

# Current Use Board Regular Board Meeting

## Approved as amended

**DATE:** July 27, 2023

**TIME:** 1:00 p.m.

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

## **BOARD MEMBERS:**

Senator Ruth Ward

Representative Josh Yokela

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

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

Rick Evans, NHDRA Commissioner Designee, NH DRA

Larissa Robinov, Commissioner Designee, NH DNCR, Division of Forests and Lands

Barbara Richter, NH Conservation Commission

Mark Beauchesne, Executive Director, Designee, NH Fish & Game

Jonathan Rice, Assessing Official, City

Tom Hughes, Assessing Official, Population <5,000

Norm Bernaiche, Assessing Official, Population >5,000

Susan Bryant-Kimball, Forest Landowner

Tom Thomson, Public Member

Chuck Souther, Chair, Public Member, Agriculture

## **MEMBERS of the PUBLIC:**

Robert Johnson, NH Farm Bureau

Phil Bodwell, DRA

Bradford Keith

William Loranger, DRA

Mark Dell'Orfano, DOJ

Jasen Stock, NHTOA

John Biglow

Allison Auguer, DRA

Ben Lafond, DRA

Chair Souther convened the regular meeting of the Current Use Board at 1:19 p.m.

## **Minutes**

Senator Ward *motioned to accept the minutes of the October 21, 2022, regular board meeting*; Mr. Bernaiche *seconded the motion*. No discussion. Chair Souther called the motion to approve the minutes of the October 21, 2022, regular board meeting as written. Commissioner Jasper, Representative Yokela and Mr. Hughes abstained; all others approved. *Motion passed with majority vote.*

## **Agricultural Land Assessment Model**

There were some concerns expressed about bringing the Agricultural Land Assessment Model (ag model) to the fall public forums. Some members felt the model was not ready to present to the public and needed more work while others suggested that as the Board has been working on this for a few years, they should present what they have even if only to receive comments.

Mr. Rice echoed that the Board has been working on this model for a while to explain how the farmland assessment range is derived and now that a model has been presented, it appears there may be some inequity between the farmland and forest land assessment ranges. The numbers appear to be shocking however if they do

reflect what the values should be, it should carry some weight to determine if an advantage exists between forest land owners and agricultural land owners. If an advantage is determined to exist, the Board can move forward and address it. The Board should have one message to present to the public.

Chair Souther agreed the Board should present the ag model to the public with the understanding that it may take more time to develop, approve and implement. He added that the forums may provide the Board with other ideas to consider.

Mr. Bekkerman summarized the Ag Model the subcommittee recommended to bring to the full Board. Based on his experience and research of various state programs, many states use the farm income capitalization method to develop current use values and that is the method this model based on. The model determines the potential income that can be generated on a piece of land to determine a taxable value. For this there are three main components: **Land's Agricultural Productivity, Net Income, and Capitalization Rate.**

1. **Land's Agricultural Productivity** represents the likely production output on agricultural land.
2. **Net Income** is difference between total market value of output produced on the agricultural land (i.e., revenues = market price × productivity) and the market value of expenses needed to produce the crop. \*Hay and silage prices are used in the model as they are largest proportion of agricultural land use in New Hampshire.
3. **Capitalization (Cap) Rate** represents the long-term likely rate-of-return that can be generated from the estimated net income of the agricultural production on the land.

Capitalization rate calculation:

$$5\text{-Year FSA Loan Rate} + \text{Average NH Tax Rate} = \text{Capitalization (Cap) Rate}$$

Commercial property is valued similarly using an income approach. Current use value is looking at the income-producing capability of the land. For a commercial property, assessors look for the income producing capability of a building. For example, a 10,000 square foot commercial building rents for \$8 a square foot. How much income can that building generate? How much value is that building worth?

$$10,000 \times \$8 = \text{Income} - \text{Expenses} = \text{Net Return} / \text{Tax Rate} = \text{Income or Assessed Value}$$

The ag model uses variable inputs that could change every year. This is very similar to the forest land assessment model that uses a 30-year discounted cash flow, variable inputs that change annually such as FIA data. FIA data is the forest inventory conducted by the U.S. Forest Service that provides acreages, volumes and products for each of the three categories, white pine, hardwood and other. The 5-year stumpage values are then combined with that data to establish the value of annual growth per acre for the three categories. That information is put into the discounted cash flow to produce the forest land assessment ranges.

Mr. Bekkerman added there are similarities and differences in how NH values agricultural land compared to other states. Some states determine a midpoint and adjust by soil type, some use a 10-year average versus five, and others use an Olympic average, which is in his opinion, the way to go.

Mr. Hughes asked if it was the average value in the State that was used. Mr. Bekkerman explained the data provided is the average productivity of hay and silage and the average prices received by farmers for those products. The ag model is determining what a buyer would pay for the land based on the product that can be grown on the land.

There was some concern that this information might be too complicated, which may have a negative effect on how it is received by the public, so it needs be presented in a way that makes sense. Having the commercial example may be helpful to understand that if someone is going to buy a property and they want to rent it out and they know they can only make this much income from it; they will only pay this amount for it and that is where the value comes from. Mr. Bernaiche stated if you follow the calculation inputs, they are from a known sources.

He doesn't feel it is too complicated as there are just three main components, income, expenses and net income, and some financial variables to account for risk that are factored into the last calculation. He offered to work with Mr. Bekkerman to develop a presentation for the forums.

Concern was reiterated about the perceived inequity between the forest land assessment rates which are a lot lower versus the new agricultural rates presented, understanding that the crops are very different. Another concern was whether the new rates would cause owners to have to sell their properties due to the increase. Mr. Bernaiche suggested examples could be added to the presentation. The values did increase but they were developed from a market-based model. If it is preferred to use a midpoint and adjust for SPI then the intent of the ag model is being disregarded. A suggestion was made for the presentation to be made to the full Board prior to the forums so that the members could be comfortable with the information that will be presented. A meeting will be scheduled in September to review the presentation and determine whether or not to bring the proposed rates developed by the ag model to the public forums.

Commissioner Jasper expressed his appreciation for all the work Mr. Bekkerman has done on this.

Proposed Forest Land Assessment Ranges

Mr. Evans reported the Forestry Subcommittee voted to recommend to the Board the following proposed 2024-2025 Forest Land Assessment Ranges, With and Without Documented Stewardship:

Forest Land (per acre)		Forest Land w/Documented Stewardship (per acre)	
White Pine	\$122 - \$184	White Pine	\$74 - \$110
Hardwood	\$67 - \$101	Hardwood	\$40 - 60
All Other	\$39 - \$59	All Other	\$24 - \$36
Wetland	\$24		
Unproductive	\$24		

Mr. Bernaiche *motioned to accept the 2024-2025 proposed forest land assessment ranges as presented and bring to the public forums*; Commissioner Jasper *seconded the motion*. No discussion. Chair Souther called the motion to bring the proposed 2024-2025 assessment ranges to the fall public forums. *Motion passed unanimously.*

Mr. Beauchesne *motioned to have the Agricultural Land Assessment Model subcommittee come back to the Board with a presentation of the ag model prior to bringing to the public forums*; Commissioner Jasper *seconded the motion*. No discussion. Chair Souther called the motion. *Motion passed unanimously.*

Proposal to Remove the Setting of Current Use Values from Rulemaking

Attorney Mark Dell'Orfano introduced himself as the attorney from DOJ assigned to the DRA Administratively Attached Boards.

Mr. Hughes proposed removing rules Cub 305.02-305.06, which are the rules that incorporate the assessment ranges, and replace with the forestry and agricultural formulas, for transparency, which alleviate the rules having to go through the rulemaking process annually. He stated that he is not aware of any other values that are updated annually and included in rules. It is also his understanding that JLCAR does not approve the values but the language in the rules however it gives the impression that they are.

This change would speed up the process, get the values out timelier, and be more in line with other rules. It would be similar to that of the stumpage values in RSA 79 Forest Conservation and Taxation, a process that is explained in rules but established outside of rules.

Ms. Martel summarized that RSA 79-A:4, III. and IV., state that the board annually has to determine the schedule of criteria and current use values and recommend to the Chairman who shall adopt rules for the schedule of criteria and current use values as recommended by the board. It is her interpretation the rules must be adopted through rules and a change would require a legislative change. Mr. Hughes' replied he interprets it differently. He believes the schedule of criteria and the process of establishing the values should be in rules, not the actual values. It is the same as timber establishing the stumpages values.

A lengthy discussion followed. Attorney Dell'Orfano suggested the statutory authority for the stumpage rates is different than that of the current use values and a review would need to be completed of both however he does not believe there is a concrete answer at this time. The question was asked why this change was being recommended. Mr. Hughes stated this process takes time and would alleviate work for the DRA. JLCAR does not approve the rules; they approve the language. Additionally, he feels that having them in rules is the opposite of transparency which the Board is working towards, as all the public sees are the values, having the formula in rules would explain how those values were developed.

Attorney Dell'Orfano clarified that Legislative Services reviews the language of rules, not JLCAR. One of the important things JLCAR does, is it allows the people's representatives to ask questions as to why something is done in a particular way and he's noticed with other forms of rulemaking, that process can add a lot of value to the agencies so that they get a sense of how the legislature may or may not decide to change a particular statute that allows for that rulemaking in the future. Mr. Hughes appreciated the comment but feels JLCAR might be more interested in understanding the rules and seeing how those values were developed.

Attorney Dell'Orfano suggested that adding the development of the values is a great addition to the rules and he does not think that changes whether the values are there or not. He recommended a adding a rule that directs DRA to post the inputs and how they were calculated in some form of a technical release.

This would be a project for DRA to see if there is any authority to change how the values might be removed from rules. A suggestion was made to hear from DRA on this and would be requested. There was also a suggestion to hold an additional forum in fall due to presentation of the ag model. Commissioner Jasper stated that current use is constantly under attack and putting in legislation could be risky because you never know how it might be amended. He believes the Board should move forward with the ag model proposal and keep things as they are and not move forward with Mr. Hughes proposal. Chair Souther asked the Board for their thoughts. There was a consensus to leave things as they are.

### 2023 Public Forum Schedule

There was a brief discussion about where to hold the public forums. Lancaster was preferred in the North and Concord for the final forum. Keene and Durham were two other suggestions to cover the western and eastern parts of the State. The Board will schedule the dates at the September meeting.

### Other Business

Chair Souther reported that the 50-Year Celebration went very well and thanked those who attended. A brief discussion about the commendation and where it should go followed. Mr. Thomson suggested it should be given to DRA to post in their lobby. He added that all member organizations such as NHTOA, the Farm Bureau, Fish and Game and SPACE received a commendation as he delivered many of them. He also has put in a request to the Governor's Office for copies for the Board Members.

Correspondence was received relating to a complex assessing question. Chair Souther responded to the correspondent with the suggestion to contact an attorney as this Board is not an adjudicative board. The Correspondent expressed frustration that she could not find the answer in the current use information published.

Chair Souther attended an Executive Council meeting as was asked to give an overview of the Board and its duties. He asked the Board if this would be appropriate. Commissioner Jasper did not feel that was appropriate. There were no other comments. Chair Souther stated he would attend his reappointment meeting with no additional comments about the Board.

Mr. Evans presented a few question from DRA field staff about situations they have encountered, or issues found during assessment review for the Board to consider.

1. Would the Board consider coming up with a better definition of curtilage (Cub 301.05), specifically to address groomed and maintained land around a structure. They are finding inconsistency in the application of this and when a land use change tax (LUCT) is applied.
  - a. Brush-hogging land 3-times a year – some towns assess LUCT, some do not
  - b. Personal gardens on agricultural land – some towns assess a LUCT, some do not
  - c. Temporary campers on current use land  
Example: Camper, no improvements, utilities or water, parked and used for a week

Relating to example c., Mr. Beauchesne stated in Vermont they call that homestead and that is how it is valued. Mr. Bernaiche does not think parking a camper or having a garden is open space land; they are part of curtilage or homestead and not an agricultural operation or farm. A personal garden might be one size one year and a different size the next. When a person has to rent out land to put equipment on then you allow parking equipment on current use land at a different tax, it's not fair. He feels current use land is meant to be open or producing timber and agricultural products. To start allowing campers or other things on the land and assessors having to determine if some are okay and some are not, is not practical. In his town, they strongly encourage with letters to owners to move them onto curtilage land rather than use the land in current use.

Ms. Bryant-Kimball offered that hoop houses that are allowed because they do not disturb the underlying ground, what is the difference with a camper that does not disturb the underlying ground? Commissioner Jasper suggested a hoop house is used for agricultural purposes; a camper is not. He added that he does not understand why a personal garden would not be considered agricultural and mowing would disqualify land. Other points made included a suggestion that the Board spend some time on this to see if clarification can be provided or not, especially mowing as it is inconsistent throughout the State, and that what is being discussed is open space and there is no requirement that it be a farm only capable of producing crops and no buildings.

### Public Comment

Rusty Keith presented his comment.

“What this referred to is a public forum. I made a comment about the fact that we have quite an issue with conservation easements on current use land. In my interpretation of the law, is that the law is pretty specific that you do not have a LUCT if you put a conservation easement on your current use land and then it is transferred into 79-B, conservation assessment and that is an exception to a LUCT. So, when read the law, it says that's an exception when it qualifies. I read that to say that when you put a conservation easement on current use land that is a disqualifying event, very similar to what a planning board does when a planning board requires open space for a subdivision and then that subdivision begins. That open space, regardless of its size, does not qualify for current use anymore. It is considered a change in use and the law is very specific about that.

What they are not specific about, is the placement of a conservation easement is a change of use. When they do specifically say, in regard to a subdivision, they don't say here but they do say, and this is where Mr. Evans sent

me the law and I said yeah I did read the law exactly as you sent it to me but in the beginning of the paragraph that he referred to, 79-A, VI. (b) “for the purposes of this section, land use shall not be considered changed and a LUCT shall not be assessed when...” and further down it says, “...land under current use assessment is eligible for conservation restriction assessment.” So, I read that to say, if it is not eligible, for conservation restriction assessment, and it has changed in use, and the LUCT shall be applied.

We have a significant amount of land in the Town of Lyme, that has now come under conservation restriction assessment restrictions, that still enjoy current use that have not been transferred into 79-B. And that to me is why the legislature created 79-B. And it is statutorily required to have a certain criteria met, it is not determined by this board, that removes it essentially from this Board’s authority, and gives it back to the Selectboard, under the statute under five different categories, they must meet in order to qualify, for conservation assessment.

I was asking if this could be clarified much like you are talking about curtilage being clarified. That if we don’t tell people that they don’t have a change if they put a conservation easement on their current use land. If they put a conservation easement on it, by the law, it doesn’t qualify for current use.”

Ms. Richter stated this Board has had this discussion and agreed it was not a change of use of the land as defined by RSA 79-A.

Mr. Keith replied, “When a planning board requires open space land, there is no change in the use of that land any more than there is when you put a conservation easement on it.”

Mr. Bernaiche replied that it is a change in use because it is used to satisfy a density requirement for the development that is being proposed and approved. That is the difference.

Mr. Keith stated, “We will take it up with the law.”

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

Chair Souther adjourned the meeting at 2:58 p.m.

Respectfully Submitted, Stephanie Martel  
NH Department of Revenue Administration – Municipal and Property Division

Documentation relative to the Current Use Board may be submitted, requested or reviewed by:

Telephone: (603) 230-5096  
Facsimile: (603) 230-5947  
E-mail: [cub@dra.nh.gov](mailto:cub@dra.nh.gov)  
Web: <http://revenue.nh.gov/current-use>

In person at 109 Pleasant Street, Concord  
In writing to:  
Current Use Board  
c/o NH Dept. of Revenue Administration  
PO Box 487  
Concord, NH 03302-0487