

## STATEWIDE PROGRAM OF ACTION TO CONSERVE OUR ENVIRONMENT

S.P.A.C.E. NEWSLETTER

WINTER, 2001

### Taxes Revisited *Everything is on the table*

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#### LEGISLATIVE UPDATE

*Every leading tax  
proposal to date  
contains a statewide  
property tax*

This year's legislative session is well underway, and there is one topic dominating conversation — taxes. As the SPACE Newsletter goes to print, there have been a number of proposed ways to fund state services and the state's commitment to education, and many more are expected. Of interest to current use landowners is that *every leading tax proposal introduced to date contains a statewide property tax.*

For the past three years, in response to a state Supreme Court ruling, New Hampshire has been struggling to develop a new way of funding education. The "Claremont II" ruling said that the state has an obligation to fund an adequate education, and required the state to find a new way to raise revenue for education. Since then, the legislature has considered new taxes of every type—an income tax, a sales tax, a consumption tax, a value-added tax, a capital gains tax, and dozens of others. The legislature passed a statewide property tax—at a rate of \$6.60 per \$1,000 of assessed value—and combined this with other revenues to fund the state's commitment to education.

The statewide property tax passed in 1999, and current use landowners across the state have seen changes to their tax bills as a result. In many towns, the overall tax rate declined, causing a drop in taxes. For landowners in "donor towns"—primarily in the Seacoast, Lakes Region and ski towns—tax rates increased, sometimes dramatically.

This tax structure was passed as a temporary measure, and expires shortly. Legislative leaders and the Governor have been discussing new tax structures, and one thing has become clear — *everything is on the table.* Taxes long considered "dead-on-arrival" are having hearings and gaining support. Governor Jeanne Shaheen was re-elected without taking "the pledge" to veto new broad-based taxes—the first Governor to do so in decades. No program is safe from legislative review—no matter how important the program is to the people, economy, and environment of New Hampshire.

As the SPACE Newsletter goes to press, three leading tax proposals have been introduced, and will be heard soon. While each plan is complex and contains elements that cannot be covered here, it is safe to say that no plan directly threatens the viability of the state's current use program.

- Governor Shaheen has proposed a 2.5% sales tax, combined with a statewide property tax of \$4.90 per \$1,000 of assessed value;
- Representative Hager (Concord) and Senators Below (Hanover) and Fernald (Sharon) have introduced an income tax of 3.3% (less personal exemptions), combined with a statewide property tax of \$4.75 per \$1,000 of assessed value; and
- Representative Hess (Hookset) has introduced a plan that dedicates existing business taxes to fund education, and leaves the existing statewide property tax of \$6.60 per \$1,000 of assessed value in place, with any budget shortfall to be addressed later in the session either through new revenues or budget cuts.

*continued on page 4*

# Current Use Board Report

## Assessment Range Increase Ahead

The Current Use Board has approved an assessment range increase that will effect the *Forestland* and *Forestland with Documented Stewardship* categories. The Farmland and Unproductive Land categories assessment ranges will remain the same.

The majority of the assessment range increase is due to increases in stumpage prices over the past three and a half years. The size of the increase differs with tree species, with the *White Pine* and the *All Other* categories seeing the largest increases. The *Hardwood* category has been increased only slightly.

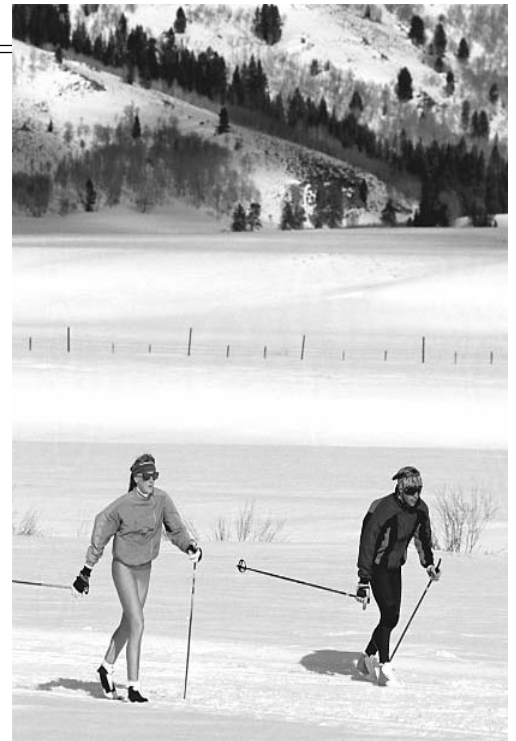
There was considerable debate among Current Use Board members about the amount of the assessment range increase, and some observations that stumpage prices were already headed downward. In the end, the Board decided to raise the assessment ranges to only half of what the computer generated model indicated, and resume the discussion next year with another year's stumpage prices to consider.

The *Forestland* category will see an additional increase in the assessment ranges as well, with the harvest administration fee being reduced from 10% to 5%. This follows a reduction from 15% to 10% that took effect on April 1, 2000. Prior to that, the *Forestland* category had used a

15% harvest administration fee. This was reduced because the costs reflected in the 15% were components of a forest stewardship plan at the time of harvest; costs that unmanaged forestland does not incur.

The Current Use Board agreed that the reduction of the harvest administration fee to 5% allows for the difference in actual costs between *Documented Stewardship Forestland* and *Forestland* to be more accurately reflected. (See page 3 for explanation of how forestland assessment ranges are determined.)

The approved changes will take effect on April 1, 2001.



*Just one of many ways to enjoy New Hampshire's open spaces in the winter.*

### Forest Land Assessment Ranges

		WHITE PINE	HARDWOOD	ALL OTHER
1995-97	<i>Stewardship Forestland</i>	\$46-\$90	\$15-\$27	\$30-\$66
	<i>Forestland</i>	\$85-\$128	\$43-\$65	\$68-\$104
1998-99	<i>Stewardship Forestland</i>	\$55-\$103	\$15-\$33	\$40-\$81
	<i>Forestland</i>	\$93-\$141	\$47-\$72	\$78-\$119
1999-00	<i>Stewardship Forestland</i>	\$55-\$103	\$15-\$33	\$40-\$81
	<i>Forestland</i>	\$100-\$152	\$51-\$78	\$82-\$125
2001-02	<i>Stewardship Forestland</i>	\$63-\$115	\$15-\$36	\$44-\$87
	<i>Forestland</i>	\$112-\$170	\$55-\$84	\$91-\$137

## Administrative Rule Change in Response to Van Lunen Decision

An administrative rule change has been made in response to a New Hampshire Supreme Court opinion entitled *Appeal of Estate of Richard Van Lunen*. The Supreme Court upheld the lot-by-lot assessment of the Land Use Change Tax where a lot or combination of lots under the same ownership is larger than ten acres. However, the Supreme Court interpreted the associated administrative Rule 308.01 to require the town to remove the value added to the property by improvements made in association with the subdivision for the computation of the Land Use Change Tax. At the Public Forums held last fall, Current Use Board Chairperson Barbara Reid stated that it has always been the intention of the Current Use Board that the value of betterments affecting the value of a lot be included in the fair market value of the property for the assessment if the Land Use Change Tax. Towards that end, after receiving public commentary, a definition of

betterments has been added to the administrative rules, and Rule 308.01 has been rewritten. The new wording shall read:

Cub 308 ASSESSING THE USE CHANGE TAX

Cub 308.01 Assessing Full and True Value

(a) For the purposes of this section, the full ad true value of the land as referenced in RSA 79-A:7, shall be based on the highest and best use of the land as of:

- (1) The date the actual physical change was begun; or
- (2) The date on which the parcel no longer qualifies for current use assessment due to size

(b) The full and true value of the land being disqualified pursuant to RSA 79-A:7, shall be based upon the highest and best use of the land, including the value of all betterments serving the land.

The approved changes will take effect on February 22, 2001.

## 1993 Current Use Survey to be Updated

The SPACE Board of Directors has approved funding to update the 1993 Current Use Survey with a new telephone survey of current use landowners. The survey will be conducted this summer by the UNH Survey Center at the University of NH Institute for Policy and Social Science Research.

The 1993 survey was the first comprehensive research of current use landowners, and created a demographic profile of who owns current use land that is still being used today. The survey results have been an invaluable tool, not only for determining who owns current use land, but also in building support for the program. Much of the debate against current use can be disputed with the statistically valid results of the survey data. For example, a popular argument against current use is that it is a tax dodge for the very wealthy. The 1993 survey showed that 62.8% of current use landowners had annual incomes of less than \$45,000, while only 6.3% had annual incomes above \$105,000. The survey also established that individuals or families living in New Hampshire own 90% of current use land.

But recently these results have been challenged as being out of date. One issue that has highlighted the need for the new survey are the results regarding posted versus unposted land. The 1993 survey results showed 79.3% of current use landowners do not post their land. However, the population increases and development pressures in recent years have some questioning if that can still be true today.



*Winter is one of the best times to observe wildlife.*

The survey is far more comprehensive than merely tracking landowner demographics. Other questions asked will focus on:

- the level of knowledge about program requirements
- landowner perceptions of the costs and benefits of current use
- what objectives landowners have regarding their current use land
- income generating uses of land
- what changes to current use would prompt landowners to sell

Also, the new survey results will be compared and analyzed against the 1993 results to see what trends can be ascertained. The results will be published in an upcoming newsletter. If you receive a call from the UNH Survey Center, please take the time to respond to the questions. You will be helping us gather important data about current use landowners!

## New Hampshire Supreme Court Decides Current Use Case

On December 28, 2000, the New Hampshire Supreme Court released its opinion in the Tyler Road Development Corporation v. Town of Londonderry case. SPACE filed an *amicus curiae* (friend of the court) brief with the Supreme Court in the fall of 1999 in this significant current use litigation.

The appeal to the Supreme Court came because a Rockingham County Superior Court judge, agreeing with the plaintiff, ruled the method used by the Town (pursuant to 1991 legislation) to assess the Land Use Change Tax (LUCT) on land that became disqualified from current use was unconstitutionally retrospective in that the land had been enrolled in current use prior to the 1991 legislation.

The Supreme Court sided with the Town of Londonderry and reversed the Superior

Court's decision. The Supreme Court held that the case substantially relied upon by the Superior Court judge, a 1993 Supreme Court decision entitled Opinion of the Justices (Current Use Reimbursement Program), was in error in its "...implicit supposition that the relevant transaction for analysis is when land is enrolled in current use, rather than when the land is removed from current use". The Court then decided in the adversarial Tyler Road case that such removal is the "relevant transaction."

In support of this determination the Court cited another of its decisions and concluded "It stands to reason that if income is taxed when income is realized, and sales are taxed when sales are made, then land use changes are taxed when land use changes."

Tyler Road Development Corporation had argued that investors having expected a

particular land use change taxation method would be unfairly trapped if that method were subsequently changed. The Supreme Court disagreed, emphasizing that the purpose of the current use system is not to facilitate development of land, but, as stated in RSA 79:A:1, to encourage the preservation of open space in New Hampshire.

It has long been SPACE's position that the 1991 legislation merely clarified when land is disqualified from current use and the consequent application of the LUCT. Prior to that time, such disqualification in the case of building lot development in subdivisions had been insufficiently specified in the statute, causing towns to have widely varying approaches to assessing the LUCT.

Copies of the Supreme Court decision are available through the SPACE office, or online at [www.state.nh.us/courts/supreme/opinions](http://www.state.nh.us/courts/supreme/opinions).



## How Forestland Assessment Ranges are Determined

Current Use assessment ranges are based on the net income producing capabilities of the land. This process calculates the net income producing capability for forestland.

- 1 Review average weighted stumpage prices per species as provided semi-annually by the Department of Revenue Administration.
- 2 Determine whether there are seven consecutive data periods (3 1/2 years) above or below the mean. If so, an increase or decrease is needed.
- 3 Determine the average price over this 3 1/2 year period.
- 4 Incorporate these 3 1/2 year average prices into the Current Use Model.
- 5 Compute the high and low assessment ranges using the following additional factors:

	<i>Forestland</i>	<i>Forestland with Documented Stewardship</i>
Management Fee	\$0.10	\$1.50
Interest Rate	7.50%	7.50%
Harvest Administration		
2000-01	10%	15%
2001-02	5%	15%

*This information is provided by the Dept. of Resources and Economic Development, Division of Forests and Lands*

### Taxes Revisited... *continued from page 1*

Each of these plans also addresses, through different means, a recent Superior Court ruling by Judge Galway that found substantial flaws in the assessment methods used in the existing statewide property tax, and if left unaddressed would end the statewide property tax. This ruling is being appealed to the state Supreme Court, and its impacts may not be known for some time. More tax proposals are anticipated, and SPACE will evaluate these as they are released.

Current use landowners have seen direct legislative challenges to the program over past years, and SPACE has worked to make certain that this program remains the cornerstone of New Hampshire's land conservation efforts. This year, landowners can take comfort in the fact that there are no bills that directly threaten the viability of the state's current use program. However, in a fast-paced legislative year with multiple tax proposals and an anticipated budget deficit, bills can change and SPACE could quickly find itself calling current use landowners into action.

There is one piece of legislation that has caught SPACE's attention, though it does not directly address current use. House Bill 571, *an act establishing a commission to study the feasibility of creating a statewide land value assessment system for the purpose of*

*creating a revenue source for funding education*, is sponsored by Representative George Katsakiores of Derry. The bill is modeled after a bill from 1998, House Bill 1666, that would have established a new tax on land only—not buildings or other improvements—in order to fund education. SPACE opposed House Bill 1666 in 1998, and will be closely monitoring this year's legislation. House Bill 571 does not institute a new tax, but instead establishes a new committee to study the potential benefits and problems of such a tax—providing current use advocates an opportunity to educate legislators about the importance of fair tax treatment for open space.

In addition to this legislation, SPACE will be monitoring all of the tax plans, any one of which could have impacts, intended or otherwise, on current use. Legislators will also be able to file new bills during a brief period in April, and there is no way of knowing how these bills may impact current use and the fair taxation of open space.

SPACE remains committed to fair taxation of open space in New Hampshire, and will work to make certain that current use remains the strong, viable program it is today. Obviously the state's ongoing tax debates present challenges, but SPACE will continue to stay abreast of legislation that directly or indirectly impacts this important land conservation program.

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*Be an informed landowner — The Tax Debate, Current Use Board Report and a NH Supreme Court Decision in this issue!*

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