

**Town of Boscawen**  
Agricultural Commission  
Meeting Minutes – Draft  
Boscawen Municipal Complex  
November 7, 2017

Members Present: John Keegan – Chair, Bill Bevans – Vice-Chair, Rusty Colby, John Porter, Tina Larochelle.

Members Absent: Joshua Marshall

Ex-Officio Absent: Roger Sanborn

Alternate Member Absent: Ken Marshall

Others Present: Bruce Crawford-Planning Board Chair, Kellee Jo Easler – Planning & Community Development Assistant, Linda Chandonnet – Recording Secretary, Paul Franklin– Guest, Mark Stetson-Guest.

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Chairman Keegan called the meeting to order at 7:00pm with a voting board.

Roll call made by Chairman Keegan.

Review and Acceptance of Prior Meeting Minutes:

Chairman Keegan stated that Appendix 1 referenced on page 2 of the November minutes is missing. Appendix 1 is the handout showing the points John Porter made did at the Monadnock Farm and Community Coalition meeting on September 17, 2017.

**Motion made to accept the October minutes by Tina Larochelle and seconded by Rusty Colby as amended. All in favor, none opposed.**

Accountant's Report:

Chairman Keegan stated the account report shows no activity for the past month except \$8.00 spent for the Community Garden.

**Motion made to accept the account report by Tina Larochelle and seconded by John Porter. All in favor, none opposed.**

Land Use Happenings:

Mr. Porter reiterated that the purpose of this evening's presentations and discussion would be to hear from the speakers how assessors look at farm structures, as it relates to single use, lost capital, distinguishing equipment from buildings and so on. These are the types of issues the Commissioners want to better understand.

Chairman Keegan introduced guest Mark Stetson, from Avitar Associates of New England, and Paul Franklin, farmer and member of the State Tax Appeals Board.

Mr. Stetson was the first speaker who reviewed in detail how the property tax assessment process works. His principle points included:



**Town of Boscawen**  
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November 7, 2017

The Legislature mandates towns be reevaluated every 5 years to bring assessments in line with current to market values. Boscawen is scheduled to be reevaluated in 2018. This can be done in 3 ways:

- Sales comparisons
- Cost approach
- Income thru sales for some commercial properties

Overview of the assessing process; method used must be consistent.

- Properties are at market value
- Entire town should be done fairly and equitably

Property tax exemptions available to property owners;

- Under current use property owners must have 10 acres of land or more that are in the natural state and intend to leave it that way.
- Land under current use that can qualify for tax savings.
- Barns and farm structures currently being used to qualify for tax savings in some towns, where approved by town meeting.

Other types of potential tax savings of property;

- RSA 79-D is the Barn Easement Program, it allows the town to adopt a lower value to a qualifying barn or agriculture structure, and try to preserve historic agriculture structures.
- RSA 79-E is Community Revitalization tax relief incentive is a discount to enhance downtown buildings and town centers at a lower rate for a fixed number of years.
- RSA 72; 81- 83 is a property tax incentive to help Commercial and Industrial construction for the Coos County only. It has to be adopted at town meeting and gives a discount up to 50% on the school and town tax rate for up to 10 years.

Mr. Colby asked, if the current use tax incentive affects just the land and the building? Mr. Stetson replied, the current use under farm structures does not change the assessment of the building. It is purely dealing with the assessment of the land under the building, which normally would not qualify for current use. The town must first adopt this provision for property owners to apply. In most cases the savings are not significant unless there are special circumstances such as the Connelly Farm in Temple.

Mr. Paul Franklin was the next speaker. He has owned a pick-your-own apples orchard and fruit operation in Plainfield for 40 years. For 34 years he was involved in the assessing for the Department of Revenue, and the last 22 years he was on the Board of Tax and Land Appeals. He has always done both agriculture and taxation and served as selectman and moderator. He handed out print outs of his main points and discussed the broader issues of what assessing is and the



**Town of Boscawen**  
Agricultural Commission  
Meeting Minutes – Draft  
Boscawen Municipal Complex  
November 7, 2017

constitutional basis for property taxation explained that citizens have the right and responsibility to challenge their assessments. See Appendix 1.

Both speakers added they are receptive to any evidence presented to them to revise a property owner's taxes, but the key is data to support the claim.

Mr. Porter stated an important issue is separating real estate and equipment. With the use of robotics, in barns, egg production and other phases of agricultural it is hard to separate the two. He thinks our fast paced technology is making it hard to make those divisions and it's a real challenge.

Mr. Stetson stated that lack of access makes it difficult to assess property. If the assessor can not go inside to inspect the facility they have to estimate and that can make it frustrating for all parties. Mr. Porter asked if there is an attempt to make an appointment and how does that work? Mr. Stetson replied, yes, there is an attempt to do so and the owner also receives a letter inviting them to call and schedule the inspection.

Mr. Franklin added that there is no bright line for the fixture analysis. The courts have consistently said it is fact specific and it is a mix of facts and law. There are two court cases that they frequently use to help provide guidance there, one is King Ridge vs. Sutton and the other involved a lumber Co. in Wentworth. In both cases access to see the facts was vital. Mr. Porter mentioned lost capital is also something to keep it in mind when assessing. We have two dairy farms contemplating a 2-3 million dollar expansion projects and we want to be appealing to them to do that here. He thinks these issues are going to be important decision points. Mr. Franklin encouraged Mr. Porter and the Commission to talk to the Farm Credit East people as they are the best and have a handle on these issues.

Chairman Keegan asked about 79-E and if there is way to help residents in Boscawen to make a living in agriculture. Mr. Stetson replied that he doesn't see how 79-E would apply, as the public benefit is to enhance downtowns and town centers. But looking forward the commission may want to look into 72; 81. The keys here are the town meeting has to adopt it and the property owner has to apply before the construction starts.

Mr. Keegan asked a question for a person who had agriculture property with a view who wants to know about the view tax. Mr. Stetson stated there is no such thing, and explained it only adds value to the property. He and Mr. Franklin illustrated their point with several examples.

Old Business:



**Town of Boscawen**  
Agricultural Commission  
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Boscawen Municipal Complex  
November 7, 2017

107 Banner Recognition for Crete Farm: Chairman Keegan asked Kellee Easler about the status on the  
108 Crete Farm banner presentation. She will check with Alan. The banner was displayed for all to  
109 see.

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111 Agricultural Rack Cards: Chairman Keegan asked if anyone had feedback on the rack cards. None  
112 given. He noticed there was no rack holder at the Franklin Savings Bank so he brought one there  
113 along with cards.

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115 Educational Program - Update: Chairman Keegan stated he has not heard from Dot Perkins and  
116 needs to get in touch with her to see if there's a potential Master Gardener Candidate for the  
117 Educational Program.

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119 New Business:

120 2018 Budget Chairman Keegan spoke about the Community Garden and the garden shed that was  
121 the big, one-time expense this year. He also asked the board if anyone had any suggestions or  
122 insights for next year's budget. None were identified except by Mr. Bevans who stated if we  
123 replace the rack cards it is \$1,000.00 for 400 ct.

124 Chairman Keegan asked Mrs. Easler what the schedule in developing the budget for next year.  
125 Mrs. Easler stated they are currently working on it and do not have a first meeting scheduled.  
126 Chairman Keegan asked Mrs. Easler what the schedule in developing the budget for next year.  
127 Mrs. Easler stated they are currently working on it and do not have a first meeting scheduled.  
128 Chairman Keegan asked if they could put a place holder of \$2,000.00.

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130 **MOTION; To put a place holder of \$2,000.00 for the budget by Mrs. Larochelle. Seconded**  
131 **by Mr. Porter, all in favor, none opposed.**

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133 New Business:

134 Farm Stands: Chairman John Keegan said Farm Stands are allowed as a right and asked what do  
135 they require for approval? He will ask Alan Hardy for more information and if we need to put it in  
136 for next month's meeting.

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138 Property Tax follow-up: John Porter suggested that the Commission keep education ourselves on  
139 the property tax issue on a future agenda. He recommended having Farm Credit East  
140 representatives talk more about loss capital. Chairman John Keegan asked the board if they would  
141 like a Farm Credit East representative to come and talk to them. Mr. Porter added that he also  
142 thinks Mr. Stetson would find it beneficial to hear from them. John Keegan agreed and will contact  
143 Farm Credit East. Mr. Crawford would also like to be invited.

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145 **Motion to adjourn made by Bill Bevans and seconded by Tina Larochelle. All in favor, none**  
146 **opposed.**

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The meeting adjourned at 8:15pm.

The next meeting of the Commission is scheduled for December 14, 2017 at 7:00pm.

*Minutes respectfully submitted by Linda Chandonnet*

DRAFT



## **Few basics of assessing :**

General interrelationship of constitution, statutes, regulations, case law and role of courts and BTLA. Government determines each person's tax liability and individuals have the right to audit and challenge; reverse of Federal income tax.

### NH Constitution:

**Part 1 [Art.] 12. [Protection and Taxation Reciprocal.]** Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. ...

**Part 2 [Art.] 6. [Valuation and Taxation.]** The public charges of government, or any part thereof, may be raised by taxation upon polls, estates, and other classes of property, including franchises and property when passing by will or inheritance; and there shall be a valuation of the estates within the state taken anew once in every five years, at least, and as much oftener as the general court shall order.

### The What and How of Property Taxation:

#### **Statutes re; what is taxable:**

**72:6 Real Estate.** – All real estate, whether improved or unimproved, shall be taxed except as otherwise provided.

#### **21:21 Land; Real Estate.** –

I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.

**72:7 Buildings, Etc.** – Buildings, mills, wharves, ferries, toll bridges, locks and canals and aqueducts owned by private parties, any portion of the water of which is sold or rented for pay, are taxable as real estate.

The next 76 paragraphs then carve out different items that are not taxable through exemption.

#### **Two notable clarifications of what is taxable:**

1) Case law definition of what a "building" is in Appeal of Town of Pelham (Preston) 143 NH 536 (1999)

"A trailer is taxable as a building, if by its use it: (1) is intended to be more or less permanent, not a temporary structure; (2) is more or less completely enclosed; (3) is used as a dwelling, storehouse, or shelter; and (4) is intended to remain stationary."

2) Certain personal property. Personal property can become taxable as real estate as a "fixture" (an item intrinsically part of the underlying real estate). It is dependent on case specific facts and are dependent on a number of factors including nature and use of item, the fashion in which it may be especially adapted to real estate and vice versa and the intent of owner. Examples gas pumps; dryberths, mechanical apparatus of houses, kilns, specialized industrial buildings ("clean rooms", etc. Note all building items start out as personal property which when assembled on land routinely becomes real estate.

### **Statutes re; how is real estate taxable:**

**75:1 How Appraised.** – The selectmen shall appraise open space land pursuant to RSA 79-A:5, open space land with conservation restrictions pursuant to RSA 79-B:3, land with discretionary easements pursuant to RSA 79-C:7, residences on commercial or industrial zoned land pursuant to RSA 75:11, earth and excavations pursuant to RSA 72-B, land classified as land under qualifying farm structures pursuant to RSA 79-F, buildings and land appraised under RSA 79-G as qualifying historic buildings, qualifying chartered public school property appraised under RSA 79-H, residential rental property subject to a housing covenant under the low-income housing tax credit program pursuant to RSA 75:1-a, renewable generation facility property subject to a voluntary payment in lieu of taxes agreement under RSA 72:74 as determined under said agreement, telecommunications poles and conduits pursuant to RSA 72:8-c, and all other taxable property at its market value. Market value means the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor. The selectmen shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

Sounds easy but as noted by NH Supreme Court "the search for fair market value is a snipe hunt carried on at midnight on a moonless night." Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974)(citations omitted).

The cost, sales or income approaches are used to value property and usually result in reasonable estimates of market value if sufficient market data (sales and leases) are available. Difficult for "special purpose" properties because they often are unique and there aren't comparable sales. And in NH, "transmissible" value as opposed to "value in use" or value to owner is the basis of valuing for taxation. Look back at the definition of market value in RSA 75:1.

In valuing a special purpose property, one needs to consider whether the special features are the current industry standard or state of art which it allows it to be competitive with current market standards. If the improvement is dated, some functional depreciation in addition to physical depreciation is warranted. There are times when an improvement becomes so obsolete, it loses all contributory market value, eg. silos.



Even when a special purpose building is functional, it may be part of an industry that markets nationally or internationally that is struggling and some external or economic obsolescence may be appropriate to estimate its contributory value. Examples, large brick and mortar retail, dairy industry or recently, the egg business. Some refer to this as lost capital and is best determined by reading and observing industry trends. This is probably one of the most difficult types of property for mass appraisal systems to deal with but that doesn't diminish the assessor's responsibility under RSA 75:1 to review all information that may be presented to them to consider a property's market value. Farm Credit appraisers are a good resource of industry information.

## **CHAPTER 79-F**

### **TAXATION OF FARM STRUCTURES AND LAND UNDER FARM STRUCTURES**

#### **79-F:3 Definitions. –**

I. "Appurtenances" means the land necessary to support or service the qualifying structure.

II. "Assessing official" means the assessing authority of any town, city, or place.

III. "Board of tax and land appeals" means the board of tax and land appeals established pursuant to the provisions of RSA 71-B:1.

IV. "Commissioner" means the commissioner of the department of revenue administration.

V. "Land under and curtilage of the qualifying farm structure" means only the land immediately under the footprint of the qualifying farm structure and its appurtenances.

VI. "Open space land" means any or all farm land, forest land, or unproductive land assessed under RSA 79-A and as defined as follows.

(a) "Farm land" means any cleared land devoted to or capable of agricultural or horticultural use.

(b) "Forest land" means any land growing trees.

(c) "Unproductive land" means land, including wetlands, which by its nature is incapable of producing agricultural or forest products due to poor soil or site characteristics, or the location of which renders it inaccessible or impractical to harvest agricultural or forest products.

VII. "Owner" means the person who is the owner of record of any land assessed under RSA 79-A.

VIII. "Person" means any individual, firm, corporation, partnership, or other form of organization or group of individuals.

IX. "Qualifying farm structures" mean structures contiguous to a minimum of 10 acres of open space land that are used by the owner of the land to exclusively:

(a) House livestock;

(b) Store feed grown or used on the farm;

(c) Store livestock bedding;

(d) Store crops or fertilizer for crops grown on the farm;

(e) Store farm equipment which is actively used to maintain the farm; or

(f) Boil sap from maple trees and store fuel-wood used to boil sap from maple

trees.

X. "Use change tax" means a tax that shall be levied when the land use changes from under farm buildings use to a non-qualifying use or when the use of a qualifying farm structure changes to a non-qualifying use.

**79-F:4 Appraisal of Qualifying Farm Structures and Land Under Them. –**

I. The selectmen or assessing officials in any municipality adopting the provisions of this chapter shall appraise:

(a) Qualifying farm structures for no more than their replacement costs less depreciation; and

(b) The land under the qualifying farm structures at no more than 10 percent of its market value. The land under the qualifying farm structure shall be contiguous to a minimum of 10 acres of open space land.

I have had no experience with this relatively new enabling statute. On its face though, it doesn't appear to change the basis for valuing the buildings ("replacement cost less depreciation") but it could reduce the "site" value placed on land associated with an agricultural building.

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11/9/17