger a land use change tax but property with conservation easements can only be removed through eminent domain proceedings. He referred to RSA 79:A-7, relating to land use change tax, which exempts the transfer of properties from current use assessment or current use classification from 79-A to 79-B and it is not subject to the land use change tax as stated in the RSA.

Ms. Bryant-Kimball referred to Mr. Keith's comment about the Board's authority to choose what methodology is used to develop the rates and to adopt applicable rules. She believed that to be incorrect and referred to RSA 79-A which states the land shall be assessed according to its income-producing capability to grow trees and crops. She added the Board adopts rules to support the RSAs.

An example of a 12-acre parcel enrolled in current use was discussed. The property was subdivided and two of the three parcels sold; no land use change tax was applied to the unsold parcel. If the 12-acre parcel had a timely filed conservation restriction assessment application on file, the remaining 2-acre parcel would have met the criteria of RSA 79-B and no land use change tax would have been required however there was no application on file and a land use change tax should have been applied. The Board's intent was to clarify the rule pertaining to this type of situation. A current use lien does not get released from the registry because a conservation restriction assessment is placed on the same property; a second lien is created for the conservation restriction easement.

Mr. Keith suggested the Board add under the current use criteria for current use assessment that the property retains the development rights. He added when a conservation easement is placed on the same property, the change of use removes the current use lien and is not subject to the land use change tax. He feels the law is clear that the transfer from one to the other does not trigger the land use change tax. Discussion followed.

The other public comment referred to the lack of encouragement for property owners to apply for the recreation discount or create a stewardship plan. If a change was desired for the recreation discount, that would require a statutory change. Ms. Francher reiterated the statutory requirement to value the income-producing capabilities of current use land; she gave a brief explanation of the implementation of the new model that serves as a firm basis for the forestland assessment ranges and suggested if a change is desired, the Board should review the model in an effort to stay within the statutory requirements.

**RSA 79-A:2 Definitions. -**

*“V. "Current use value" means the assessed valuation per acre of open space land based upon the income-producing capability of the land in its current use solely for growing forest or agricultural crops, and not its real estate market value. This valuation shall be determined by the assessor in accordance with the range of current use values established by the board and in accordance with the class, type, grade and location of land.”*

**RSA 79-A:4 Powers and Duties of Board; Rulemaking. –**

*“II. The board shall reduce by 20 percent the current use value of land which is open 12 months a year to public recreational use, without entrance fee, and which also qualifies for current use assessment under an open space category. There shall be no prohibition of [...]”*

After further discussion, it was felt that the issues brought forth deserved further discussion and consideration and should be added to the task list and, if needed, prepared for the next rulemaking effort rather than postponing the current changes.

**Other Business**

**New Director**

Chair Pinkham-Langer introduced the new Director of the Municipal and Property Division, James Gerry.

**Current Use Assessments Rates for 2020**

Chair Pinkham-Langer brought forth a suggestion to look into whether or not the assessment ranges have to go through the timely process of rulemaking or whether they could be set by the Board following the three public forums. After a brief discussion Ms. Bryant-Kimball ***motioned to investigate the possibility of not going through formal rulemaking for the rates***; Commissioner Jasper ***seconded the motion***. It was clarified this would be for both the forestland and farmland assessment ranges. Chair Pinkham-Langer called the motion to investigate with DRA's legal department whether or not the rulemaking process is required for the assessment ranges. ***Motion passed unanimously.***

A brief discussion followed about the difficulty preparing information relating to the farmland category as the economist for the Cooperative Extension has left and the position remains vacant. The Dean is currently looking to fill the position however until that time; the previous resources do not exist. It was noted the farmland range has not changed in many years however providing some transparency and information about how the farmland value is derived is important. The soil potential index, which is summarized and additional resources provided in the handbook, plays a significant role in the determination of the farmland assessment.

## Task List

Chair Pinkham-Langer suggested additional discussion take place at the next meeting pertaining to the task list. The list currently includes:

- Lake water body issue and defining contiguous lots
- Rights-of-way conservation easements and when does the LUCT apply?
- Existing grandfathered rights-of-way; clarify that they are existing prior to the enactment of the statutory change

Mr. Souther added that the Board needs to do a better job of setting the public forum dates as far in advance as possible.

Commissioner Jasper ***motioned to authorize the Chair to proceed into final rulemaking following the public comment period ending on June 23, 2019, if no additional comments are received***; Mr. Bernaiche ***seconded the motion***. Mr. Thomson asked for clarification on Cub 307.01 (e) "An adjoining property owner who constructs a rights-of-way access road on a parcel of current use land [...]." He asked whether this applied to current or grandfathered rights-of-way. A lengthy discussion followed. It was stated a lot of discussion went into this while working on the rules; to define "existing." It was suggested to add this to the task list to discuss further and to make sure any language change was clear.

The motion was restated. Commissioner Jasper ***motioned to authorize the Chair to proceed into final rulemaking following the public comment period ending on June 23, 2019, if no additional comments are received***; Mr. Bernaiche ***seconded the motion***. Chair Pinkham-Langer called the motion. Mr. Thomson *abstained*. ***Motion passed with a majority vote.***

Mr. Bernaiche ***motioned to adjourn***; Mr. Souther ***seconded the motion***. ***Motion passed unanimously.***

Chair Pinkham-Langer adjourned the meeting at 10:38 a.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) 230-5096  
Facsimile: (603) 230-5947  
E-mail: [cub@dra.nh.gov](mailto:cub@dra.nh.gov)  
Web: <http://revenue.nh.gov/current-use>

In person at 109 Pleasant Street, Concord  
In writing to:  
NH Department of Revenue Administration  
Current Use Board  
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