

Land Use Change Tax Agreement

This Land Use Change Tax Agreement ("Agreement") is entered this 6 day of June, 2016⁷ ("Effective Date"), by and between Pillsbury Realty Development, LLC ("Landowner"), a New Hampshire limited liability company having a principal place of business at 15A Pillsbury Street, Londonderry, New Hampshire 03103, and the Town of Londonderry ("Town"), a New Hampshire municipality, having its administrative offices at 268B Mammoth Road, Londonderry, New Hampshire 03103.

Whereas, Landowner is the principal developer of the so-called Woodmont Commons Planned Unit Development ("Woodmont"), a mixed-use real estate development comprising approximately six hundred acres located in the Town of Londonderry;

Whereas, Landowner owns the vast majority of the real property upon which Woodmont is to be developed pursuant to its Woodmont Commons Planned Unit Development Master Plan approved by the Town of Londonderry Planning Board on October 2, 2013.

Whereas, certain of Landowner's real property located within Woodmont is presently open space enrolled in the current use taxation program pursuant to NHRSA Chapter 79-A;

Whereas, in commencing construction activities for the development of Woodmont, certain of the enrolled acreage will be changed to a use which no longer qualifies for current use assessment; and,

Whereas, disqualification of real property enrolled in current use triggers an obligation for Landowner to pay a land use change tax.

Now therefore, for consideration received, Landowner and the Town agree as follows:

1. The following parcels of real property are located within Woodmont and contain acreage which is presently enrolled in current use: 15 Pillsbury Road (Parcel 010 041 0) and 7 Pillsbury Road (Parcel 010 041 2) ("the Enrolled Parcels"). Within the Enrolled Parcels, approximately one hundred eighty seven (187) acres of unimproved real property are enrolled in current use ("the Enrolled Acreage").
2. The commencement of construction of the so-called Access Road, a new connection extending between Garden Lane and Pillsbury Road, shall constitute actual construction on the Enrolled Acreage and within the Woodmont planned unit development site such that physical changes in the earth relative to sitework, roadbuilding, grading, installation of utilities and stormwater management features are actively and substantially occurring. Reference is hereby made to NHRSA 79-A:7, IV(a).
3. The total full and true value of the land comprising the Enrolled Acreage as of the date of changes in the current land use is Five Million Six Hundred Eighty Six Thousand Dollars (\$5,686,000) ("the Total Assessed Value").
4. The Total Assessed Value equates to a land use change tax of Five Hundred Sixty Eight Thousand Six Hundred Dollars (\$568,600) ("LUCT"), which shall be documented by the

parties upon Form A-5 entitled "Land Use Change Tax", as the same is published by the New Hampshire Department of Revenue Administration. The LUCT shall be paid by Landowner to Town within thirty (30) days of Landowner's receipt of LUCT invoicing.

5. The land valuation and land use change tax methodology used herein, and as stated as of the effective date hereof, shall be considered for use hereafter with respect to the disqualification of Woodmont real property enrolled in current use. The timing of said disqualification shall occur in accord with NHRSA 79-A:7, IV(a).
6. This Agreement represents the entire agreement of the parties relative to Woodmont current use disqualification and land use change taxes. Any modification to or amendment of this Agreement shall require a writing signed by all parties.
7. This Agreement shall be interpreted under the laws of the State of New Hampshire. Any litigation rising in relation to this Agreement shall be filed in the Rockingham County Superior Court for the State of New Hampshire.

In Witness Whereof, the parties hereby executed this Agreement as of the Effective Date.

Pillsbury Realty Development, LLC
Landowner

By: 

Michael L. Kettenbach
Its Manager

Town of Londonderry,
through its Town Council

By: 

Town Councilor

By: 

Town Councilor

By: 

Town Councilor

By: 

Town Councilor

By: 

Town Councilor

TITLE V

TAXATION

CHAPTER 79-A

CURRENT USE TAXATION

Section 79-A:7

79-A:7 Land Use Change Tax. –

I. Land which has been classified as open space land and assessed at current use values on or after April 1, 1974, pursuant to this chapter shall be subject to a land use change tax when it is changed to a use which does not qualify for current use assessment. Notwithstanding the provisions of RSA 75:1, the tax shall be at the rate of 10 percent of the full and true value determined without regard to the current use value of the land which is subject to a non-qualifying use or any equalized value factor used by the municipality or the county in the case of unincorporated towns or unorganized places in which the land is located. Notwithstanding the provisions of RSA 76:2, such assessed value shall be determined as of the actual date of the change in land use if such date is not April 1. This tax shall be in addition to the annual real estate tax imposed upon the property, and shall be due and payable upon the change in land use. Nothing in this paragraph shall be construed to require payment of an additional land use change tax when the use is changed from one non-qualifying use to another non-qualifying use. The tax imposed by this section is a tax on the change of use of the land and not a tax on the land itself. The property tax exemptions under RSA 72:23 shall not apply to the land use change tax and no person or entity shall be exempt from payment of the land use change tax.

I-a. Land which is classified as open space land and assessed at current use values shall be assessed at current use values until a change in land use occurs pursuant to RSA 79-A:7, IV, V, or VI.

II. The land use change tax shall be due and payable by the owner, or by the responsible party pursuant to RSA 79-A:7, VI(e), at the time of the change in use to the town or city in which the property is located. If the property is located in an unincorporated town or unorganized place, the tax shall be due and payable by the owner or responsible party at the time of the change in use to the county in which the property is located. Moneys paid to a county from the land use change tax shall be used, in addition to any other funds, to pay for the cost of the services provided in RSA 28:7-a and 7-b. The land use change tax shall be due and payable according to the following procedure:

(a) The commissioner shall prescribe and issue forms to the local assessing officials for the land use change tax bill which shall provide a description of the property which is subject to a non-qualifying use, the RSA 75:1 full value assessment, and the tax payable.

(b) The prescribed form shall be prepared in quadruplicate; the original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the land use change tax along with a special tax warrant authorizing the collector to collect the land use change tax assessed under the warrant; the quadruplicate copy of the form shall be retained by the local assessing officials for their records.

(c) Upon receipt of the land use change tax warrant and the prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice thereof. Such bill shall be mailed, at the latest, within 18 months of the date upon which the local assessing officials receive written notice of the change of use from the landowner or his or her agent, or within 18 months of the date the local assessing officials actually discover that the land use change tax is due and payable. Upon receipt of payment, but except for proceedings under RSA 79-A:7, VI(e), the collector shall forward the original tax bill to the register of deeds of the county in which the land is located for the purpose of releasing recorded contingent liens required under RSA 79-A:5, VI. The tax bill shall state clearly whether all, or only a portion, of the land affected by the notice of contingent lien is subject to release. The recording fee charged by the register of deeds shall be paid by the owner of the land in accordance with the fees to which the register of deeds is entitled under RSA 478:17-g, I.

(d) Payment of the land use change tax, together with the recording fees due the register of deeds, shall be due not later than 30 days after mailing of the tax bills for such tax, and interest at the rate of 18 percent per annum

shall be due thereafter on any taxes not paid within the 30-day period.

(e) All land use change tax assessments levied under this section shall, on the date of the change in use, create a lien upon the lands on account of which they are made and against the owner of record of such land or against the responsible party pursuant to RSA 79-A:7, VI(e). Furthermore, such liens shall continue for a period of 24 months following the date upon which the local assessing officials receive written notice of the change of use from the landowner or his agent, or the date the local assessing officials actually discover that the land use change tax is due and payable, and such assessment shall be subject to statutory collection proceedings against real estate as prescribed by RSA 80.

(f) Thereafter, the land which has changed to a use which does not qualify for current use assessment shall be taxed at its full RSA 75:1 value. The land shall again become eligible for current use assessment if it meets the open space criteria established by the board under RSA 79-A:4, I.

III. Whenever land of nonuniform value shall be subject to the land use change tax under this section, or whenever the full value assessment for the land subject to the tax shall not be readily available then the local assessing officials shall assess the RSA 75:1 full value of such land and the land use change tax shall be paid upon such assessed value.

IV. For purposes of this section land use shall be considered changed and the land use change tax shall become payable when:

(a) Actual construction begins on the site causing physical changes in the earth, such as building a road to serve existing or planned residential, commercial, industrial, or institutional buildings; or installation of sewer, water, electrical or other utilities or services to serve existing or planned residential, commercial, industrial, institutional or commercial buildings; or excavating or grading the site for present or future construction of buildings; or any other act consistent with the construction of buildings on the site; except that roads for agricultural, recreational, watershed or forestry purposes are exempt.

(b) Topsoil, gravel or minerals are excavated or dug from the site; except:

(1) Removal of topsoil in the process of harvesting a sod farm crop in amounts which will not deplete the topsoil; and

(2) Removal of gravel and other materials for construction and maintenance of roads and lands for agricultural and forestry purposes within the qualifying property of the owner or, with the approval of local authorities, to other qualifying property of the owner.

Sale of excavated materials shall constitute a land use change of the property from which the material was excavated. The site shall be reclaimed when the construction or maintenance project is completed to mitigate environmental and aesthetic effects of the excavation. Both project completion time and acceptability of reclamation shall be determined by local authorities. The owner shall keep local officials informed in writing of plans to remove and use of soil material from qualifying lands for purposes of this subparagraph and to assure conformance with any local ordinances, as well as plans for reclamation of the site. Fully reclaimed land shall be eligible for current use assessment if it meets open space criteria established by the board under RSA 79-A:4, I, whether or not such land was under current use assessment prior to the excavation.

(c) By reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

V. The amount of land which has changed to a use which does not qualify for current use assessment and on which the land use change tax shall be assessed in the circumstances delineated in RSA 79-A:7, IV shall be according to rules adopted pursuant to RSA 541-A by the chairman of the board, based upon the recommendation of the board. Except in the case of land which has changed to a use which does not qualify for current use assessment due to size, only the number of acres on which an actual physical change has taken place shall become subject to the land use change tax, and land not physically changed shall remain under current use assessment, except as follows:

(a) When a road is constructed or other utilities installed pursuant to a development plan which has received all necessary local, state or federal approvals, all lots or building sites, including roads and utilities, shown on the plan and served by such road or utilities shall be considered changed in use, with the exception of any lot or site, or combination of adjacent lots or sites shown thereon which are under the same ownership, and large enough to remain qualified for current use assessment; provided, however, that if any physical changes are made to the land prior to the issuance of any required local, state or federal permit or approval, or if such changes otherwise violate any local, state or federal law, ordinance or rule, the local assessing officials may delay the assessment of the land use change tax until any and all required permits or approvals have been secured, or illegal actions remedied, and may base the land use change tax assessed under RSA 79-A:7 upon the land's full and true value

at that later time.

(b) When land is required to remain undeveloped to satisfy density, setback, or other local, state, or federal requirements as part of the approval of a plan of a contiguous development area, such land shall be considered changed to a use which does not qualify for current use assessment at the time any portion of such development area is physically changed to a non-qualifying use. However, application of the land use change tax to such development area shall continue to be in accordance with subparagraph (a).

(c) When a road is constructed or utilities installed pursuant to a condominium development plan, only the development area shall be removed from current use along with the percentage interest in the open space land assigned to the unit or units within that development area.

VI. For purposes of this section, land use shall not be considered changed and the land use change tax shall not be assessed when:

(a) Land under current use is taken by eminent domain or any other type of governmental taking which would cause the use change penalty to be invoked because, by reason of an actual physical change or by reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

(b) Land abutting a site taken by eminent domain or any other governmental taking upon which construction is in progress is used to stockpile earth taken from the construction site. Stockpiled earth may be removed at a later date after written notification to the appropriate local official.

(c) Land accorded current use assessment in one category is changed in use to any other qualifying category.

(d) Land under current use assessment is eligible for conservation restriction assessment pursuant to RSA 79-B. Such land shall then be allowed to change from current use assessment to conservation restriction assessment with no land use change tax being applied.

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

VII. When land which is accorded current use assessment in one category is changed in use to any other qualifying category as provided in subparagraph VI(c), the owner of the land shall notify the local assessing officials in writing of the change in use at the time that the change in use is made. If a land owner fails to provide the notice required under this paragraph, he may be fined not more than \$50 at the discretion of the town or city.

Source. 1973, 372:1. 1974, 7:9. 1975, 197:3. 1977, 326:1, 2. 1979, 485:1, 3. 1981, 465:19. 1982, 33:1, 3. 1985, 88:1; 125:1; 227:1, 2. 1989, 50:7; 266:5, 6. 1991, 281:11-17. 1993, 205:2. 2006, 209:1, 2. 2009, 84:1, 2. 2010, 237:2-4, eff. April 1, 2010. 2012, 104:1, eff. July 28, 2012; 160:1, eff. June 7, 2012.