

Current Use Board  
Regular Board Meeting

**Approved as written**

**DATE:** April 18, 2022

**TIME:** 10:00 a.m.

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

**BOARD MEMBERS:**

Senator Ruth Ward

Representative Tony Piemonte - *Absent*

Anton Bekkerman, Dean's Designee, UNH College of Life Sciences and Agriculture - *Absent*

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

Rick Evans, NHDRA Commissioner Designee, NH DRA

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

Barbara Richter, NH Conservation Commission - *Absent*

Mark Beauchesne, Commissioner Designee, NH Fish & Game - *Absent*

Jonathan Rice, Assessing Official, City

*Vacant*, Assessing Official, Population <5,000

Norm Bernaiche, Assessing Official, Population >5,000

Susan Bryant-Kimball, Forest Landowner

Tom Thomson, Public Member

Chuck Souther, Chair, Public Member, Agriculture

**MEMBERS of the PUBLIC:**

Jasen Stock, NHTOA

Tom Christenton

Ginny Christenton

Kevin Scott

Robert Johnson, NH Farm Bureau

Sam Greene, NH DRA

Chair Souther convened the regular meeting of the Current Use Board at 10:00 a.m.

**Election of Chair**

Commissioner Jasper *nominated Chuck Souther* to remain as Chairman; Mr. Bernaiche *seconded the motion*. No other nominations were received. Mr. Souther called the motion. *Motion passed unanimously.*

A brief discussion whether a vice-chairman was needed, and it was noted that there was nothing in statute requiring one.

**Minutes**

Senator Ward *motioned to accept the minutes of the November 5, 2021, regular board meeting*; Ms. Francher *seconded the motion*. No discussion. Chair Souther called the motion to approve the minutes of the November 5, 2021, regular board meeting as written. *Motion passed unanimously.*

The Agricultural Land Assessment Model Subcommittee has not met to date. A meeting is anticipated to be scheduled soon.

### **Frequently Asked Questions**

Chair Souther suggested a subcommittee to gather and create a frequently asked questions section for the Current Use Booklet. Mr. Rice, Mr. Evans and Ms. Bryant-Kimball volunteered.

The Board discussed how to field questions received by Department of Revenue Administration (DRA), the Board (via e-mail) and individual board members; the difficulty being that the Board does not meet regularly. The DRA fields a lot of questions that are answered by the Assistant Director, most relating to the current use program. For tax related questions, general information is provided, and specific property questions are referred to the municipal assessor. A suggestion was made that if a board member receives a question and provides a response, to forward both to the Board for review. It was clarified that discussion, if necessary, would not be held over e-mail but at the next meeting of the full Board.

### **Questions**

The following questions were received and answered by DRA and are being brought to the Board for discussion.

- Q1. A property enrolled in current use was approved for a subdivision. Roads, water, sewer and utilities were put in, and homes constructed and sold as they were built. When all buildings were complete and sold, the assessor then billed the Land Use Change Tax (LUCT) to all the new homeowners.
- R1. The DRA's response was that the bill should have gone to the developer who had agreed to pay the LUCT. The assessor disagreed and the bills were sent to the new property owners.

The date of the discovery can be up to 18 months after the actual disqualification to allow the property to be lienied; you cannot bill someone who does not own the property. In most cases, a title company will contact the municipality to verify ownership, determine who pays the penalty and estimate the LUCT to be encumbered, if necessary. In this case, the title company did not discover lien to discuss with purchasers. There was some discussion about when the property(ies) should have been disqualified based on the construction of the roads, water, sewer and utilities.

- Q2. Appraisal firms doing current use audits in towns find missing original A-10 forms; letters are mailed to owners requesting new A-10 forms.
- R2. If the original A-10 was filed at the registry of deeds, the municipality may request a CU-18, Notice of Change in Current Use Assessment, from an owner to supplement the file.
- Q3. Town A owns approximately 75 acres in Town B; seven of those acres are where Town A has their water supply. Can Town A enroll the remaining 68 acres in current use.
- R3. As long as the well radius and land needed for the protection of the wells is within those seven acres, the remaining acres may be enrolled in current use.

The DRA will keep track of questions received and answers provided, for the next couple meetings to get an idea of the types of questions that come in and bring the information to the Board for review.

### Forest Management Plan

The DRA conducts an Assessment Review of municipal records at least once every five years and one of the categories reviewed is current use. It is often found that forest management plans are out of date, no longer current or in place. There have been questions relating to the process for a change of ownership; how often plans should be reviewed and updated and how; what the process is for towns to notify and or remove property from receiving forest stewardship assessment and how long owners should have to comply with a request for an updated plan.

Currently, there is nothing specific in rules to answer those questions. Management plans are typically written for 10-20 years. One suggestion was to have a one-page summary to notify new owners of the plan, identify whether the new or current owners will continue with the plan on record or want to submit a modified plan.

Mr. Bernaiche and Mr. Evans will work together on rules to create a consistent process for municipalities to notify owners to review, concur or update a plan within a specific period of time or be removed from the stewardship category.

### Equine Association Visit

Chair Souther was asked to attend a meeting of the Equine Association to discuss why equine are not considered for the recreational discount. He responded by saying the low impact activities that qualify for the recreational discount are statutory and a board meeting would be the venue to discuss further.

### 50-Year Celebration of Current Use

The current use program became law 50-years ago in 1973. There are several organizations that have begun discussing ways to celebrate including SPACE. More information to come.

### Public Comment

Kevin Scott, of Chester, previously attended a meeting to discuss what he believed to be an inappropriately timed LUCT. He submitted his application for abatement with the Town and has not received a response from the Board of Selectmen however he has received a response from the Town's assessor who has suggested the abatement be denied. The assessor commented that Mr. Scott's statement that conservation easements are not permitted under current use is incorrect.

Mr. Scott suggests that there is no advantage for a landowner who has dedicated his land to a conservation easement to additionally enroll the land into current use. He believes the two are different. One allows an owner to have his land valued at less than development value and still be redeemable for development by paying a penalty tax; the other, whether donated or sold, can never be developed so why would anyone do both. His question to the Board is whether his statement is correct or not.

Mr. Bernaiche responded that Mr. Scott's statement is correct, that if there is a conservation easement on a property, the owner is afforded the same per acre assessment as current use categories and there would be no incentive to also enroll it into current use.

The second issue relates to a 2 ½ acre portion of the property identified for a future house lot that was reserved during the negotiation of the conservation easement in 2006, in which the Town approved both. A few months later a driveway was put in however the house was not built until a year and a half ago and they received a LUCT in October, which he is appealing as untimely. He explained the Selectmen were notified, they knew the 2 ½ acres had been approved and withdrawn and driveway construction had begun but they did not get a LUCT until a building permit was filed.

Mr. Bernaiche reiterated that the 2 ½ acres would not be removed from current use until the lot is developed but it sounds like the driveway was removed but the Town missed it. If the driveway is 10% of the value of the entire lot; a LUCT bill representing 90% of the market value of both the building lot and driveway, should be issued.

Mr. Scott stated the 2 ½ acres was no longer in current use; it was in a conservation easement.

Mr. Evans responded that once land is in current use, it remains in current use until disqualified; a conservation easement does not nullify the current use enrollment or lien on the property.

Tom and Ginny Christenson, of Lyndeborough, presented a diagram of three house lots, two of which were recently sold. Their question related to RSA 79-A:7 VI. (e).

*RSA 79-A:7 VI. (e) A road is constructed on an existing right-of-way on current use land solely for the purpose of access to an adjoining lot where the owner of the land in current use does no other activity changing the use of the land under this section and does not share any ownership interest in the adjoining lot. Provided, however, and notwithstanding any other provision of law to the contrary, **that if such road construction on an existing right-of-way would constitute a change in use if done by the owner of the land in current use, then the owner of such adjoining property utilizing the road for access shall be responsible for and shall be assessed the land use change tax penalty on such land as provided for in this section, although such land in current use shall remain in current use***

The main road is in current use as a forest management road; once the houses are built, the portion of the road from the beginning to the home would be considered a driveway and a LUCT billed. The question was when the rights-of-way to the lots were deeded, before the law change or when the houses were built. If imposed, the total LUCT penalty will be the same for various owners as it is the "access" that is being valued and not the physical road.

Mr. Bernaiche *motioned to adjourn*; Commissioner Jasper *seconded the motion*. Chair Souther called the motion. *Motion passed unanimously.*

Chair Souther adjourned the meeting at 11:43 a.m.

Respectfully Submitted, Stephanie Martel  
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:  
Current Use Board  
c/o NH Dept. of Revenue Administration  
PO Box 487  
Concord, NH 03302-0487