



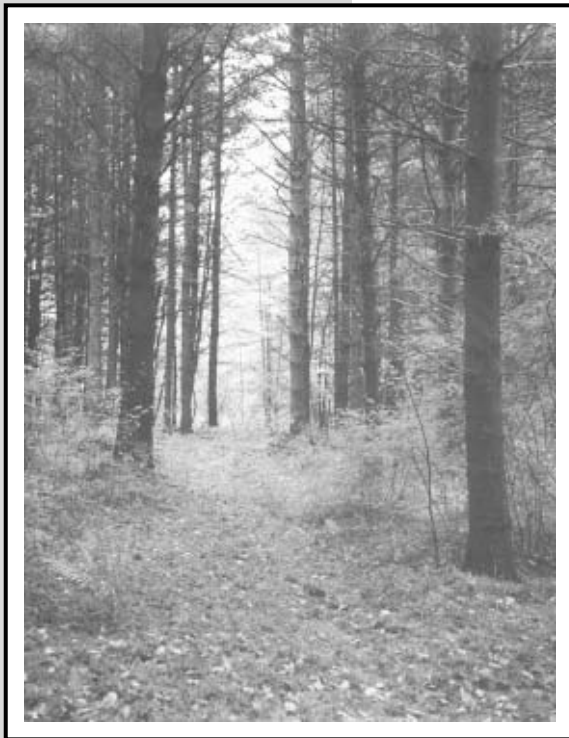
STATEWIDE PROGRAM OF ACTION TO CONSERVE OUR ENVIRONMENT

S.P.A.C.E. NEWSLETTER

WINTER, 2002

Board of Tax & Land Appeals Issues Ruling

Important to Towns and Forestland Owners



*Photo of a Tree Farm
by Eric Darbe
Courtesy NH Timberland
Owners Association*

On July 30, 2001 the Board of Tax and Land Appeals (BTLA) issued a ruling regarding assessment practices in the Town of Marlow. At issue was the town's placement of forestland within the current use assessment ranges. The Town's position as quoted from the ruling:

"The Town indicated it uniformly utilizes the upper limit of the assessment ranges for each of the forestland categories. In other words, the Town assigns the highest value in each range, without considering site quality, location or grade characteristics that may distinguish each property in CU. The Town defended this process of uniformly assigning the highest values to each CU property in the forest land category because the Town believes to do otherwise would involve too much 'subjectivity' and excessive 'time and expense' on the part of the selectmen/assessors.

"The Towns representatives indicated only two individuals have ever challenged this practice of assigning the highest value to each CU property. The Town argued that approximately 70% of the land area in the Town is in CU and the forestland is generally of high quality and fairly homogeneous. The Town also stated it's belief—that 'many' towns follow a similar process

in using the highest value in the range, rather than attempting to apply the entire range of values to the CU assessment process"

The BTLA ruled against the town's assessment practice, saying:

"The board rules the Town's uniform practice of using high end value of the CU forestland assessment ranges, without making any distinctions or adjustments for the physical characteristics of the land, is not in accordance with the applicable law and must be corrected."

The BTLA's decision was based on NH's Constitutional requirement of proportionality of property assessment. The decision describes how proportionality is achieved in current use through statute and administrative rules.

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Current Use Board members discuss *Marlow* ruling

Two current use Board members had suggestions for towns about implementing the BTLA recommendations. Kathy Temchack, Assessor for the City of Laconia, said she went to every current use property in her town and placed them within the assessment range. It was time-consuming to accomplish, but only needed to be done once and updated occasionally as the need arises. Phil Bryce, Director of Forests and Lands, pointed out that the land characteristics that determine placement within the assessment range (class, grade, forest type and location) don't change much over time. He suggests that a town do the entire town at one time because the comparisons of properties will be most valuable in relation to one another. He also noted that decisions regarding a parcel's location could be made from a town map. For example, a property located on a paved state road usually has good access for the removal of forest products (the "current use" of the land) than another property located on an unmaintained Class VI road, which would have poor access.



Phil Bryce, Director
Forest & Lands

Towns Respond Proactively

The Department of Revenue Administration (DRA) responded quickly by notifying municipalities of the *Town of Marlow* decision and posting a Technical Information Release on the DRA website. Many towns have responded proactively to the decision. Foresters are being employed by some towns to review the placement of current use land within the assessment range. Other towns have

contacted current use landowners directly, requesting they complete a form using the matrix as suggested in the decision. UNH Cooperative Extension foresters are also answering questions for towns and landowners.

Marlow Decision

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"RSA 79-A:5,I, requires the selectmen to appraise open space land "at valuations based upon the current use values established by the [current use] board." RSA 79-A:2,V, requires that "[t]his valuation shall be determined by the assessor in accordance with the range of current use values established by the board in and accordance with the class, type, grade and location of land."

...It is eminently clear from the detail contained within the statutes and rules that for the constitutional requirement of proportionality to be met in the assessment of CU forest land, the selectmen must, as part of their assessing responsibilities, consider any affect of "type" (tree species), "grade" (physical geography), "location" (accessibility) and "site quality" (soil, climate, etc.) in determining the proper assessment. Cub 304.03 (1) clearly places this responsibility initially with the assessors to determine, as best they can, how each qualifying piece of land should be assessed within the CU assessment ranges."

The Town requested that if the BTLA were to require the Town to reassess its current use properties it provide some guidance as to a practical, cost efficient way to accomplish this. The ruling responds to this request by including a matrix (see below) and outlining a procedure used by another town to gather voluntary information directly from landowners. However, as noted in the ruling

"If the selectmen receive inadequate or faulty responses, or if the taxpayer fails to respond in a timely fashion, then the selectmen can take whatever additional steps may be necessary to obtain adequate information or, on their own, determine or adjust where within the assessment range to place the forest land using other acceptable methods and information sources. Lack of response from a taxpayer does not relieve the selectmen of their initial obligation to assess the property as best they can based on available public information."

The Department of Revenue Administration (DRA) responded quickly by notifying towns of the decision and posting a Technical Information Release on the DRA website.

BTLA decisions are binding on all towns in the state.

Copies of the Marlow decision are posted on the SPACE website at www.nhspace.org, or copies are available (free to donors, \$2.00 to everyone else) by contacting the SPACE office.

The Marlow Decision Sample Matrix

Factors affecting “grade”, “location”, and “site quality” are specified in current use rule CUB 304.03 as follows:

Grade

- a. Steep slopes
- b. Presence of boulders and rock outcrops
- c. Ravines
- d. Wetland or bodies of water
- e. Any other physical qualifications

Location

- a. Legal restrictions to access
- b. Abutting a maintained public highway
- c. Any other characteristics affecting accessibility

Site Quality

- a. The quality of the soil
- b. The climate and evaluation
- c. Physical geography
- d. Any other factors that would affect the management of the land

Tax Map Lot #	Forest Type & # of acres (fill out one box for each forest type)	Characteristics of Land			Forest Type Values*	
		Circle one for each characteristic good=2, average=1, poor=0			Total	Average
Map 20 Lot 23-b	White Pine 22 acres	Grade Good <u>Average</u> Poor	Location Good Average <u>Poor</u>	Site Quality <u>Good</u> Average Poor	3	50%
		Grade Good Average Poor	Location Good Average Poor	Site Quality Good Average Poor		
		Grade Good Average Poor	Location Good Average Poor	Site Quality Good Average Poor		

* Example: If the forest land type is “white pine” without “documented stewardship” (current use assessment range: \$112 to \$170 per acre in 2002-03) and the grade, location and site quality indications are average, poor and good, respectively, the calculated scale would be 1 for grade, 0 for location, and 2 for site quality, for a total of 3 out of a maximum possible of 6, or 50%. 50% of the difference (\$58) between \$112 and \$170 is \$29 which, when added to the base of \$112, arrives at an assessment of \$141 per acre (.50 x(170-112)+112=141) for forest land with these specific attributes.

Forestland Assessment Information for Landowners

- Questions about your forestland assessment? Ask your town how your property is assessed.
- Questions about how to rate the grade, location and site quality of your forestland? Contact your county UNH Cooperative Extension Forester.
- Consider hiring a forester to create a stewardship plan for your land. You benefit from the reduced stewardship assessment ranges at the same time your forest benefits from management.
- If your town requests information about your current use land, be cooperative! It saves the town time and money if you provide accurate, honest information about your forestland.
- Although most forestland owners will see only a small change in their tax bill if their assessment changes, owners of larger parcels can see significant change to the bottom line. It is especially important for owners of larger parcels to accurately assess the variations of the grade, location and site quality to receive a fair assessment.



LEGISLATIVE UPDATE

In a relatively quiet legislative session (as far as current use is concerned!) two bills involving current use were introduced. The first, **HB 1157**, sponsored by Representative Charles Sova of Enfield, sought to make current use a local option. SPACE strongly opposed this bill, as it has opposed similar bills that have been introduced in the past.

At a committee hearing held January 16, 2002, Representative Sova presented his bill by saying local control is of value to New Hampshire citizens and “one size fits all” is not functional here. He asserted that although current use is a good concept, some towns, including some in his district, bear an unfair burden. Representative Sova said he was not arguing the validity of current use, but trying to give communities and the people the option of having a choice.

SPACE testified against the bill, reminding legislators that one of the goals of current use was to protect private landowners from being forced to develop or sell their land simply to pay the property taxes. If HB1157 were to become law it would undermine the intent of the law that has been successfully conserving open space for more than 25 years. We know from numerous Cost of Community Services studies that current use land, paying taxes based on current use assessment, pays more in taxes than it requires in town services.

Two Current Use Bills Introduced This Session

Armed with statistics from the most recent UNH survey of current use landowners, SPACE testified to a potential chain of events if HB 1157 became law. Based on the 2001 UNH survey, 27% of current use landowners earn income from their current use land, primarily through forestry and farming. HB 1157 could eliminate this income source for landowners in towns that “opted out” of current use, because both industries rely on current use for economic viability.

Many landowners simply could not afford to own their open space land if taxed as house lots. When asked if they would be able to afford the *ad valorem* taxes on their land if current use were eliminated, 51% of survey respondents said they could not, and another 11% were not sure or could only keep a portion of the land. Thus, if HB 1157 were to become law, the real estate market in communities that opted out could become flooded with open space land by landowners forced to sell to pay the taxes—depressing land values and with it, tax revenues.

Many of the SPACE coalition members were present to testify against HB 1157. In a unanimous vote, the House Environment and Agriculture Committee voted to kill the bill.

The second bill, **HB 1399** introduced by Representative Earl Goodwin of Dover was looking for a solution to a problem that has been experienced in that region. It attempts to resolve a ploy used by some developers to reduce the amount of Land Use Change Tax (LUCT) assessed. Ownership of unimproved subdivided land is transferred to other entities that are owned by the same developers; thereby paying less LUCT than if the developer was selling the improved lot to potential homebuyers. It is an expensive and seldom used gimmick; nevertheless SPACE’s position is that the fair amount of LUCT should be paid, and manipulations to reduce the fair penalty need to be remedied. SPACE did not take a position on this bill because as written it would be difficult to administer. The House has sent this bill to a study committee, noting the issue is complex and the need to “avoid unintended consequences.” SPACE expects to work with this study committee, offering our expertise.

Although things are calm at the moment, SPACE will continue to monitor legislation to ensure nothing is added at the last moment that would be detrimental to current use.

2002—2003 Current Use Assessment Ranges

	WHITE PINE	HARDWOOD	ALL OTHER
<i>Forest Land</i>			
Stewardship Forestland	\$63—\$115	\$15—\$36	\$44—\$87
Forestland	\$112—\$170	\$55—\$84	\$91—\$137
<i>Farm Land</i>	\$25—\$425		
<i>Unproductive Land</i>	\$15		

Unproductive Land is land incapable of producing a farm or forest crop and is left in a natural state. Wetlands are under this category.

All dollar amounts are assessed value per acre.

SPACE Sponsors Forestland Assessment Range Research

SPACE commissioned a study to determine how forestland is assessed within the range established by the Current Use Board. Fourteen randomly selected municipalities, with at least one municipality in each county, were visited. Towns visited for this study were Bennington, Brookfield, Concord, Conway, Deerfield, Dummer, Harrisville, Littleton, Loudon, Milton, Newmarket, Newport, Peterborough, and Tilton. Information was gathered on the assessment of 30 parcels in each town, creating a sample of 420 parcels statewide.

Based on the sample of 420 current use parcels statewide, almost half (48%) of the parcels are assessed at the highest end of the assessment range. Another seventeen percent (17%) of the parcels were assessed at the middle (.51-.61) of the assessment range and only eight percent (8%) are assessed at the low end of the range. This distribution of assessments is heavily skewed to the high end of the assessment range.

The research also showed that of the 420 parcels sampled, 60 were assessed outside of the range established for the forestland type listed on the tax card. Of these 60 parcels, 43 were assessed above the maximum assessment value and 17 were assessed below the minimum value.

Of the fourteen towns visited, five towns indicated they uniformly assess current use land at a single point regardless



of the parcels *class, type, grade or location* as specified in the current use administrative rules. Three of these five towns assess at the top of the assessment range and two at the mid-point.

Three towns were considering the *class, type, grade and location*, with two towns' assessors reviewing the land's topography and accessibility, and one town using a forester to recommend placement within the assessment range. Six municipalities did not know how the land was assessed within the current use range, either because of a turnover in municipal officials and staff since the current use land was last assessed or because municipal officials allowed this determination to be made by outside contractors, without significant input from the town.

Over the years SPACE has received numerous landowner inquiries regarding the forestland assessment ranges. However, at a Public Forum the Current Use Board indicated they had no evidence of towns uniformly placing current use land at the high end of the assessment range. SPACE commissioned this study to provide factual information where only anecdotal informa-

tion was available before. The BTLA rendered the *Marlow* decision while the research was in progress, confirming the research significance—and timeliness!

Copies of this research are available on the SPACE website at www.nhspace.org or on paper by calling the SPACE office.

Free to SPACE contributors, \$3.00 to all others.

Current Use Board Report: No Rate Changes This Year

There was a lot of discussion and no major changes this year for current use. State Forester Phil Bryce (Director of Forest and Lands) reviewed the stumpage price formula used to calculate the forestland assessment ranges, and reported the current model indicated no changes. Last year the assessment ranges did increase, but the Current Use Board decided to only make half the increase indicated. After this years review that appears to have been the right decision.

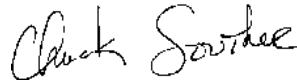
Commissioner of Agriculture Steve Taylor recommended no changes to the farmland assessment range after presenting information from the New England Agricultural Statistics 2000 that verified the current range.

Board members also discussed the *Marlow* decision. (See article front page and page 2) Most Board members agreed that changes to the current use administrative rules would not help resolve the problem. Chairperson Barbara Reid outlined what DRA is doing to instruct towns how to place forestland within the assessment ranges. The Board decided to include the matrix as suggested by the Board of Land and Tax Appeals in the new Current Use Guidebook as a tool for towns and landowners alike. (See page 3 for the matrix.)



Many Thanks to S.P.A.C.E. Donors!

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SPACE-Sponsored UNH Survey of Current Use Landowners Almost Complete

The University of New Hampshire Survey Center conducted a survey of Current Use landowners for SPACE. The purpose of the survey was to assess the present status of the Current Use program, as well as the potential impact of regulatory, administrative and land management practices on enrollment and maintenance of lands in Current Use. The survey questionnaire included questions about land in Current Use and Current Use assessment practices, as well as future land use plans and the land use change tax structure. This survey replicates portions of a similar survey conducted by the UNH Survey Center in 1993. A random sample of 460 owners of Current Use land in New Hampshire was interviewed by telephone. The margin of sampling error for a survey of this size is +/- 4.7%.

Major findings in this study include:

On average, land has been enrolled in Current Use for 20 years, and the median lot size is 45 acres.

People with land in current use are significantly older than the adult New Hampshire population. The median age of Current Use landowners is 65 years old.

21% of surveyed forestland owners have a written management plan.

Current use land is a source of income for 27% of landowners, compared to only 15% in 1993.

Of those respondents who have farmland in current use, 50% said that the farmland is no longer active pasture or cropped.

Landowners are familiar with land assessment values set by the Current Use Board, as well as the Land Use Change Tax. However, there is considerable confusion about criteria for placement of Current Use land within assessment ranges, and only one-third of owners know the current Land Use Change Tax rate.

More than half (51%) of landowners say they could not afford to keep their land if it were taxed at regular rates. In addition, 4% said they could keep only a portion of their land and another 7% said they did not know if they could afford to keep their land. When asked if current use were eliminated would they sell their land, 40% of landowners said that they would keep their land, 40% said they would have to sell some or all their land, and 20% didn't know.

The survey report is being finalized, and will be available soon! It will be posted on our website at www.nhspace.org, or contact the SPACE office to obtain a copy when released. Price to be determined.

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