

Equity and Efficiency Considerations in Use Value Taxation

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with Research Associates

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Abstract

Use value taxation is used in almost every state in the country to provide property tax relief to owners of farmland, forestland, and, in many cases, land available for recreational use. Created in the last half of the 20th century as a mechanism to protect land on the urban fringe from conversion to sprawling suburban development, use value taxation has had reasonable success in its stated intentions. However, this tax break also has potential equity and efficiency effects. Our study explores several of these equity and efficiency concerns in two states, Massachusetts and New Hampshire. We tested first for whether there is an inter-municipal equity issue involving wealthier communities taking greater advantage of use value taxation than poor communities. We did not find this to be true in either state. We then tested for an internal equity issue involving the shifting of tax burden from taxpayers who have their land classified in use value taxation to other taxpayers in the community via higher property tax rates. We were able to demonstrate this effect in New Hampshire, but not in Massachusetts. Finally, as an efficiency concern, we tested whether the amount of land in use value taxation had a measurable negative impact on housing production. We did not find that the amount of land receiving this tax break had an effect on housing production in either state.

Overall, use value taxation seems to reduce development pressure in some fringe communities. In Massachusetts, this does not appear to impose either an equity or efficiency burden. However, in New Hampshire, where use value taxation is much more prevalent and where the property tax is a more important source of municipal revenue, the reduction in development pressure comes at the cost of higher tax rates on the rest of the community. The increased tax burden may or may not be justified by the apparent salutary effect of use value taxation on urban sprawl.

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Table of Contents

Introduction and Overview	1
Research Design	3
Quantitative Analysis	5
Comparing New Hampshire and Massachusetts	9
Insights Gained from Interviews with Local Tax Assessors	12
Conclusions, Reflections, and Recommendations	14
Reference Works	17
Appendices	18
Summary of MGL Chapters 61, 61 a & 61 b	18
Summary of NHRSA 79-A	23
Data Sets Utilized	24
Communities and Individuals Interviewed	25

Equity and Efficiency Considerations in Use Value Taxation

Introduction and Overview

With the rapid growth of suburbanization in the post-World War II era and the absorption of more and more land into residential, industrial, and commercial uses, land values outside of central cities increased substantially. In many once rural communities beyond the city limits, assessed values rose faster than the values attached to “current” use in agriculture and forestry. This threatened the livelihood of farmers and foresters and many were forced to sell their land to developers in the face of property taxes that could not be covered by the returns on their farm or forest products.

In many cases with legislatures still dominated by rural interests, forty-eight states responded to this development with various forms of “use value taxation” in order to limit the property tax assessments on land remaining in farming and forestry. Use value taxation provides tax relief for property owners with large tracts of land (normally greater than five acres for agriculture and greater than ten acres for forestry) based on its “use” rather than the land’s “fair market value.” Such preferential tax treatment was imposed because of rising real estate prices, growing concerns about urban growth, and worries about the adequacy of food supply (Malme, 1993).

Preferential tax treatment joined a battery of conservation strategies which utilize easements, overlay protection districts for flora and fauna, the public purchase or transfer of development rights, and the purchase and ownership of land by public or private entities all with the purpose of removing land from the development pool, more or less permanently. By providing “preferential property tax treatment” to active agriculture and silvaculture, use value taxation provides financial relief to land owners, principally on the grounds that they are conducting socially valuable activity on the land and preventing further urban sprawl.

Despite these good intentions, use value taxation raises both efficiency and equity issues. By permitting particular parcels of land to be taxed at levels below fair market value, land is diverted from its most valuable use. Instead of providing tracts that can be used for higher valued housing, industry, and commercial purposes, preferential tax treatment encourages the use of land in lower value operations. By taking such land out of the supply of parcels that could be developed for such purposes, the remaining land area presumably becomes more expensive, driving up the cost of housing, manufacturing, wholesale, and retail trade. This reduces economic efficiency. By allowing farmers and foresters to pay lower taxes in their communities, presumably other residents must pay higher taxes to cover the cost of public services. This violates a basic principle of equity in tax incidence.

The actual impact of use value taxation on efficiency and equity cannot be easily determined from theory alone. Empirical analysis of the effect of such preferential tax treatment on overall property tax rates and on the production of such market goods as housing needs to be undertaken to estimate whether there is a substantial social cost attached to such tax treatment that offsets at least some of the social benefits of limiting urban sprawl. This study makes one attempt at such an empirical analysis.

Here we focus on two New England states – Massachusetts and New Hampshire – looking at the similarities and differences in their respective use value taxation laws and the associated impact on overall property tax rates and housing production. We use the New England County Metropolitan Area (NECMA) for the purpose of this analysis. This NECMA region is comprised of seven counties in eastern Massachusetts -- Essex, Middlesex, Worcester, Suffolk, Norfolk, Bristol, and Plymouth and three counties in New Hampshire -- Strafford, Rockingham, and Hillsborough. This area of more than 300 municipalities provides satisfactory variance across rural, ex-urban, and suburban communities and provides the ability to investigate differences between Chapter 61, & 61a & 61b in Massachusetts and New Hampshire's current use law. More importantly, over 90 percent of these communities have at least one parcel covered by use value taxation.

The Massachusetts law -- covering Chapters 61, 61a, and 61b -- was adopted in stages. (Chapter 61a, in 1973, 61b in 1979, and 61 in 1981). Colloquially referred to as "Chapter lands," local assessors can give tax breaks to forest land (Ch. 61), farmland (Ch. 61a), and recreational land (Ch. 61b). Land owners apply to place their land in these categories with the local (municipal) assessors office which, with limited discretion, reviews the application and decides if the minimum criteria are met. Forest land is assessed at 5 percent of the fair market value. A 10 acre minimum parcel (excluding a house lot) is required. Assessment rates for each acre of farm land are set annually by the state farm bureau, based on the agricultural use. Crops or produce from the land must generate an annual income of at least \$500. Recreational land is assessed at 25 percent of fair market value. Five acre minimums are required for farm and recreation land. Applications are renewed annually.

To cover the eventuality of the land being put up for sale at market value at some future date, a lien is placed on the land, registered with the registry of deeds, to capture a "roll back" of taxes (five years) if and when the land "comes out of Chapter classification." This normally equals the difference between taxes that would have been paid if the land was assessed at fair market cash value and the actual taxes paid. Under the Massachusetts law, the municipality also has the "right of first refusal" to purchase the land for fair market value, if the land owner decides to sell or convert the land back to its highest and best use.

The New Hampshire Law -- Chapter 79A -- was adopted in 1973. Colloquially referred to as "current use", the state has a Current Use Board which oversees the law and establishes the various assessment rates for forest and farm land. The local (municipal) assessor oversees the application process. The forest land classification makes distinctions between hardwoods and softwoods, and between managed and unmanaged acreage. The assessment of farmland is based on a per/acre value (currently a low of \$25 to a high of \$425) multiplied by a soil potential index (SPI) obtained from the county conservation district offices. Farm land must generate an income of at least \$2,500. The recreational category is assigned to other current use properties that are "unposted" (open to public use without a fee 12 months a year). Such lands are granted an additional 20 percent reduction in assessed values. Land owners must allow all of the following uses --hunting, skiing, fishing, snowshoeing, hiking, nature observation -- unless detrimental to a specific agricultural or forest crop. Restrictions can include mechanized and off-road vehicles, camping, and cutting trees. Land coming out of current use is subject to a land use change tax of 10% of the fair market value at the time of change. A lien is applied to land coming out of

current use to recover the tax. Cities and towns do not have the automatic right to purchase the land as it comes out of current use.

Research Design

As noted above, we approach the discussion of use value taxation as a potential efficiency problem as well as a potential equity problem.

The efficiency concern arises if communities apply use value taxation in such a way that they keep land off the market, thereby limiting the supply of land and inflating the price of other parcels. This inefficiency would potentially limit the supply of housing, making it less affordable. Our model tests whether there is less housing production in communities with a higher utilization of use value taxation.

As for the equity concern, we test for the possibility that use value taxation provides a benefit to some landholders that must be offset by taxing other landholders at a higher rate. By controlling for differences in assessed valuation in each of the communities, we will test the hypothesis that communities that have a greater occurrence of use value taxation impose higher property tax rates in order to make up for the lost revenue from the lower assessments on farm and forest land.

In the course of this examination, we also test whether wealthier communities allow a larger percentage of their land in current use to receive this differential tax benefit. If so, this would suggest a “class” conflict between wealthier and poorer communities in providing the supply of land necessary to meet critical regional needs including affordable housing, job creation, and commercial activity.

Overall, if we find significant inefficiency or inequity as a result of use value taxation, it can be concluded that the presumed economic and environmental benefits of current use tax preferences are at least partially offset by their adverse impact on housing supply and on regional economic development more broadly and on horizontal tax equity between different classes of landholders.

We initially use an econometric model to test for these possible adverse outcomes in our 300+ communities and follow this up with interviews with municipal officials in a small number of these communities. In our econometric analysis, we first test whether there is a statistically significant difference in the use of these tax preferences relative to the median household incomes in each community. This provides an indication of whether, other things constant, wealthier communities are availing themselves of this form of tax shelter more than poorer communities. Second, using the available data, we analyze the impact of this special tax treatment on housing production and test whether, while holding other variables constant, we see significantly less housing production in those communities where current use taxation is more prevalent. Finally, we check our findings with field interviews in eleven communities to determine the reasons and rationale for specific observable differences in the application of this tax policy and its effect on housing production.

Model Design:

We have constructed a three-step model for the analysis.

1. We first test the relationship between *use value taxation* and *median household income*, controlling for other variables, as a preliminary consideration of inter-municipal equity.
2. Second, we test the relationship between the *average tax rate* in the community and the *percentage of land in use value taxation*, controlling for other variables, as a consideration of tax equity.
3. Finally, we test the relationship between *new housing production* between 1990 and 2000 and *the percentage of land in use value taxation*, controlling for other variables, as a consideration of economic efficiency.

The model is summarized as follows:

<i>Theoretical Proposition</i>	<i>Dependent Variable</i>	<i>Key Independent Variable</i>	<i>Control Variables</i>
Inter-Municipal Equity	% Land in Use Value Taxation	Median Household Income	<ol style="list-style-type: none"> 1. Proximity to highway 2. Distance from Boston 3. Population Density per Square Mile
Tax Equity	Average Tax Rate	% Land in Use Value Taxation	<ol style="list-style-type: none"> 1. Proximity to highway 2. Distance from Boston 3. Population Density per Square Mile
Economic Efficiency	New Housing Production 1990-2000	% Land in Use Value Taxation	<ol style="list-style-type: none"> 1. Distance from Boston 2. Population Density per Square Mile

Quantitative Analysis

In a perfect world, New Hampshire and Massachusetts would publish data comparable across state borders. However, the differences in data between neighbors have made comparisons of like variables difficult. The main obstacle is that data in Massachusetts for the total acreage of land in Chapters 61, 61a, & 61b (and therefore the share of total acreage under tax preference) do not exist in any easily obtainable form. Instead, we only know the number of parcels, but not their size. To get this acreage count for each municipality across the Commonwealth, a team of researchers would have to visit each assessor within the NECMA municipalities in Massachusetts (200+) and gather these data from what are often paper documents.

This lack of acreage data in Massachusetts severely limits our capacity to run the statistical models for Massachusetts. In Massachusetts we had to settle for using the percentage of total parcels under Chapters 61, 61a, & 61b as an alternate to the ideal measure of acreage under these tax provisions.

Likewise, problems have arisen within New Hampshire data. We have not been able to locate a source for comparable municipal level data on other metrics such as differential per pupil school expenditures, other municipal expenditures, tax exempt land, etc. which are easily accessible on a current and historical basis for Massachusetts's communities. This has limited the number of control variables we can use for interstate comparison.

Despite these differences, regressions were run for the New Hampshire communities using percent of acreage in current use which produced some statistically significant relationships confirming economic theory. Similar regressions run for Massachusetts communities using the percentage of parcels in "Chapter land" produce different results, some of which may be explained by differences in the data for each state. However, the results may point to differences in the effect of the use value taxation regimes in different states.

Model runs:

Using New Hampshire data, regressions were run where the percentage of land in current use valuation was made a function of median household income and two control variables -- highway access and population density. We carried these same variables forward in the second and third model runs. However, we used the percentage of current use acreage as an independent variable with control variables of median household income, highway access, and population density when testing the effect of the amount of current use land on tax rates and housing production. All 82 municipalities in the three counties were tested. The results are as follows:

income communities can charge lower tax rates presumably because of higher average assessed values on property. A lower rate on higher value land can provide the same amount of revenue as a higher rate on lower value land. Urbanized areas with higher population densities (PopDen) also seem to have slightly higher tax rates perhaps because of a greater reliance on local tax revenue to meet the need for more comprehensive municipal services. Once current land use acreage, median household income, and population density are taken into account, access to major highways does not appear to have any impact on property tax rates.

DV3: Percentage Change in Housing Units (1990-2000)

$$\% \Delta \text{Housing Units}_{(1990-2000)} = 1.04 + .001 \text{ CU\%} - .006 \text{ Pop Den} + .026 \text{ MHY}$$

$$(13.6) \quad (0.54) \quad (1.80) \quad (2.98)$$

R Square = .142

This last regression indicates that, at least in New Hampshire, the proportion of land under current use taxation does not seem to affect housing production. The coefficient on CU% is essentially zero with a very small t-statistic. Both control variables are statistically significant suggesting that housing production on a percentage basis increased faster in less dense communities and in those with higher incomes.

MASSACHUSETTS FINDINGS

Using data on the percentage of parcels in various Chapter land classification, the only consistent and reliable data for Massachusetts, rather than percentage of acreage, as we had available in New Hampshire, we ran regressions using all 227 communities in the seven counties. Other than the variation in data on the amount of land in use value taxation, we followed the same regression procedures using the same variables in both states.

DV4: Percent of Parcels in Chapter 61

$$\text{Percent Ch. 61 Parcels} = .037 - 1.47 \text{ MHY} - .012 \text{ Hwy Acc}$$

$$(6.01) \quad (1.82) \quad (4.02)$$

$$- .003 \text{ PopDen} \quad \text{Adjusted } R^2 = .160$$

$$(5.03)$$

From this initial run, the percent of land parcels under Chapter 61 appears to be inversely correlated with median household income, a finding not shared with New Hampshire. Hence, less wealthy municipalities seem to take advantage of this tax benefit more than wealthy ones. As would be expected and consistent with the New Hampshire regressions, this type of tax preference is used predominantly in rural areas where population density is low – and in the Massachusetts case where direct highway access is not available.

This finding is counter to our original hypothesis that wealthier communities are more likely to take advantage of Chapter 61 even after controlling for population density and highway access.

Thus, in both New Hampshire and Massachusetts we find no evidence that the use of such tax preferences is more prevalent in richer communities than poorer ones.

DV5: Residential Property Tax Rate

$$\text{Tax Rate} = 15.70 + 4.40 \text{ Ch 61\%} - 21.62 \text{ MHY} - .167 \text{ PopDen} - .624 \text{ Hwy Acc}$$

(25.1) (0.69) (2.80) (2.90) (2.06)

$$R \text{ Square} = .075$$

Unlike New Hampshire, these results do not show any relationship between the number of parcels under Chapter 61 and the tax rate burden on other taxpayers. The coefficient on Ch 61% is positive as expected, but the low t-statistic indicates we have no confidence in this estimate. This may be due to the inability to measure accurately the actual percentage of land under tax preference in Massachusetts or it may suggest that the proportion of land subject to Chapter 61 is too small to have a statistically significant effect on the residential tax rate.

All three control variables were significant in this regression. As in New Hampshire, there is an inverse relationship between median household income (MHY) and tax rates, suggesting that higher income communities in both states can charge lower tax rates presumably because of higher average assessed values on property. A lower rate on higher value land can provide the same amount of revenue as a higher rate on lower value land. Unlike New Hampshire, however, in Massachusetts it appears that more rural areas face higher tax rates than more urbanized ones - - perhaps because of large differences in average assessed values between the two. Once Ch. 61 parcels, median household income, and population density are taken into account, access to major highways appears to be correlated with lower tax rates as well. That would suggest the lowest tax rates in Massachusetts are found in poorer rural districts and the highest rates in richer urbanized ones.

Both states limit the discretion of local tax assessors in granting the tax break. If you qualify, you are given the break which in more urban areas can reach as high as 90% of the fair market value of the property. Each state establishes the value of forest and farmland on a statewide basis. Therefore, properties with a higher market value receive a differentially higher tax abatement.

DV6: Percentage Change in Housing Units (1990-2000)

$$\begin{aligned} \% \Delta \text{ Housing Units}_{(1990-2000)} = & 7.39 + 48.295 \text{ Ch 61\%} + 4.33 \text{ Pop Den} \\ & (0.43) \quad (0.27) \quad (2.71) \\ & + 67.00 \text{ MHY} - 11.54 \text{ Hwy Access} \\ & (0.31) \quad (1.37) \end{aligned}$$

$$R \text{ Square} = .024$$

This last regression indicates that, in Massachusetts like New Hampshire, the proportion of land under current use taxation does not seem to affect housing production. The very small t-statistic on Ch 61% suggests no relationship as does the very low R Square indicating the entire regression equation explains almost none of the inter-municipal variance in housing production. Indeed, the only variable that is statistically significant is population density, suggesting that increased housing supply was more likely to occur in more urban areas.

Comparing New Hampshire to Massachusetts

As mentioned earlier, the data in Massachusetts is severely limited by the lack of Ch. 61 acreage information at for each community on a current and historic basis. Likewise the data in New Hampshire presents its own obstacles in that there is a lack of substantial municipal metrics. This has created a data divide between the two states, one that creates great difficulty in an interstate comparison.

While we cannot say that using the percentage of parcels in Ch. 61 in Massachusetts is an equivalent surrogate for the actual percentage of land in current use in New Hampshire, we do see some interesting variations in the results between the states.

The similarities and differences we discovered are as follows:

Inter-municipal equity

- ❑ In New Hampshire, we found no statistically significant difference in the application of current use between wealthy and less wealthy communities
- ❑ In Massachusetts, however, the percentage of parcels in Chapter classification is inversely correlated to median household income.
- ❑ Therefore, contrary to our original hypothesis, we find no evidence that use value taxation is more prevalent in richer communities than poorer ones.

Effect of Density

- ❑ As expected, in both states, use value taxation is used more often in rural areas.

Effect of Highway Access

- ❑ In New Hampshire, access to a major highway does not appear to affect the amount of land in current use.
- ❑ In Massachusetts, however, communities without direct highway access are more likely to have a higher percentage of parcels in Chapter classification. This again reflects the more prevalent use of Chapter classification in areas further from urban **concentrations**.

Tax Equity

- ❑ In New Hampshire, there is a strong and statistically significant relationship between the percentage of land in current use and the tax burden that falls on other taxpayers in the same community. This suggests a concern about tax equity is warranted in the case of New Hampshire.
- ❑ In Massachusetts, however, there is no significant relationship between the percentage of parcels in Chapter classification and the tax rate burden on other taxpayers. However, we do see higher tax rates in rural areas without highway access.

Economic Efficiency – Effect on Housing Production

- ❑ In neither state does the portion of land in use value taxation appear to be a statistically significant impact on housing production.

While we did not find a statistically significant difference in the application of use value taxation across municipalities of differing incomes, there is at least one important difference in the impact of such tax preferences between the two states. In New Hampshire, there appears to be a significant tax equity issue. This was not true in Massachusetts.

This might be due to the fact that we were able to measure the proportion of acreage in use value in New Hampshire while we only had data on percentage of total parcels in Massachusetts. It may be true that if we had acreage data in Massachusetts, we would find a result consistent with New Hampshire. However, this difference is more likely due to the intensity of current use application in the two states. Several communities in New Hampshire have over 65% of their acreage receiving the tax break. Indeed, across the 87 municipalities in our New Hampshire sample, the mean percentage of acreage in current use is 41%. Even in Hillsborough County, the most urban of the counties in the state, the percentage in current use was 48%. In contrast, in eastern Massachusetts only about 1.5% of all land parcels benefit from use value taxation with a range from 0 to 22% across our sample communities. It may not be surprising then that we find a tax equity issue in the Granite State where use value taxation is so prominent but not in Massachusetts where this tax preference is sparingly used.

This finding may also be due to the fact that communities are so much more reliant on the property tax in New Hampshire where there is no income or sales tax. Thus, any reduction in revenue in New Hampshire due to current use taxation must be made up by increases in the

average tax rate. Some confirmation for this conjecture was found in our interviews in Massachusetts with local assessors (see below) who generally saw the Ch 61 exemption as having almost no impact on local revenue because of its limited use. Local assessors in New Hampshire had the same impression. But our regression results suggest otherwise.

We should note that in western Massachusetts the use of Ch. 61 is likely more prevalent because of its more rural character. It is therefore possible that a tax equity issue exists there as well as in New Hampshire.

Insights Gained from Interviews with Local Tax Assessors

We chose eleven “typical communities” and interviewed municipal officials about differences and similarities in the administration of the use value taxation system and, more importantly, for this study, local attitudes about the tax. We looked at the amount of land in current use (# of parcels in MA) and the median household income by quintile. In New Hampshire, we have chosen the three communities in the middle household income quintile -- Merrimack, Newmarket, and Nottingham.

Community	MHI Quintile	County	CU %
Low Current Use %			
Merrimack	3	Hillsborough	20.0
Medium Current Use %			
Newmarket	3	Rockingham	45.0
High Current Use %			
Nottingham	3	Rockingham	59.4

In Massachusetts, with the exception of the very high number of parcels, we interviewed the community in the high and low quintiles of each category.

Community	MHI Quintile	County	# 61 Parcels
Low 61 Parcels			
Topsfield	1	Essex	25
Brockton	5	Plymouth	24
Medium 61 Parcels			
Wrentham	1	Norfolk	78
Spencer	5	Worcester	80

High 61 Parcels			
Harvard	1	Worcester	153
Haverhill	5	Essex	174
Very High 61 Parcels			
Plymouth	4	Plymouth	232
Carver	5	Plymouth	324

Interview Questions:

Our standard list of questions included the following:

1. *How many parcels do you have in “use value taxation?”*
2. *How many acres in each category?*
3. *What is the assessed value of the land (after the use value tax break is applied)?*
4. *How is that value determined?*
5. *What would the value be without the tax break?*
6. *What is the procedure for granting the tax break?*
7. *What is the city's "philosophy" about preserving land? Does this affect the administration of “use value taxation” in the community?*
8. *What is your experience when someone wants to bring land out of “use value taxation?”*
9. *Specifically, what is your experience of trying to capture the parcel for public use by the city or by a land trust or other mechanism?*
10. *Is there more pressure recently to release “use value” land for development?*
11. *Is this pressure greater or lesser than neighboring communities?*
12. *When land is released for development, what is the usually proposed use – housing, commercial (office), retail, or industrial?*

Insights:

According to our interviews, most land in “use value taxation” has been in this category for a period of 10 years or longer. This is due in part to the extensive enrollments that were made when the laws were first adopted. It would be an interesting historical study to explore the attitudes of taxpayers early on in the process of granting these tax breaks. In fact several assessors told us that they used to hear a lot about “internal equity” from taxpayers who had to bear the brunt of absorbing the residual tax burden in their own property tax bills as an offset to revenue foregone as a result of this tax benefit. Several studies in New Hampshire have tracked the historical trend of properties coming out of “current use” and whether the “land use change tax” is an adequate offset to the earlier foregone revenue (Levesque, 1995, Belowski, 2002).

While it appears that these studies may have been a rear guard action to protect the tax break from significant legislative changes, they do demonstrate that most communities receive a residual benefit when land comes out of current use large enough to calm community concerns.

It also appears to be true that the oversight process in the New Hampshire law is more visible than in Massachusetts, at least in the collection of data and in the exercise of considerable deliberations by the Current Use Board. New Hampshire also has a stronger advocacy community for preserving the tax break.

However, with few exceptions, very little additional land is going “in” to use value taxation. There are a few parcels that “trickle in” from time to time as a property owner chooses to create an orchard or a small hobby farm that generates enough income to meet the low minimum thresholds (\$500 annually in Massachusetts and \$2,500 in New Hampshire). The more aggressive use, at least in Massachusetts, is the Ch. 61b exemption for recreational land. There is some confusion among the assessors we interviewed about the interpretation of the law for golf courses and private sportsmens’ clubs. It would seem that properties receiving this exemption must be open to the public, but the law allows the exemption for lands open to “members of a non-profit organization.” There is also some ambiguity in the requirement to tax Ch. 61b land at the commercial tax rate if a municipality has a differential tax rate system.

Land coming out of “use value taxation” is almost always used for low density residential construction. This is due primarily to the lack of available water and sewer services.

According to our interviews, the issue of “internal equity” (i.e. other taxpayers offsetting the cost of the tax break) is considered unimportant because it is assumed that the tax break only amounts to “pennies on the dollar.” While the statistical analysis indicates that this perception, at least in New Hampshire, is questionable, the concern is rarely heard on the floor of town meetings. As noted above, this was a concern “early on, but we don’t hear much about it nowadays.” Many assessors felt that new residential property owners like the “rural feel” of the community and either do not recognize the “small” differential tax bill feel it entails or find the increased tax cost worth the price.

There are few assessors who indicate there is an explicit “town philosophy” about “use value taxation”, even though some communities in New Hampshire have over 70 percent of their land in one or another form of current use. Some of the assessors told us that there are other boards and commissions that do “worry about this” including the conservation commission (most often mentioned) and the planning board when they update their master plans. However, we discovered that a number of towns already have significant tracts of land in permanent open space categories (public ownership, land trusts, or conservation easements.) This is a much more secure way (although more costly) of protecting land from development.

Anecdotally, a number of officials worried quietly about the impact of a lot of land “coming out” of current use and what it would do to the “rural character” of their communities. This is particularly true of communities on the “urban fringe” or with large tracts of land in former agricultural use, particularly cranberry bogs that are no longer profitable.

Despite the lack of statewide data on acreage in Massachusetts communities, every assessor was able to produce a report listing all “Chapter land” parcels, the acreage, the assessed value and the use value. This data deficiency, a significant impediment to our research, is therefore easily correctable by adding a line to the annual reports provided to the state by each municipality’s assessor listing the amount of acreage in each parcel and in each “Chapter land category.” Every assessor indicated that they would readily comply. Going back historically would be problematic, at least for properties that predate the automated assessing systems that are in use in municipalities today. Even more useful, but more labor intensive, would be to maintain an accurate map of the acreage in a municipal or regional geographic information system. One assessor was able to point out all of the Chapter land parcels on a wall map in the office. It is possible that others could do the same. However, monitoring local, regional, and statewide trends over time particularly related to lands vulnerable to conversion would require a more active integration of assessing records and cartographic systems.

Assessors have limited discretion in granting the tax break and focus primarily on certifying the applications, establishing the legal framework (liens) for granting the break and recovering either the 5 year roll back (Massachusetts) or the 10% land use change tax (New Hampshire). Many agree that the law is good, right, and just, but they leave it to state officials to worry about the details. Many assessors in both states felt that the law(s) could improve, but it is beyond the scope of this study to survey and catalogue these suggestions. An interesting companion study would be to explore the historical case law that has developed in each state as various court cases have challenged aspects of the law.

On one occasion, we heard an anecdote about a large development company using the law to “park” land during a down market and bringing it out, paying the back tax liability, and converting the land to development in a robust market. However, most assessors know the landowners and get a sense of who is using the law for its original intent (most of them) and who might be taking undo advantage of the benefits.

Few towns in Massachusetts that we interviewed have had the ability to intervene and exercise their right of first refusal to purchase land that is coming out of Chapter 61 because funds for this purpose are limited and the window of time (120 days) is often not enough to muster support for such an appropriation. Some communities have established an account so that some portion of the roll back or land use change tax is captured and placed in a dedicated fund for future purchases. One local official advocated changes in the legal requirements for a property owner notifying the community that land is “coming out.” At the present time, communities are presented with a purchase and sales agreement by the owner. The community must match the offer in order to exercise its right of first refusal. “The current time limit [120 days] doesn’t give us adequate time to perform our ‘due diligence’ on the property’s true value, and to marshal the resources necessary to exercise our right.”

Conclusions, Reflections, and Recommendations

Our research design set out to test the equity and efficiency of use value taxation in two states in New England – Massachusetts and New Hampshire. Acknowledging the limitations on the data sets available, we can conclude that there appears to be no inter-municipal equity effect of

median household income on the amount of land receiving this tax break. We were able to establish a significant tax equity impact, at least in New Hampshire, indicating that other taxpayers in the community pay the difference. We were not able to demonstrate a similar effect in Massachusetts. We are also able to conclude that there is no apparent impact on housing production correlated to the amount of land in use value taxation.

As we draw further insights from this study and consider some suggestions for policy makers, we offer several broad themes and a few specifics for the two state regimes in our study. Development pressure makes land valuable and the market will cause conversion. In the latter half of the 20th century when 48 of the 50 states created use value taxation systems, development pressure became more intense as a result of the baby boomer population explosion, suburban expansion, and highway construction. Large lot residential development, campus style office parks, and auto-dependent retail only added to land conversion pressure by making large tracts of land, particularly “cleared” farmland, high candidates for re-use.

Land conversion was also encouraged by the fact that as current farmers approach retirement age, their children are less and less likely to choose to continue the 24/7 responsibilities of active agriculture, particularly with livestock management as a component. Their land IS their retirement program. Unless the land is unusually configured or productive, the land crop to be raised will probably be a subdivision.

Forestland may be more sustainable because it does not require as much active management. This is evident in New Hampshire where a considerable portion of the land is managed in this category. We wonder, however, whether recreation land without a defined public purpose should get this tax break.

While our study did not document the differential impacts of use value taxation as a protection against development, it is clear to us that the law acts as a “circuit breaker” in communities on the fringe. Those communities with lower densities had correspondingly higher percentages of land or parcels receiving the tax break. When properly applied with its original intent of protecting open land from development, it appears that those communities with rapidly appreciating land markets can stave off a wholesale conversion to residential or commercial development with reasonable success, even if only for the short term. Of course, in New Hampshire this comes at the cost of higher tax burdens on the rest of the community, a price this community may be willing to pay.

While the Massachusetts law allows municipalities the right of first refusal upon land conversion, few towns we interviewed take advantage of this provision. Towns with limited financial resources do not have the fiscal capacity to engage in this practice. One New Hampshire official was surprised that this provision existed in Massachusetts and would advocate the same provision be added to the current use law in the Granite State.

While we heard only one anecdote to this effect, it is clear that the laws can be exploited by speculators. This is particularly true in a cyclical land market. When the market is down, a landowner, regardless of future intention, can place the land in an exempt category and meet the minimum requirements for forest management or agricultural income. When the market

rebounds, the “penalty” for bringing the land out of use value taxation in both states is easily offset by the increase in land value.

Finally, the use value tax break has not been sufficient to stem the tide of development by itself. Many municipalities are worried that they are vulnerable to significant and potentially overwhelming changes in the character of their community and the consequent demand for additional services. “We’re not ready and things could change quickly.” Those fortunate to have the fiscal capacity to permanently protect lands through purchase, or the political clout to get the state or federal government to do that for them, are more secure.

One last point: in reviewing our findings, we advocate a much more comprehensive strategy for collecting and managing the land data that are already available under these regimes. With today’s technology, there is ample opportunity to secure and harvest the data that tax assessors have in their offices. Local officials, cooperating regionally, could easily add time series data to an existing baseline of information, and, with a simple requirement for electronic boundary files to be submitted by property owners, a computer cartographic database could be assembled and updated with the annual filings of owners seeking to maintain their exemptions. These data would be immensely helpful to a more thorough analysis of the impact of use value taxation. Specifically, based on our research and what we have heard from the assessors, we recommend:

- a. Change the tax assessors form in Massachusetts to capture the acreage in “Chapter lands”
- b. Add right of first refusal to New Hampshire law

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Appendices

Summary of MGL Chapters 61, 61 a & 61 b

Prepared for CURP by James Hlawek

Part I-Title IX of the General Laws of Massachusetts includes several Chapters related to taxation. Chapters 61, 61a, and 61b relate to special provisions for assessing property tax on open space that is classified as a specific type of land. Below is a description of the key provisions of Chapters 61, 61a, and 61b.

Chapter 61 (Classification and Taxation of Forest Lands and Forest Products)

What is Chapter 61 property and how does land become Chapter 61 property?

Land owners can seek to have land classified as Chapter 61 property if they own at least ten contiguous acres of land, not including any space that is covered by buildings. Chapter 61 property is limited to forest land. To have the forest land classified as Chapter 61 property, the owner must complete a ten-year forest management plan, which consists of a comprehensive schedule of timber management activities to be conducted over the next ten years, including thinning, harvesting, and construction of access roads. The owner must then submit the forest management plan and a Chapter 61 application to the State Forester demonstrating a commitment to improving the “quality and quantity” of timber on the land. The State Forester then decides whether to certify the land as Chapter 61 property. If the State Forester refuses to certify the land, then the owner may appeal. The first step of the appeals process is for the State Forester to convene a three-person panel for their independent decision. If the panel refuses to certify the land as Chapter 61 property, the owner can further appeal to Superior Court or to the Appellate Tax Board.

If the State Forester does certify the land, the owner still must submit an application to the Board of Assessors of the municipality where the land is located. Assuming the Board of Assessors approves the application, the owner still must pay a products tax of 8% of the fair market value of all forest products cut during the two previous years.

Every ten years, the owner must again go through the certification process. This process includes submission of a new ten-year forest management plan to the State Forester. However, the owner only has to apply to the municipal Board of Assessors once. After the initial certification and municipal approval, continued municipal approval is assumed.

What are the tax advantages of Chapter 61?

Chapter 61 property owners receive significant property tax breaks. Upon certification, the property owners are assessed tax at the commercial tax rate multiplied by five percent of the fair market value of the property (as a comparison, non-Chapter 61 property owners are typically assessed tax at the applicable tax rate multiplied by somewhere between 90 and 100 percent of the fair market value of the property).

What are the advantages to the municipality?

The municipality receives the advantages of open space and the opportunity to preserve the open space. In return for the tax advantages given to the property owner, the municipality receives the option to purchase the property and maintain it as open space whenever the owner announces a plan to sell the land or to convert the land to commercial, industrial, or residential usage (with the exception of a conversion to a residential usage for the personal use of the owner). If the owner plans to sell the land, the municipality has 120 days to match any bona fide offer. If the owner plans to convert the land to commercial, industrial, or residential usage, the municipality has the right to purchase the land at its fair market value, as determined by an independent appraiser. The municipality can also transfer their option to a non-profit organization.

What penalties does an owner face for failing to preserve the Chapter 61 status of property?

An owner who decides not to maintain the Chapter 61 status of forest land must pay a withdrawal tax to the municipality. The withdrawal tax is equal to the difference between the amount of property tax that the owner would have paid if the land were non-Chapter 61 property and the amount that the owner did pay under Chapter 61 since the last certification period, or five years, whichever is longer, plus interest.

Why wouldn't a property owner seek Chapter 61 certification?

For starters, Chapter 61 only applies to forest land. Owners of agricultural or recreational land, for example, cannot seek Chapter 61 certification (although they can seek Chapter 61a and 61b status as described below). Also, preparing a ten-year forest management plan is a significant burden. However, the withdrawal tax that is described as a penalty does not function as a penalty. The tax is nothing more than forcing the owner of converted Chapter 61 property to yield past property tax breaks. Thus, an owner of forest property who is considering Chapter 61 certification has nothing to lose through applying other than the burdens of certification since the worst that can happen is that the Chapter 61 owner may someday have to pay the non-Chapter 61 property taxes that they would have otherwise had to pay plus interest.

Chapter 61a (Assessment and Taxation of Agricultural and Horticultural Land)

What is Chapter 61a property and how does land become Chapter 61a property?

To be classified as Chapter 61a property, land must be “actively devoted” to agricultural or horticultural usage. Under Chapter 61a, land is “actively devoted” to agricultural or horticultural usage if it has been used primarily or directly to raise or grow animals, products derived from animals, food for consumption, animal feed, tobacco, sod, flowers, trees, nursery products, greenhouse products, or forest products for sale in the regular course of business for at least two years. Also, the agricultural or horticultural usage must have generated at least \$500 in sales (the floor starts at \$500 in total sales and increases slightly if the property is larger than 5 acres). The “actively devoted” property must be at least 5 contiguous acres. Buildings on the land along with the land where residential property exists do not count towards the 5 contiguous acres and do not qualify for Chapter 61a tax breaks.

To have land classified as Chapter 61a property, the owner must apply for Chapter 61a certification from the municipal Board of Assessors. The property owner must renew the certification annually.

What are the tax advantages of Chapter 61a?

Owners of Chapter 61a land are assessed property taxes at the commercial tax rate multiplied by the value of the land for its respective agricultural or horticultural usage. The value of land for different agricultural or horticultural usage is determined by the Farmland Valuation Advisory Commission (FVAC). Each year, the FVAC releases the per acre value of Chapter 61a land based on the specific agricultural or horticultural usage. For each specific agricultural or horticultural usage, the FVAC establishes a range of per acre values depending on whether the productivity of the land is below average, average, or above average. For example, in 2001, the FVAC established that the per acre value of Chapter 61a property for apple orchards was \$1414, \$1768, or \$2121 depending on whether the productivity of the land was below average, average, or above average, respectively.

Since non-Chapter 61 property is taxed at the commercial tax rate multiplied by 90 to 100 percent of the full fair market value of the property, the amount of the Chapter 61a tax savings is the commercial tax rate times the reduction in the value of the property attributed to the owner's decision to use the land for agricultural or horticultural purposes, rather than for commercial, industrial, or residential purposes. For example, if an apple orchard with average productivity has a fair market value of substantially over \$1768 (that is, if a residential or commercial developer would pay substantially over \$1768 to purchase the land), then Chapter 61a property tax savings are significant. But if the fair market value of the apple orchard is equal to or only slightly above \$1768 (that is, if agricultural usage is the most economically efficient use of the land or if residential or commercial developers would only pay slightly over \$1768 to purchase the land), then the Chapter 61a tax savings are not likely to be significant. Accordingly, owners using their land for apple orchards in areas where the full fair market value of land is only slightly over \$1768 have minimal incentive to seek Chapter 61a status. In this way, Chapter 61a provides the strongest tax advantages to owners of land used for agricultural or horticultural lands in areas ripe for development where the full market value of the land is high. Thus, Chapter 61a is designed to give property owners incentives to prevent development in areas threatened by sprawl.

To further demonstrate this point, the average fair market value of an acre of land in Sudbury is approximately \$193,000. Thus, an owner of a Chapter 61a apple orchard in Sudbury would receive an enormous tax advantage. On the other hand, the average fair market value of an acre of land in New Salem is only approximately \$1975. The owner of the Chapter 61a apple orchard in New Salem would receive only a minimal tax advantage.

What are the advantages to the municipality?

The municipality receives the advantages of open space and the opportunity to preserve the open space. In return for the tax advantages given to the property owner, the municipality receives the option to purchase the property and maintain it as open space whenever the owner announces a plan to sell the land or to convert the land to commercial, industrial, or residential usage (with the exception of a conversion to a residential usage for the personal use of the owner). If the owner plans to sell the land, the municipality has 120 days to match any bona fide offer. If the owner plans to convert the land to commercial, industrial, or residential usage, the municipality

has the right to purchase the land at its fair market value, as determined by an independent appraiser. The municipality can also transfer their option to a non-profit organization.

What penalties does an owner face for failing to preserve the Chapter 61a status of property?

An owner who decides not to maintain the status of Chapter 61a property must pay a penalty tax to the municipality. The owner must pay the higher of:

- The roll-back tax, which is the difference between the amount of property tax that the owner actually paid and the amount the owner would have paid if the property had been taxed at its full fair market value for the prior five years.
- The conveyance tax, which is the sales price of the land (or the fair market value if the owner independently converts the property to non-Chapter 61a usage) multiplied by the conveyance tax rate, which is 10 percent if the property loses its Chapter 61a status the first year after the owner's acquisition of the property, 9 percent if it loses its status the second year after acquisition, 8 percent if it loses its status the third year after acquisition and so forth. Thus, if the owner maintains Chapter 61a property over ten years, there is no conveyance tax rate, and the owner automatically pays the roll-back tax.

Why wouldn't a property owner seek Chapter 61a certification?

Owners who are considering whether to classify their agricultural or horticultural land as Chapter 61a property would probably not want to do so if there is a strong likelihood of paying the conveyance tax. Unlike the "penalty" for failing to preserve the Chapter 61 status of forest land, the conveyance tax functions as a penalty since the owner would not have to pay the conveyance tax if the land had not been classified as Chapter 61a property. Thus, if a property owner has serious doubts about maintaining the Chapter 61a status of property for at least ten years, then the owner may not want to seek Chapter 61a status.

Also, as mentioned above, the relative advantage of Chapter 61a status depends on the full fair market value of the land. For property in which the full fair market value is equal to or only slightly above the FVAC value, the minimal Chapter 61a savings may not even be worth the administrative burden of annual applications to the municipal Board of Assessors.

Chapter 61b (Classification and Taxation of Recreational Land)

What is Chapter 61b property and how does land become Chapter 61b property?

To be classified as Chapter 61b property, an owner must have five or more acres of contiguous land that is either maintained in a substantially natural condition or devoted to recreational outdoor purposes (including hiking, golf, soccer, horseback riding, and hunting) that are open to the public. Buildings on the property or the land on which residential property resides do not count towards the five contiguous acres and do not qualify for Chapter 61b tax advantages.

To have land classified as Chapter 61b property, the owner must apply for Chapter 61b certification from the municipal Board of Assessors. The property owner must renew the certification annually.

What are the tax advantages of Chapter 61b?

Owners of Chapter 61b land are assessed property tax at the commercial tax rate multiplied by the value of the land for recreational purposes (as determined by the municipal assessors). However, the assessors cannot assess the value of the land for recreational purposes at over 25 percent of the full fair market value of the property. Note that unlike Chapter 61a property, there is an independent assessment of the value of a specific piece of land based on its actual use. Also, note that unlike Chapter 61a property, there is a cap on the value of the land based on its actual use (i.e., the basis for determination of Chapter 61b property taxes) relative to the full fair market value of the property. Thus, unlike Chapter 61a property owners, Chapter 61b property owners have a guaranteed minimal tax savings.

What are the advantages to the municipality?

The municipality receives the advantages of open space and the opportunity to preserve the open space. In return for the tax advantages given to the property owner, the municipality receives the option to purchase the property and maintain it as open space whenever the owner announces a plan to sell the land or to convert the land to commercial, industrial, or residential usage (with the exception of a conversion to a residential usage for the personal use of the owner). If the owner plans to sell the land, the municipality has 120 days to match any bona fide offer. If the owner plans to convert the land to commercial, industrial, or residential usage, the municipality has the right to purchase the land at its fair market value, as determined by an independent appraiser. The municipality can also transfer their option to a non-profit organization.

What penalties does an owner face for failing to preserve the Chapter 61b status of property?

An owner who decides not to maintain the status of Chapter 61b property must pay a penalty tax to the municipality. The owner must pay the higher of:

- The roll-back tax, which is the difference between the amount of property tax that the owner actually paid and the amount the owner would have paid if the property had been taxed at its full fair market value (non-Chapter 61b tax rate) for the prior ten years, plus interest.
- The conveyance tax, which is the sales price of the land (or the fair market value if the owner independently converts the property to non-Chapter 61b usage) multiplied by the conveyance tax rate, which is 10 percent if the property is sold or converted to non-Chapter 61b usage within the first five years of its initial classification, 5 percent if sold or converted between the 6th and the 10th year after its initial classification, and 0 percent if sold or converted after the 10th year. Thus, if the owner maintains Chapter 61b property over ten years, there is no conveyance rate and the owner automatically pays the roll-back tax described in the first bullet.

Why wouldn't a property owner seek Chapter 61b certification?

Owners who are considering whether to classify their recreational land as Chapter 61b property would probably not want to do so if there is a strong likelihood of paying the conveyance tax. Unlike the "penalty" for failing to preserve the Chapter 61 status of forest land, the conveyance tax functions as a penalty since the owner would not have pay the conveyance tax if the land had not been classified as Chapter 61b property. Thus, if a property owner has serious doubts about maintaining the Chapter 61b status of property for at least ten years, then the owner may not want to seek Chapter 61b status.

Summary of NHRSA 79-A

Prepared for CURP by Charles Coffin

Overview:

New Hampshire RSA 79-A, herein known as “Current Use,” was created in 1973 to maintain a healthy and attractive environment within the state. This was done to preserve recreational, forestry, wildlife, and agricultural resources. This law prevents the loss of open space due to property taxation rates which would exceed the value of open space usage. This means that an owner of a parcel would incur a large tax burden for owning undeveloped land, potentially motivating them to sell the land for commercial or residential use. To remedy this predicament current use was developed to lower the owner’s tax burden, thereby protecting open space lands. In New Hampshire the owner(s) of said parcels of land are encouraged but not required to implement management practices on their Current Use parcel.

Boards and Committees

The Current Use law is overseen by a board comprised of 14 appointed members: 3 assessors, one Member of both houses of legislature, and various other commissioners and appointed individuals. The role of the board is to maintain the law and to insure that towns and parcel holders are acting appropriately. The board does have the power to change or tailor the Current Use statute to specific cases. The standard for Current Use classification is a parcel of land with at least 10 contiguous acres. However the board does have the power to establish acreage minimums of less than 10 acres. This rule is applied to parcels with certain classifications such as tree farms or wetlands.

The board is also required to reduce current use values by 20% on all recreational land which is open to the public 12 months per year free of charge. This clause only applies if all recreational activities (hunting, fishing, skiing etc.) are permitted, unless the land is deemed unsafe for that particular activity by the board.

Assessing the Land Value:

One of the three appraisers or a selectman of the town can assess land which is being filed for the Current Use classification. Only open space land is evaluated, thereby excluding any buildings or improvements to the parcel. Improvements to land include roads, driveways, groomed lands, and utilities such as septic systems. The land under review is assessed at values which have been previously established by the board for that tax year. When assessing farmland the soil potential index is utilized to deem the fertility and potential for crop outputs. All land is assessed at its best use and at its highest rate of potential return.

Data Sets Utilized

We gathered significant data sets on all of the communities in the study area.

1. Using U.S. Census data, we have a standard data set for communities in both states on ***median household income*** and ***housing production rates*** during the decade between 1990 and 2000.
2. In Massachusetts, using the data from the state Department of Revenue, we have information on the ***general tax policies*** of each community, including ***assessed valuation*** of all parcels and the assessed valuation of all parcels in Chapter 61a, the state's use value taxation regime. We also have ***local tax rates***, including which communities offer a differential (lower) tax rate to residential properties than commercial and industrial properties.
3. In New Hampshire, using data from the current use taxation board, we have information on ***the percentage of land acreage in current use*** under the state's use value taxation regime. In Massachusetts, we have ***the value of land in current use as a percentage of total assessed valuation***.
4. We have information from the Massachusetts Department of Housing and Community Development on the ***linear distance from Boston*** of each of the communities. We will calculate the distance for each of the New Hampshire communities.
5. Using data from the U.S. Department of Agriculture, we have information on the amount and value of land ***in agriculture*** in each community.
6. Finally, we have the ***major highway system*** map for the two states, which we will use to determine proximity to a "limited access highway" (essentially the interstate routes and several state numbered routes).

Communities and Individuals Interviewed

Massachusetts Communities

Brockton: June 1, 2005

Participants:

Bernard Siegel
Paul Sullivan
Francis Bukunt

Summary:

The city of Brockton has a total of twenty-two parcels in Ch. 61 A&B. The Chapter land is broken up within the city into only 61a (orchards, farms, etc.) and 61b (recreation land). There are a total of 164.178 acres in 61a and 196.02 acres in 61b, giving Brockton 360.198 acres in total. Additionally, Brockton currently has 18% of its' land in some tax exemption status. This land is largely comprised of Massasoit Community College and the VA Hospital.

Mr. Siegel, assessor for the city of Brockton, stated that the criteria used by the city are those established by the Massachusetts Department of Revenue. Brockton assesses the land at the residential tax rate (\$10.62) and not their commercial tax rate (\$21.40). Mr. Siegel stated that this was due to the zoning of the areas in which the parcels located. He also noted that Brockton's 61b exemptions, all golf courses, are given to both public and private facilities. This private course exemption was justified as the preservation of greenspace within the municipality. He lastly noted that due to Brockton's dense population the tax burden that is passed on to the community was merely pennies per resident.

Brockton does not have a true philosophy on how to deal with Chapter 61 land when it comes out. They follow the state statute on the procedures to remove lands and the tax penalties which are placed on the parcel owner. Mr. Siegel noted that the Conservation Commission chairman is an advocate for purchasing such parcels, however, the city does not possess the financial ability to protect said parcels.

Mr. Siegel went on to explain how most, if not all the land in Ch 61a will come out of protection and into the open market. He speculates that it will all be used for residential development. Most of the families with farms/orchards in Brockton have been in the agricultural business for generations. However, the farmers or the offspring of the farmers have indicated that the land will be sold, posing not a question of if, but of when.

Carver: June 21, 2005

Ellen Blanchard, Assessor for the Town of Carver

Carver, Massachusetts has a total of 410 parcels in Chapter 61, 61a, & 61b. Chapter 61 is composed of 23 parcels totaling 150 acres, 61a has 378 parcels totaling 9,200 acres, and 61b has 9 parcels equaling 320 acres.

Ellen Blanchard, town assessor of Carver, noted that the land is assessed at the the rates set by the Farmland Valuation Advisory Commission (FVAC) and by the Department of Revenue. Carver taxes Chapter lands at their commercial rate of \$17.68 per \$1,000.

Carver has an active preservation program for open space. The town uses a philosophy off employing all roll back taxes incurred on Chapter lands. These funds are earmarked only for the purpose of purchasing land for preservation in the future. This fund was established in town meeting in 2002. Carver also has a Land Use Committee. This board makes recommendations to the town selectman on what to do, i.e. invoke the right of first refusal, or allow the parcel to be sold to a private developer.

Currently there is Chapter land coming out in Carver. This is largely due to the development plans of both A.D. Makepeace and Ellis D. Atwood companies. They currently are selling off some of their frontage lots and plan to develop these lands into housing. Ellen Blanchard believes that the pressure facing Carver is for residential production and is about equal to its surrounding communities.

Harvard: June 9, 2005

Angela Marrama, Assessor

The town of Harvard, MA has 150 parcels classified as Chp. 61, 61a, or 61b. There are 938.9 acres in Chp. 61, 1,469.34 acres in 61a, and 233.77 in Chp. 61b, totaling 2642.01 acres in total Chp 61 lands.

Town assessor Ms. Marrama noted that she follows the state mandates on how Chapter lands are assessed. Most Chapter land in the community is assessed at the medium value, with exceptions for parcels with large wetlands, or orchard and farms with poor outputs. Harvard's current tax rate is \$10.01 per thousand.

Harvard has a very proactive approach on how to deal with lands when they come onto the market. Ms. Marrama stated that Harvard is extremely active in employing its right of first refusal, purchasing about half of the parcels over the last five or ten years. The parcels that are not being purchased by the community are converting to residential spaces. Most of the parcels coming out are owned either by older individuals who are looking to retire or by the children of old or deceased farmers who are not interested in pursuing agriculture.

Ms. Marrama believes that the pressure on the town is due to not only the demand for housing, the natural beauty of the town and its resources (orchards, lakes, etc.) but also the strong school system. Ms. Marrama also mentioned issues which stem from the former military base Devens, an area which does contain some of Harvard's land. Ms. Marrama stated that the conversation regarding the base and its land ownership is a hot topic within the community.

Haverhill: May 19, 2005

Steve Gullo, Assessor

The City of Haverhill, Massachusetts has 161 total parcels of land falling under Chapters 61, 61a, and 61b. These parcels constitute Haverhill's 36 square miles of Chapter land, with 2,483.48 acres of agricultural land, 293.91 acres of recreational land, and 148.59 acres of forested land.

Steve Gullo, assessor for the City of Haverhill, noted that when issuing a tax break for Chapter 61 land, the Massachusetts Department of Revenue (DOR) sets the criteria. For example, DOR weighs land values differently, depending on whether the land is farmed for vegetables or vineyards. Haverhill taxes Chapter land at the commercial rate.

When moving land out of Chapter 61, property owners must notify the mayor, assessor, city clerk, and others in writing. The city has the first right of refusal on real estate offers and has 120 days to purchase land coming out of Chapter 61. Haverhill can purchase such land through a surrogate, like the Haverhill Open Space Committee. In general, Haverhill has a "philosophy" about open space, in that it wants to keep as much Chapter land as possible to counteract urbanization. Despite this philosophy, there is a lot of pressure to move land out of the Chapter 61 designation.

When land comes out of Chapter 61, there are two ways that it is dealt with. One is that if the land owner has been there less than 10 years, they must pay a conveyance tax to convert the land to another use. The rate of payment is a descending percentage that depends on the length of an owner's tenure under Chapter 61. If the property owner has kept her land for more than 10 years and wants to take her land out, she is expected to pay a rollback tax. The rollback tax is paid on the amount that the owner did not pay over the years that her land qualified for the Chapter 61 tax breaks. Haverhill has a lien on Chapter 61 property to protect its interests in the event of non-payment.

Most of the land that comes out of Chapter 61 in Haverhill goes to residential use. That sector also bears the burden of paying the taxes for those with land in Chapter 61, with approximately 80% of taxes paid by residents and about 14% paid by commercial or industrial property owners.

Town of Plymouth – June 7, 2005

Anne Dunn, Assessor

The Town of Plymouth, Massachusetts has a total of 668 parcels of land that receive tax breaks through Chapter 61, 61a, or 61b. 6,716.52 acres are defined as Chapter 61 forested land, 4,520.56 acres are defined as Chapter 61a agricultural land, and 7,131.77 are defined as Chapter 61b recreational land.

Town of Plymouth assessor Anne Dunn noted that many land owners began to take advantage of Chapter 61, 61a, and 61b in 1987 and that it is still taken advantage of today. Plymouth assesses Chapter land at about 5% of the market value and has a single tax rate of 10.43%.

When moving land out of Chapter 61, property owners must notify the mayor, assessor, city clerk, and others in writing. The city has the first right of refusal on real estate offers and has 120 days to purchase land coming out of Chapter 61. Plymouth can purchase such land through a surrogate, like the Plymouth Preservation Committee. Ms. Dunn said that there is not necessarily a “philosophy” about open space in Plymouth, but that residents do have concerns about the additional services – water, sewers, schools – new residential development will require.

When land comes out of Chapter 61, there are two ways that it is dealt with. One is that if the land owner has been there less than 10 years, they must pay a conveyance tax to convert the land to another use. The rate of payment is a descending percentage that depends on the length of an owner’s tenure under Chapter 61. If the property owner has kept her land for more than 10 years and wants to take her land out, she is expected to pay a rollback tax. The rollback tax is paid on the amount that the owner did not pay over the years that her land qualified for the Chapter 61 tax breaks.

Dunn noted that compared with other towns, Plymouth probably faces less development pressure from the commercial and industrial sectors, with most new buildings being residential. In 2000, Plymouth had about 15,600 single-family dwellings. In 2005 Plymouth had 16,831 single-family dwellings. With many land owners set to bring parcels out of Chapter 61, particularly Chapter 61a agricultural land, Plymouth is likely to see even more residential development.

Spencer: June 13, 2005

Donald Clough
Richard Foisy

Spencer has 4038 acres of Chapter 61a and 1030 acres of Ch 61 B. There are no parcels classified under Ch. 61.

“We are nervous. The pressure is on us and we do not have adequate facilities to accommodate the growth that would come. We don’t have town water or sewer. The demand for additional school expenditure and police protection would overwhelm our capacity to respond.”

While most land coming out of chapter classification is converted to residential use, there have been some small commercial or mixed use developments. Some older farming families are “cashing out.” There is quite a bit of state owned land in Spencer that is permanently protected.

Topsfield: June 6, 2005

Pauline Evans, Principal Assessor

Topsfield has 306 acres in Ch. 61 A, 547 acres in 61 B, and 164 in 61. There is also a lot of land in town in permanent conservation.

“We’ve seen several parcels come out of Chapter classification and become the basis for a Ch. 40-b [affordable housing] proposal. We are almost ‘built out’ under current zoning. However there is pressure to develop some of these parcels. This creates a demand for services including schools and infrastructure. We have limited water available so that is a constraint and we rely on septic systems.”

The town monitors owners of lands in Chapter classification at least every few years to make sure that the minimum thresholds are being met. “Owners who get the classification have responsibilities. This is not just a tax break.” Land which has come out of Chapter classification has been used for residential development. The town has not exercised its right of first refusal on recent conversions.

There are loopholes in the law, which lawyers can exploit, particularly in Ch 61 B.

“We are a small town with a rural character. I worry, a bit, that things are changing and that we will see more development. However, we have a lot of permanently protected land that should keep us from being overwhelmed.”

Wrentham: June 17, 2005

Lisa McDonald, Assessor
Steven Boudreau, Town Manager

The town of Wrentham has 72 parcels in various Chapter land classification. Assessor McDonald’s overview provided the following information:

	# of Parcels	Acres	Full Ass. Val.	Use Value
Ch. 61	10	269.13	\$ 6,787,780	\$ 1,460,870
Ch. 61 A	35	964.87	\$23,170,450	\$ 6,976,610
Ch. 61 B	27	466.47	\$18, 007,040	\$ 9,905,010
Total	72	1,700.47	\$47,965,270	\$18,342,490

The assessor felt that, while she was not the best person in town to express the town’s philosophy, she felt that the town is very concerned about preserving land. There are several

conservation and open space groups and committees. She felt that the conservation commission was the best resource.

The Board of Selectmen did try to get a land trust to purchase two larger parcels that were just withdrawn from Ch. 61. They were not successful and the town waived its right of first refusal. Due to tough economic times, taxpayers would find it difficult to vote to buy the land at market value without the use of grants or land trusts, etc. Due to the real estate market over the past several years, it has been advantageous for developers to purchase the land and pay the roll back or withdrawal penalty taxes. It has been very profitable and that is why many communities have seen a lot of land withdrawn from the Ch. 61 programs. “The market is hot and the deals are too good to pass up. We have several old families with property going back generations. They will probably hang on. We had 100 acres donated to the town by one family.”

Most of the proposed uses for the land withdrawn have been for residential development. One parcel located on Washington St. (Route 1) formerly a Llama farm will be developed commercially as a mixed use property.

The issue of internal equity comes up but taxpayers don’t really know how much they would lower their own taxes. “We like our small town feel and this is a small price to pay.”

According to town manager Steve Boudreau, Senator Resor is working on some changes to the Chapter lands laws. “We don’t have enough time in the 120 window to perform our ‘due diligence’ with simply a purchase and sales agreement to establish the fair market value. Going to town meeting with limited data on a big ticket item like purchasing land isn’t worth it.”

New Hampshire Communities

Merrimack – June 2, 2005

Brett Purvis, Assessor
Walter Warren Community Development Director

Merrimack has 3,272 acres in current use in 184 parcels. The total appraised value of the parcels is \$28, 659,115. The total assess value under current use is \$438,408 – a 98.5% reduction in value. Only 290 acres are in agriculture. The balance, 2,982 acres, is in various forest land classifications (see page 2).

There are various triggers in the law about when the land is determined to be “out of current use. This allows us some flexibility about when we change the assessment and how the fair market calculation is applied. We assess the change on a lot by lot basis when the bulldozer arrives on the site. This is when the fair market value is truly established. At this point we apply the 10% land use change tax. In the past, we applied the change tax when the property as a whole was released from current use. Recent court cases have helped clarify the appropriate opportunity for the community to assess the tax roll back.”

Farmland is assessed based on a flat rate multiplied by the soil potential index. This allows a fairer determination of the quality of the land for agricultural products. The county conservation office makes this determination based on a soil suitability determination.

Converted land is used are primarily for residential construction.

Newmarket: June 3, 2005

Andy Blais, Assessor

Newmarket has 3,480 acres in current use. 647 acres are in agricultural classification. The balance, 2,833 acres, are in various forest classifications (see page 2).

A lot of the forest land is “backland” without frontage which limits the value. Most properties have been in current use over 10 years. Most land being converted is used for residential development. There is an effort by the Conservation Commission to monitor the land in current use and its potential for conversion. “Most of our landowners have a sense of stewardship. When they near retirement, they want to work with us to preserve the character of the town. At least one has given his development rights to the town.”

“We rarely hear that this tax is unfair. Residents like the rural nature of Newmarket and moved here because of it. They are willing to pay this small price to keep it. ‘We don’t want to become like our neighboring communities’ is a sentiment I often hear. We are under potential pressure because of our proximity to I-95 as the growth moves out. But things are relatively quiet now.”

Nottingham: June 27, 2005

Heidi Seaverns, Assessing Clerk

The town of Nottingham, New Hampshire has 388 parcels of land in current use. In total, these parcels constitute 17,215.023 acres of farm and forested land. Of that, 326.06 acres (20 parcels) fall into the “forest land with documented stewardship” category.

The assessed value of the land in current use is set by the state. Land remains in current use in perpetuity unless land owners change uses. Ms. Seaverns noted that land owners can change the use of a small portion of a parcel or they can change the use of an entire parcel. When a parcel comes out of current use, the land use change is assessed at 10% of the fair market value. Land owners pay a rollback tax when they change uses. Nottingham is under a lot of development pressure. The vast majority of land coming out of current use therefore goes toward residential development.

Nottingham does not have a “philosophy” about preserving land per se, although they do have a relatively active conservation commission. The commission was able to purchase two easements for the town last year. When land comes out of current use, however, Nottingham does not have the first right of refusal on land purchases.

Penalties for Land Use Change:

Land which has been classified as open space under the Current Use law is subject to a Land Use Change Tax (LUCT) when a parcel is being sold for development or another use. If and when the parcel no longer meets the criteria for Current Use classification it is subject to an exit or penalty tax. The land being transferred is taxed 10% of the full and true value (market value). This value is assessed when the development or changes begin to occur. In addition to the 10%, the land owner also must pay the annual real estate tax, which is due when the land is taken out of the Current Use classification.

Land use is considered changed when and only when construction begins causing physical changes to the earth. These changes include construction of roads, buildings, utilities or services to or from existent or nonexistent structures, and excavating or grading a future site. The only time when a physical land change does not call for the land use tax to be levied is when the state takes land via eminent domain or when the land is changed from one current use type to another, i.e. park to farm, or open land to conservation land.

Land which was once classified as Current Use can return to its former status. If land is taken out of Current Use and is developed then it can no longer be deemed open space. But if land is taken from Current Use and it is not developed it may be able to once again be classified as such. The land however may no longer be the required acreage which would be necessary for a open space classification. Such an issue can be brought to the board for review and the chairman is allowed to make the final decision on the status of the land. If the land is once again deemed as Current Use, then only the undeveloped land can return to the Current Use tax structure.

Use of Revenues Generated:

In RSA 79-A there is a provision that allows municipalities to create a fund separate from the general fund, known as Land Use Change Tax Fund. Revenues collected can be transferred from the Land Use Change Tax Fund to a conservation fund. Towns have the ability to establish the percentage of funds which are transferred from the LUCTF to the conservation fund. If there are funds left over in the Land Use Change Tax Fund at the end of the annual fiscal year that have not been transferred, they may be used as general fund revenue for the next fiscal year.

Analysis of Current Use:

Current Use was established to prevent large scale mass development. This has been done through tax reductions to those individuals participating. This program is one which seems to benefit not only the landholder but also the municipality in which the land is held. In a study performed by Dr. Douglas Morris of the University of New Hampshire, he found after studying ten municipalities that initially the towns were recouping their tax abatements along with a hefty surplus. This was due to the Land Use Change Tax (LUCT). In his study of Current Use lands from 1980-1987, Morris found that towns were gaining 56% more tax dollars than they were providing in reductions to people utilizing Current Use. Following the study Morris hypothesized that the longer a parcel was held in Current Use, eventually the revenues which municipalities would reap were likely to diminish significantly.

The study was once again run in 1995 for the transactions from 1988-1994 by Charles A. Levesque. The findings from this study proved to give Morris' prediction some accuracy. Municipalities were only experiencing a rate of 35% return for profit. Municipalities were still experiencing a profit nonetheless, but a severe drop from that of only a few years prior. The study was run once again in 2002 for data for Current Use transactions from 1995-2000. What was found is that municipalities were now only experiencing a rate of return on average of 9.3%, a far cry only two decades previous.

In the 2002 study, the researcher, Cynthia L. Belowski found the biggest change of land usage in the municipalities of Merrimack and Londonderry, located in Rockingham and Hillsborough counties respectively. Each town saw their average plot size decrease dramatically. In Merrimack during the 2nd study the average plot size dropped from 10 acres to a mere 1.9. The same phenomenon occurred in Londonderry which saw a decrease from 8.5 to only 2.2 acres per lot on average. This large drop in plot size has been attributed to the town's location in proximity to I-93. This study provides an interesting snippet of what one can only assume is happening all over the towns within the three New Hampshire counties, (Stafford, Rockingham, & Hillsborough) in our study.