

1 MINUTES OF THE  
2 CURRENT USE BOARD  
3 Subcommittee Meeting  
4

5 **Draft**

6  
7 **DATE:** January 24, 2020

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

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11 **SUBCOMMITTEE MEMBERS**

12  
13 Chuck Souther, Chair, Public Member, Agriculture  
14 Rick Evans, NHDRA Commissioner Designee, NHDRA  
15 Andrea Lewy, Assessing Official, Population >5,000  
16 Norm Bernaiche, Assessing Official, Population <5,000  
17 Susan Bryant-Kimball, Forest Landowner  
18 Tom Thomson, Public Member

19  
20 **MEMBERS of the PUBLIC:**

21 Mark J. Burger, Orford	Rich Brown, Lyme
22 Rusty Keith, Lyme	Rob Johnson, NH Farm Bureau
23 Matt Leahy, Forest Society	Jasen Stock, NHTOA
24 Barbara Richter, NHACC, CUB	Mary Pinkham-Langer, Pinkham Assessing Services

25  
26 Chair Souther convened the subcommittee meeting 1:00 p.m. Introductions followed.

27 **Contiguous Parcels**

28  
29 A discussion took place about whether or not parcels are considered contiguous if separated, in particular, by large  
30 water bodies such as lakes. Some examples, situations and explanations were provided. As this issue was not  
31 prevalent, the subcommittee agreed this was not an issue a solution needed to be provided for.

32  
33 **Current Use Assessment versus Conservation Restriction Assessment**

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35 A lengthy discussion took place pertaining to the intent of RSA 79-B, Conservation Restriction Assessment and how  
36 it relates to RSA 79-A Current Use Taxation and the land use change tax (LUCT). There were differing opinions  
37 about whether land under current use assessment should be eligible for conservation restriction assessment (also  
38 referred to during conversation as conservation easement) without requiring a LUCT when changed. It was agreed  
39 that to qualify for RSA 79-B, Conservation Restriction Assessment, the restriction must be held by a qualifying  
40 entity.

41  
42 Ms. Pinkham-Langer explained existing land under current use assessment may be changed to conservation  
43 restriction assessment without a LUCT being applied when a PA-60, Conservation Restriction Assessment  
44 Application, is timely filed, approved by municipal assessing officials and recorded at the registry. She reiterated the  
45 point that the land must currently qualify for current use at the time of the application, approval and filing at the  
46 registry. She provided a brief example:

- 49 • 4 Continuous parcels together qualify for current use
- 50 • 3 Parcels sell leaving the 4<sup>th</sup> parcel to no longer qualifying because of size
- 51 • The sale of the 3 parcels triggers a land use change tax on the fourth parcel unless
- 52 • A PA-60 has been timely submitted and approved by the Town prior to the sale
- 53 • There is no exception to the LUCT

54  
55 She added when land is placed into the current use program, a lien is placed on the property. If land under current  
56 use assessment is changed to conservation restriction assessment, a second lien is placed on the property; the  
57 current use lien does not go away. If there is a disqualifying event and land is removed from current use; that  
58 portion of land will be subject to both a LUCT and an Inconsistent Use Penalty under RSA 79-B.

59  
60 She further expressed that the intent of RSA 79-B was to conserve parcels that did not meet the minimum 10-acre  
61 requirement of current use but provide the same benefit of those that did. She provided another example:

- 62
- 63 • 9-acre parcel with development rights sells for \$3 million dollars on the open market
- 64 • A qualifying entity wants to preserve that 9-acres so they purchase a conservation easement
- 65 • Because the easement prevents development, the 9-acres it still has value and may be assessed for
- 66 \$800,000
- 67 • By applying for conservation restriction assessment, that property would then be assessed at current use
- 68 rates versus the \$800,000 fair market value for that property minus development rights
- 69 • Placing that property under conservation restriction assessment places a separate lien on that property

70  
71 Discussion followed. One point offered was that there are many variations of conservation easements and some  
72 may not necessarily include development rights

73  
74 Ms. Pinkham-Langer offered the following rule proposal under Cub 307 CHANGE IN USE OF THE LAND TO A  
75 NON-QUALIFYING USE

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77 **SUGGESTED RULE ADDITION:**

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79 **Cub 307.06 Change From Current Use Assessment to Conservation Restriction Assessment**

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81 ***(a) A parcel or tract of land which is sold or transferred to another owner and no longer meets the***  
82 ***minimum acreage requirements in the category in which the land is classified pursuant to Cub***  
83 ***304.01, shall be considered changed and the land use change tax imposed except when:***

84 ***(1) Prior to the sale or transfer of the parcel or tract of land, the landowner shall have completed a***  
85 ***Form PA-60 "Conservation Restriction Assessment Application" and:***

- 86 ***a. Filed the completed Form PA-60 with the municipal assessing officials on or before April 15***  
87 ***of the tax year in which they are requesting that the land be enrolled in conservation***  
88 ***restriction assessment pursuant to RSA 79-B:4; and***
- 89 ***b. The municipal assessing officials have approved, signed, and recorded the Form PA-60 at***  
90 ***the county registry of deeds for said tax year pursuant to RSA 79-B:4 and administrative***  
91 ***rule Rev 1802.01.***

92 **(b) A parcel of land assessed as current use which is sold or transferred to another owner and meets**  
93 **the minimum acreage requirements for current use assessment pursuant to Cub 304.01, shall not**  
94 **be considered changed and the land use change tax shall not be imposed when:**

95 **(1) The landowner has filed a completed Form PA-60 "Conservation Restriction Assessment**  
96 **Application" with the municipal assessing officials on or before April 15 of the tax year in which**  
97 **they are requesting that the land be enrolled in conservation restriction assessment pursuant to**  
98 **RSA 79-B:4; and**

99 **(2) The municipal assessing officials have approved, signed, and record the Form PA-60 at the**  
100 **county registry of deeds for said tax year pursuant to RSA 79-B:4 and Rev 1802.01.**

101 **(c) Qualified current use land enrolled in conservation restriction assessment in (b) above shall, at the**  
102 **time of the change to a non-qualifying use, be assessed:**

103 **(1) A land use change tax pursuant to RSA 79-A:7; and**

104 **(2) An inconsistent use penalty pursuant to RSA 79-B:6.**

105  
106 A brief comparison of the Internal Revenue Code (IRC) and applicable case law pertaining to discounts on  
107 conservation easements and the similarity with NH statute was offered. There is a perception that there is a  
108 disregard to the limitations on charitable contributions on the federal system in the sense that the discount offered in  
109 New Hampshire for land with conservation easements is too large for properties that will never be developed; that  
110 this high discount has a detrimental impact on smaller taxpayers in the communities. A suggestion was made that  
111 the Board consider federal case law in determining both a reasonable value for conservation easements and benefit  
112 to the landowner.

113  
114 Mr. Keith reiterated his belief that conservation easements remove development rights; his misunderstanding of  
115 why taxpayers with no land in current use are asked to pay to encourage landowners with land in current use not to  
116 exercise their right to develop their property; and the change from current use assessment to conservation  
117 restriction assessment should be a disqualifying event and a LUCT applied based on the intent of RSA 79-A:7, IV  
118 (b) "*When land is required to remain undeveloped to satisfy density, setback, or other local, state, or federal*  
119 *requirements as part of the approval of a plan of a contiguous development area, such land will be considered*  
120 *changed in use which does not qualify for current use assessment at the time any portion of such land is*  
121 *developed.*" He added the law states this Board has the duty and responsibility to set the criteria and he believes  
122 criteria should be added that land has to be developable to qualify for current use.

123  
124 Mr. Stock responded to the third comment indicating statute clearly states in RSA 79-A:7, VI (d) "*Land under current*  
125 *use assessment is eligible for conservation restriction assessment pursuant to 79-B, such land shall then be*  
126 *allowed to change from current use assessment to conservation restriction assessment with no land use change tax*  
127 *being applied.*" He added that statute does not mandate a landowner to apply for conservation restriction  
128 assessment; it is at their discretion.

129  
130 More discussion followed including differing interpretations of statutory intent and examples to clarify opinions. Two  
131 other issues were expressed; (1) inaccurate reporting of current use land versus land under conservation restriction  
132 assessment on the MS-1 and (2) the significant difference between the amount a property is purchased for versus  
133 what it is assessed for and the suggestion for a separate methodology for conservation land. A suggestion was  
134 made to provide more education to assessors in the communities about correctly categorizing current use land and  
135 conservation restriction assessment land on the MS-1.

136  
137 Ms. Lewy pointed out that land enrolled in current use can have conservation easements placed on it, and many do,  
138 but they were not put on the property under RSA 79-B. She added that should be part of the education as well.

139 Rights-of-Way

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141 Ms. Pinkham-Langer suggested the following proposed rule definition to clarify existing right-of-way:

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143 **Cub 301.09 “Existing right-of-way” means an unimproved right-of-way that legally existed prior to July 1,**  
144 **2006.** Discussion followed.

145

146 Mr. Evans **motioned to recommend to the full Board adding the following definition to the Cub rules, Cub**  
147 **301.09 “Existing right-of-way” means an unimproved right-of-way that legally existed prior to July 1, 2006.”**

148 Ms. Bryant-Kimball **seconded the motion.** No further discussion. Chair Souther called the motion. **Motion passed**  
149 **unanimously.**

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151 Handbook

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153 Ms. Bryant-Kimball and Ms. Lewy, members of the Handbook subcommittee, reported there was still a fair amount  
154 of work to do to complete the handbook. The draft handbook had been started prior to the rule changes and now  
155 that the rules have been approved, the references will need to be updated throughout the manual as well as the  
156 completion of other items. Chair Souther will confirm a meeting time on the day of the rulemaking hearing for the  
157 subcommittee to meet.

158

159 Chair Souther adjourned the regular board meeting at 2:34 p.m.

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161

162 Respectfully Submitted, Stephanie Derosier

163 NH Department of Revenue Administration

164 Municipal and Property Division

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

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167 Telephone: (603) 230-5096

In person at 109 Pleasant Street, Concord

168 Facsimile: (603) 230-5947

In writing to:

169 E-mail: [cub@dra.nh.gov](mailto:cub@dra.nh.gov)

NH Department of Revenue Administration

170 Web: <http://revenue.nh.gov/current-use>

Current Use Board

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