

CURRENT USE BOARD
Public Forum Notes
Claremont, NH

DATE: November 13, 2017

LOCATION: Claremont Savings Bank Community Center

BOARD MEMBERS:

Senator Ruth Ward

Stephan Hamilton, Chairman, *Commissioner Designee, NH Department of Revenue Administration*

Susan Francher, *Commissioner Designee, NH Department of Natural and Cultural Resources, Division of Forests and Lands*

Norm Bernaiche, *Assessing Official, Population <5,000*

Susan Bryant-Kimball, *Forest Landowner*

Mr. Hamilton welcomed those in attendance and began with a summary of the presentation items:

- Review of Assessment Ranges
- History of Current Use
- Constitutional, Statutory and Administrative Rules pertaining to Current Use
- Current Use Practices
- Benefits of Conservation – Tax program designed to conserve open space; uses tax benefit to conserve open space

Summary of Proposed Assessment Ranges

Mr. Hamilton summarized the proposed assessment ranges for the Forest Land (unmanaged) and Forest Land with Documented Stewardship (managed) categories:

<u>Forest Land</u>		<u>Forest Land with Documented Stewardship</u>	
White pine	\$118 - \$177 per acre	White pine	\$71 - \$106 per acre
Hardwood	\$54 - \$81 per acre	Hardwood	\$33 - \$49 per acre
All other	\$37 - \$56 per acre	All other	\$22 - \$34 per acre

He followed with a brief explanation of the economic inputs that are used in the land valuation model used to develop the proposed ranges. A 40% discount is applied to the forest land with documented stewardship category to recognize the benefit of having a good forest management/stewardship plan. In order to qualify for the discount the plan must be prepared by a licensed forester and presented to the municipality and updated every 10 years. It is the responsibility of the town to track and verify plans are being followed. The law provides for annual review of all property in current use to make sure qualifications remain the same.

An additional discount of 20% is available to an owner that allows limited recreational activities on their property. The process allows an owner to essentially restrict activity to pedestrian traffic. There are postings that are allowed however “no trespassing” is not one of them.

Q: Does the board recognize a discount of the base; the market value of the property? Is there an average discount afforded to current use?

Mr. Hamilton explained it is not a discount against a market value estimate; it is calculated based on the values (assessment ranges) per acre and will vary from town-to-town and property-to-property.

Q: Does the state have a reasonable average discount to begin with?

Mr. Hamilton replied that is not what this process is about. The Current Use board establishes per acre values of land. Municipalities assess taxes against other properties that are not in current; different from how the current use board calculates the current use values.

Q: Does a current use value override an assessed value? Do municipalities assess that property at fair market value?

Mr. Hamilton stated it does not override a value. In assessing software, only one value is usually allowed. For property in current use it is the current use value; for property not in current use, it is the assessed or ad valorem value. There are more complex systems that do carry both values; however it is the current use value that is used for taxation and tax rate setting purposes.

A comment was made that in NH, the municipality funds the benefit where in Vermont; the state pays the difference between the current use value and the assessed value.

Q: Has the state of NH funded anything pertaining to current use?

Agricultural Assessments

Agricultural land is conserved in the current use program as farm land. The range of \$25-\$425 per acre has remained unchanged over the past few years. Placement in the range is related to the earning potential of the land. Property owners may request a property specific determination of the Soil Potential Index (SPI) to have their value automatically placed within that range based on the percentage of SPI which is rated on a scale of 0-100.

Q: Has there ever been an entertainment for a discount, in addition to this range, for managed agricultural soils as opposed to a farmer who just lets his soil sit like many forest owners do?

Mr. Hamilton stated he didn't know if that idea had ever been entertained. The program as it is currently structured does not provide for any kind of managed agricultural discount.

Q: Is there incentive built into the program to encourage good soil?

Mr. Hamilton stated he was not sure how that would work. He is not sure if there are similar counterparts to licensed foresters within the agricultural industry that would allow the municipal assessing officials to make that kind of determination.

Unproductive Land

The unproductive recommended rate is \$22 per acre which represents the lowest end of any of the presented ranges. Unproductive by statute means land which is incapable of producing an agricultural or forest product such as a cliff base or area of ledge.

Wetlands

The wetland category is also recommended at the \$22 per acre. This is a little different from an environmental standpoint; it is not just finding wetland vegetation on your property. Wetland by statute means land that is inundated or saturated with water and is incapable of growing a product.

Q: The local assessor will have a code for each of those properties?

Mr. Hamilton stated each property will likely have multiple designations on it for the different types of land that may be found on a property.

Q: If a property has multiple categories, would you have to determine the size of each category?

Mr. Hamilton replied yes.

History of Current Use Program

The design and intent of the current use program is to create a set of incentives to support the conservation of natural resources and open space. Mr. Hamilton provided a brief history of the program.

C: There should be two sets of current use rates; one for out-of-state investors who invest for a long time and one for people who are residents of the state.

- In 1949, Chapter 79 Forest Conservation and Taxation Chapter was adopted by the legislature which provided an exemption for the value of standing timber from property taxation
- Open space was threatened and rapid development was occurring in a somewhat uncontrollable manner changing the nature and character of our state
- New area of conservation was conceived to assess property at its current use rather than the highest and best use (development potential)
- Value based on the ability of the property to generate income in the applicable category
- 1968 Constitution change Part 2 Article 5b
 - Statement that allowed the general court to adopt laws that reflect the current use rather than highest and best use when it comes to the taxation of property
- 1973 General Court adopted Chapter 79-A Current Use Taxation system
- **RSA 79-A:1 Declaration of Public Interest.** –*“It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources. It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens. The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for property taxation on the basis of current use. It is the intent of this chapter to encourage but not to require management practices on open space lands under current use assessment.”*

Mr. Hamilton added this is not the only program adopted to encourage other assessments at current use value and briefly explained the following:

- RSA 75:14 Appraisal of residence in commercial district
- RSA 75:1-a Low-Income Housing Tax Credits
- Other Municipal Assistance Programs
 - Exemptions
 - Tax Deferrals

Current Use Rules Cub 100-300

The Current Use Board has rulemaking authority and all rules are reviewed and ultimately adopted by the Joint Legislative Committee on Administrative Rules (JLCAR).

CHAPTER Cub 100 – Organizational Rules

CHAPTER Cub 200 – Practices and Procedures

CHAPTER Cub 300 – Criteria for Current Use

Equalization

Mr. Hamilton briefly explained the process of equalization and a discussion followed.

Dedication to Open Space

The dedication to open space; conservation in the current use program, is a perpetual dedication. An owner cannot optionally remove property from current use; there must be a disqualifying event.

Disqualifying Event

When property is disqualified, a land use change tax (10% of market value) is applied to the portion of property being removed. The sale of a property or putting an easement on a property is not considered disqualifying events.

Q: Can a portion of a property be reserved and kept out of current use?

Mr. Hamilton replied yes and many people do. If land is excluded from current use; full market value will be paid for the land removed; current use values used for land remaining in current use.

Mr. Bernaiche added from an assessing perspective, most of the “reserved” spaces have been built on; an owner is better off putting land in current use because the benefit far exceeds the cost.

Disqualifying Events

Mr. Hamilton explained the three disqualifying events which include land used to satisfy density requirement for development or planned unit cluster / condo development (statutory); actual construction for development; and soil, gravel or minerals removed for sale.

Benefits

The current use program generates \$5 Million in property tax revenue around the state. It does not impose additional burdens on municipalities; governmental structure provides support and land use change tax is issued on disqualified parcels creating revenue. Over 50% of land in the state is enrolled in the current use program, 90% of owners are NH residents; 10% out-of-state owners. This percentage varies from town-to-town. The median lot size is about 75 acres and NH has a property tax system that generally treats everyone the same.

Q: If there are 10 lots of 75 acres each and all different ownerships; how is that billed, as 750 acre lot or 10 individual lots?

Mr. Hamilton responded land in current may be composed of individual lots but they have to be under identical ownership and adjacent to each other; they do not have to be merged but do have to be contiguous. The current system treats every property the same no matter who owns it; resident or not.

Q: Is land in current use and land that has a conservation easement taxed using the same values? Are there provisions in statute to allow for a more accurate valuation method than currently set aside to conserve property versus land that has been put into current use that has not had a disqualifying event?

Mr. Hamilton stated the program determines the value of land in current use. Once land is enrolled in current use it stays in current use. If someone were to subsequently buy the development rights from that property; that is not a disqualifying event because it maintains its character as current use land and is still assessed at current use values.

Q: If I buy a piece of property and then put a conservation easement on it and then sell the conservation tax benefit to someone else and then sell the conservation property to another buyer, it remains in the current use system never having had a disqualifying event. Yet, outside the system there has been a significant change in market value; a significant change of economic value and is now assessed at a much higher rate in terms of perception of the market value of the property; is the state system designed so that the assessed value does not change?

In that situation and looking at how the value of the municipality is being allocated based on the values of the properties being assessed, there is a tax shift and cost to everyone but especially to the smaller property owners in that municipality because of the lower valuation on the conserved land. It seems like double taxation within the municipal structure based on whether or not you have land in current use.

Mr. Hamilton offered to bring that observation to the Current Use Board.

Mr. Bernaiche added at some point the legislature must have looked at this now permanently conserved land and the issue assessors had valuing it with a conservation easement and felt it would be easier to assess it a current use rates. Otherwise there are three sets of values to consider versus two: market value, current use value and land with a conservation easement value.

C: The sale of land with conservation easements can be tracked and a valuation trend established that would allow you to property value it under the current use system. I'm not sure if this has ever been addressed.

C: Land in current use has an option for redevelopment; it should be worth more.

Mr. Hamilton agreed it may be worth more being conserved or it may be worth less but the common word is "maybe"; the system doesn't work that way.

Q: If someone were to establish say a hunting area and make money from that; how would that work?

Mr. Hamilton stated there are private uses of land in current use. If you have a hunting park or paint ball game in the woods and you charge people to use it; that may not necessarily be a disqualifying event but you would lose the 20% discount because it is no longer open for recreational use; you have to pay to use it.

Q: What if it remains open to the public, like a hunting park?

Mr. Hamilton replied if you are charging a fee to use the property; it is not open to the public.

C: I see the board is looking at agritourism. I have a farm and want to convert a barn into a hotel or a bed and breakfast to bring people on to my farm and let them participate in farming activities. I have a current use farming operation but now I have a building that is no longer in current use.

Mr. Bernaiche stated that would not qualify anyway.

Mr. Hamilton added that agritourism was on our agenda because we are trying to be careful of those changes within the definitions of the law that could have an impact on the current use program and we wanted to be proactive.

Q: As mentioned before there is lack of desire or will to have different rates for non-residents. The reason I ask is I pay a non-resident education surcharge on my property in Vermont. If I lived in Vermont, the education tax is a certain amount but being an out-of-state property owner, I pay as a non-resident. Is it a constitutional issue? Can we delve into that more and what the courts have faced or considered about why so far the equality has been maintained between residents and non-residents.

Mr. Hamilton stated he does not know the Vermont constitution or tax system. In NH you can only have one rate of taxes that applies to everyone. There can be different values but you have to treat everyone within the same class the same way. NH used to have a bank tax that was a different rate for people who lived in NH and for those that lived outside NH. The Supreme Court said you could not do that.

Q: When reporting current use and conservation easement information on the MS-1 report; shouldn't the land with a conservation easement be reported under RSA 79-B rather than RSA 79-A so that taxpayers know that property will never be subject to a land use change tax or development?

Mr. Hamilton indicated that was not an issue for this board however it does fall under his area of responsibility and he will take that question back to the equalization supervisor and look at how that information is reported so that guidance may be provided next year.

A brief discussion followed pertaining to how to assess current use land with a conservation easement. The distinction was made that the land in current use is assessed based on its income-producing capability which is the market value for its current use and not its highest and best use.

Q: The question has been asked if there is some sort of percentage discount that you have determined as a board when you set the ranges. I know you base the current use value on the income-producing capability of the land and not a market value. If you measure it against market value, because I think you should, for transparency for the taxpayer as to what kind of discounts we are affording and benefits we are giving to current use landowners that the taxpayers are having to pay for. The rest of the taxpayers in the town have to pay more taxes because of the benefits we grant to our neighbors who have land in current use. That has nothing to do with fair market value or the market value of that property.

Mr. Hamilton replied unfortunately that is not the set of rights that gets valued by the assessor because you cannot consider the value of the timber; that is exempt under Chapter 79, and you cannot consider the underlying value of the land, that is exempt under Chapter 79-A so what you see as the result of the current use assessment is the difference between those things already being granted away from the assessment; it is not market value of the highest and best use, that is true. It is market value of that small segment of rights that can be valued under the current use program.

C: The difference between the processes of RSA 79-A and RSA 79-B is not transparent. It appears the shift in taxation is inequitable. There should be a discussion about conservation land.

Mr. Hamilton stated to address the shifts in taxation it could be addressed by this board but the general court is the place that it really should be addressed. The Current Use Board does not make those determinations; we carry out our duty the way that the law prescribes it; that is what we are bound to do.

There are a number of programs that shift the tax burden from the elderly to the young; from the disabled to the abled; from veterans to non-veterans. Religious to everybody else; educational and charitable and all shift tax burdens. It is not this board that determines when this shift occurs; that is the general court.

Q: Does the board make recommendations when there is not equitability to the legislative body?

Mr. Hamilton stated there are members of the general court who are members of the board and do on occasion make recommendations to change the law or introduce legislative initiative.

C: As a member of conservation I look at the property. The assessors don't bother to go out on to open land and make an attempt to come up with a value. I have a concern that assessors do not look at open space property like they do developed property and this is a cause of inequity.

Mr. Hamilton replied there is nothing this board can do other than help you understand the relationship between the assessor and the town and the assessors work under a contract which could contain limitations. Every property owner has the opportunity to request abatement in their community which requires the Board of Selectmen to address those issues and if they do not respond, there is a process to appeal those abatements to either the Superior Court or Board of Tax and Land Appeals (BTLA).

Q: How many municipalities periodically audit the declarations of current use in order to discover undeclared changes of use?

Mr. Hamilton replied the law requires an annual process be undertaken; the municipality has to maintain their records of assessment and there is a process within the ASB that tests the assessing practices of each community once every five (5) years.

C: An example was given showing the effect the total elderly exemption amount granted had on a tax rate versus the effect the current use assessment had. It was suggested the board come up with a base; switch forest land with documented stewardship as the base and add a 40% increase to forest land with documented stewardship.

Mr. Hamilton replied he was not sure statute would allow for that kind of change.

C: Why not require stewardship?

Ms. Francher stated statute encourages stewardship but does not require it.

Ms. Francher briefly explained how the forest land categories and ranges are developed using a model that is based on the requirement that we assess these lands on their income producing capability. There are various inputs of data gathered annually regarding how much land is devoted to each of these categories, white pine, hardwood and other; growth rates and the market value of the timber. Using that data and the model we come up with the income producing capability and average that across the state. The model does not consider the added expense of creating a stewardship plan or all of those things that we think of when someone is actively managing that property; without those added expenses that is the income producing capability of these forest lands in these categories. That 40% discount is applied to recognize a couple of things (1) the added expense from those people who are actively managing those forest lands and (2) the greater likelihood that you are going to have timber harvests on those properties that are going to produce yield tax income for communities.

C: Frustration has been expressed by those in attendance toward what they feel is a very flawed tax structure in NH that creates a tremendous burden on towns. One point to keep in mind is the difference on demands. Open space has very little or no demands on a community for services; it is not costing the town and does create a public benefit.

A brief discussion took place and input was received about the valuation methodologies of RSA 79-A versus RSA 79-B and a request for the board to look at those and compare.

Mr. Hamilton thanked everyone for attending and closed the public forum at 7:51 p.m.

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

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

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